CALIFORNIA COASTAL COMMISSION
ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION
45 FREMONT STREET
SUITE 2000
SAN FRANCISCO, CALIFORNIA 94105-2219
(415) 904-5200 FAX (415) 904-5400

WWW.COASTAL.CA.GOV

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ENERGY, OCEAN RESOURCES AND FEDERAL CONSISTENCY DIVISION

DEPUTY DIRECTOR'S REPORT

For the

April Meeting of the California Coastal Commission

MEMORANDUM

Date: April 07, 2016

TO: Commissioners and Interested Parties

FROM: Alison Dettmer, Energy, Ocean Resources and Federal Consistency Division Deputy Director

SUBJECT: ***Deputy Director's Report***

Following is a listing for the waivers, emergency permits, immaterial amendments, extensions and Negative Determinations issued by the Energy, Ocean Resources and Federal Consistency Division for the April 2016 Coastal Commission hearing. Copies of the applicable items are attached for your review. Each item includes a listing of the applicants involved, a description of the proposed development, and a project location.

Pursuant to the Commission's direction and adopted procedures, appropriate notice materials were sent to all applicants for posting at the project site. Additionally, these items have been posted at the District office and are available for public review and comment.

This report may also contain additional correspondence and/or any additional staff memorandum concerning the items to be heard on today's agenda for the Energy, Ocean Resources and Federal Consistency Division

REPORT OF IMMATERIAL AMENDMENTS

The Executive Director has determined that there are no changes in circumstances affecting the conformity of the subject development with the California Coastal Act of 1976. No objections to this determination have been received at this office. Therefore, the Executive Director grants the requested Immaterial Amendment, subject to the same conditions, if any, approved by the Commission.

Applicant	*Project Description*	*Project Location*
9-13-0621-A1 Pacific Gas and Electric Co., Attn: Kris Vardas	Remove contaminated sediment from the intake and discharge canals and use the discharge canal for temporary storage of clean soils.	1000 King Salmon Ave, Eureka, Ca 95503 (APN(s): 305131035)
9-14-1735-A2 / A-3-MRA-14-0050-A2 California-American Water, Attn: Ian Crooks	Modify Special Condition 6 to include additional monitoring for any exposed project components, and to modify its project description to include the measures it will use to reconnect the discharge pipe to the outfall.	Cemex, Inc. Lapis Plant, Lapis Road, Marina, Ca 93933 (APN(s): 2203011001, 2203011011)
E-09-010-A4 Pacific Gas & Electric Co., Attn: Kris Vardas	Extend the operation of the Groundwater Treatment System (GWTS) from 2016 to 2019 for treating shallow groundwater and stormwater.	1000 - 0 King Salmon Ave, Eureka

NEGATIVE DETERMINATIONS AND NO EFFECT LETTERS

Administrative Items for Federal Consistency Matters

Applicant	*Project Description*	*Project Location*
ND-0003-16 National Oceanic and Atmospheric Administration	Installation of a temporary water level station at Shelter Cove in Humboldt County to update tidal and geodetic elevations in the region. Action: **Concur, 3/9/2016**	Shelter Cove, Humboldt County (APN(s): 10817123)
ND-0004-16 U.S. Coast Guard	U.S. Coast Guard, maintenance dredging of slightly less than 2000 cu. yds. of sediment, with disposal at HOODS open ocean disposal site Action: **Concur, 3/11/2016**	Us Coast Guard Station Humboldt Bay, North Spit, Humboldt Co. (APN(s): 40115108)
ND-0005-16 U.S. Coast Guard	Maintenance and repairs to address safety and structural deficiencies at the Point Loma Lighthouse, San Diego. Action: **Concur, 3/16/2016**	Point Loma, San Diego (APN(s): 5325200400)
NE-0003-16 Port of Los Angeles, Attn: Michael Keenan	Disposal at LA-2 ocean disposal site of 21,800 cu.yds of dredged sediment from Berths 212-224 in the Port of Los Angeles. Action: **Concur, 3/9/2016**	La-2 Ocean Disposal Site, Offshore Of San Pedro, Los Angeles County

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45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

NOTICE OF PROPOSED IMMATERIAL PERMIT AMENDMENT

E-09-010-A4

TO: All Interested Parties

FROM: John Ainsworth, Acting Executive Director

DATE: April 1, 2016

SUBJECT: Application to amend Coastal Development Permit No. E-09-010 granted to Pacific Gas & Electric (PG&E) allowing initial demolition and decommissioning at the Humboldt Bay Power Plant, near King Salmon, Humboldt County.

The Acting Executive Director has determined that the requested project change described herein may be approved as an immaterial amendment to the above-referenced coastal development permit (CDP). The amendment would result in a minor change to the approved CDP – a three-year time extension for PG&E to use the Groundwater Treatment System ("GWTS") it installed as part of its power plant decommissioning project.

Background and Project Description: On December 10, 2009, the Commission approved CDP No. E-09-010 allowing PG&E to conduct initial demolition and decommissioning of the Humboldt Bay Power Plant. Work approved by the CDP includes constructing access roads, equipment laydown areas, and staging areas, demolishing the existing power plant structures and associated facilities, and conducting initial site cleanup and remediation. On October 15, 2010, the Commission approved the first immaterial amendment to the CDP allowing conversion of an on-site parking area at the site to a covered equipment storage area. On September 18, 2012, the Commission approved a second immaterial amendment to the CDP allowing PG&E to construct and operate a GWTS to treat shallow groundwater and stormwater encountered during project excavation activities. The GWTS consisted of a 21,000 gallon receiver tank, pumps and pipelines to convey water, and a treatment system that included storage tanks, clarifiers, filters, sampling equipment, and other components. It was to be located on a paved area near the power plant's discharge canal. The system was designed to treat up to about 300 gallons per minute, though most operations would be at 100 gallons per minute or less. The GWTS was expected to operate until 2016, after which it would be removed. On May 9, 2013, the Commission approved a third amendment to the CDP allowing additional excavation and cleanup needed to complete site remediation.

Requested Amendment: PG&E has requested its permit be amended to allow the GWTS to continue operating through 2019, which is when it expects final site remediation activities will be completed.

FINDINGS: THE PROPOSED AMENDMENT HAS BEEN DEEMED "IMMATERIAL" FOR THE FOLLOWING REASONS:

- Marine Resources and Water Quality: Discharges from the GWTS are subject to Best Management Practices and other requirements established as protective of marine resources and water quality in CDP E-09-010, and are additionally subject to the concentration limits of the state's Construction Storm Water General Permit (WDID 12C357418), National Pollutant Discharge Elimination System Permit No. 005622, and Nuclear Regulatory Commission requirements.

- Visual Resources and Public Access: The GWTS is located on an existing laydown area near a public shoreline access trail on the site's western boundary, though is similar to, and smaller than, much of the other industrial equipment at the site and does not significantly alter the site's existing visual character. Additionally, PG&E placed the more visually neutral components of the GWTS towards the shoreline where they would partially block other equipment from public views. Overall, the GWTS represents only a relatively minor visual component of the ongoing site activities, and extending its operating period will have a de minimis effect on both visual resources and public access.

Immaterial Permit Amendment

Pursuant to the California Code of Regulations—Title 14, Division 5.5, Volume 19, section 13166(b)—the Executive Director has determined this amendment to be IMMATERIAL.

Pursuant to section 13166(b)(1), if no written objection to this notice of immaterial amendment is received at the Commission office within ten (10) working days of mailing said notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

Pursuant to section 13166(b)(2), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the Commission at its next regularly scheduled meeting. If any three (3) Commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the Commission for action as set forth in section 13166(c). Otherwise, the immaterial amendment shall become effective.

Pursuant to section 13166(b)(3), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the Commission for action as set forth in section 13166(c).

If you wish to register an objection to this notice, please send the objection in writing to Tom Luster at the above address. If you have any questions, you may contact him at (415) 904-5248 or via email at tluster@coastal.ca.gov.

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NOTICE OF PROPOSED IMMATERIAL PERMIT AMENDMENT

9-13-0621-A1

TO: All Interested Parties

FROM: John Ainsworth, Acting Executive Director

DATE: April 1, 2016

SUBJECT: Application to amend Coastal Development Permit No. 9-13-0621 granted to Pacific Gas & Electric (PG&E) for Humboldt Bay Power Plant canal remediation, along shoreline of Humboldt Bay, Humboldt County.

The Acting Executive Director has determined that the requested project change described herein may be approved as an immaterial amendment to the above-referenced coastal development permit (CDP). The amendment would result in a minor change to the approved CDP, which allowed PG&E to conduct activities related to remediation of the Humboldt Bay Power Plant intake and discharge canals as part of PG&E's overall power plant decommissioning project.

Background and Project Description: On February 12, 2014, the Commission approved CDP No. 9-13-0621 to allow remediation of the Humboldt Bay Power Plant intake and discharge canals. The Commission's approval included an approximately three-month closure of a section of shoreline trail adjacent to the power plant to allow PG&E to remove an outfall pipe located beneath the trail, which extends along about a mile of the Humboldt Bay shoreline adjacent to PG&E's power plant site.[1] The outfall previously conveyed cooling water from the power plant's discharge canal to Humboldt Bay.

Requested Amendment: PG&E has requested its permit be amended to allow for temporary relocation instead of temporary closure of the shoreline trail. The relocation would involve replacing about 200 linear feet of shoreline trail with about 500 linear feet of trail located inland to create a temporary "jog" in the trail around the outfall pipe work site (see Exhibit 1 – Temporary Coastal Trail Alignment). The replacement section of trail would start about one-half mile upcoast of the southern trailhead at King Salmon Boulevard. Temporary relocation would allow PG&E to maintain public access to the portion of the trail to the north of the work area.

[1] The Commission had previously required that PG&E provide the shoreline trail as a public access component of CDP #E-05-001.

The proposed work would involve leveling the surface of the replacement trail area, placing aggregate over that area, and constructing a section of six-foot high security fence on either side of the trail. [***Note:*** there is currently a similar security fence just inland of the existing trail.] PG&E would also construct gates at each end of the relocated trail to allow for temporary closures during work activities that may create a safety or security hazard, such as overhead crane lifts. Construction of the relocated trail is expected to take about two weeks starting in mid-May 2016. Once complete, PG&E would open the relocated trail section, remove the outfall and overlying riprap from beneath the existing shoreline trail, then replace the riprap and rebuild the shoreline section of trail. This is scheduled to be completed by October 2016, when PG&E will re-open the replaced section of permanent shoreline trail and remove the temporary trail and fence sections.

FINDINGS: THE PROPOSED AMENDMENT HAS BEEN DEEMED "IMMATERIAL" FOR THE FOLLOWING REASONS:

- Public Access: Although previous Commission approvals allowed for temporary closure of this section of a shoreline public access trail, the proposed amendment will obviate the need for trail closure other than during relatively short-term construction activities that may raise safety and security issues. The relocated trail will allow public access to continue along an approximately half-mile length of trail that would otherwise be inaccessible during PG&E's outfall removal activities.

- Marine Resources and Water Quality: Activities associated with this proposed trail relocation amendment would be subject to the water quality and marine resource protection conditions the Commission previously authorized through CDP 9-13-0621 for the outfall removal. The project is additionally subject to PG&E's coverage under the state's Construction Storm Water General Permit (WDID 12C357418) and National Pollutant Discharge Elimination System Permit No. 005622.

Immaterial Permit Amendment

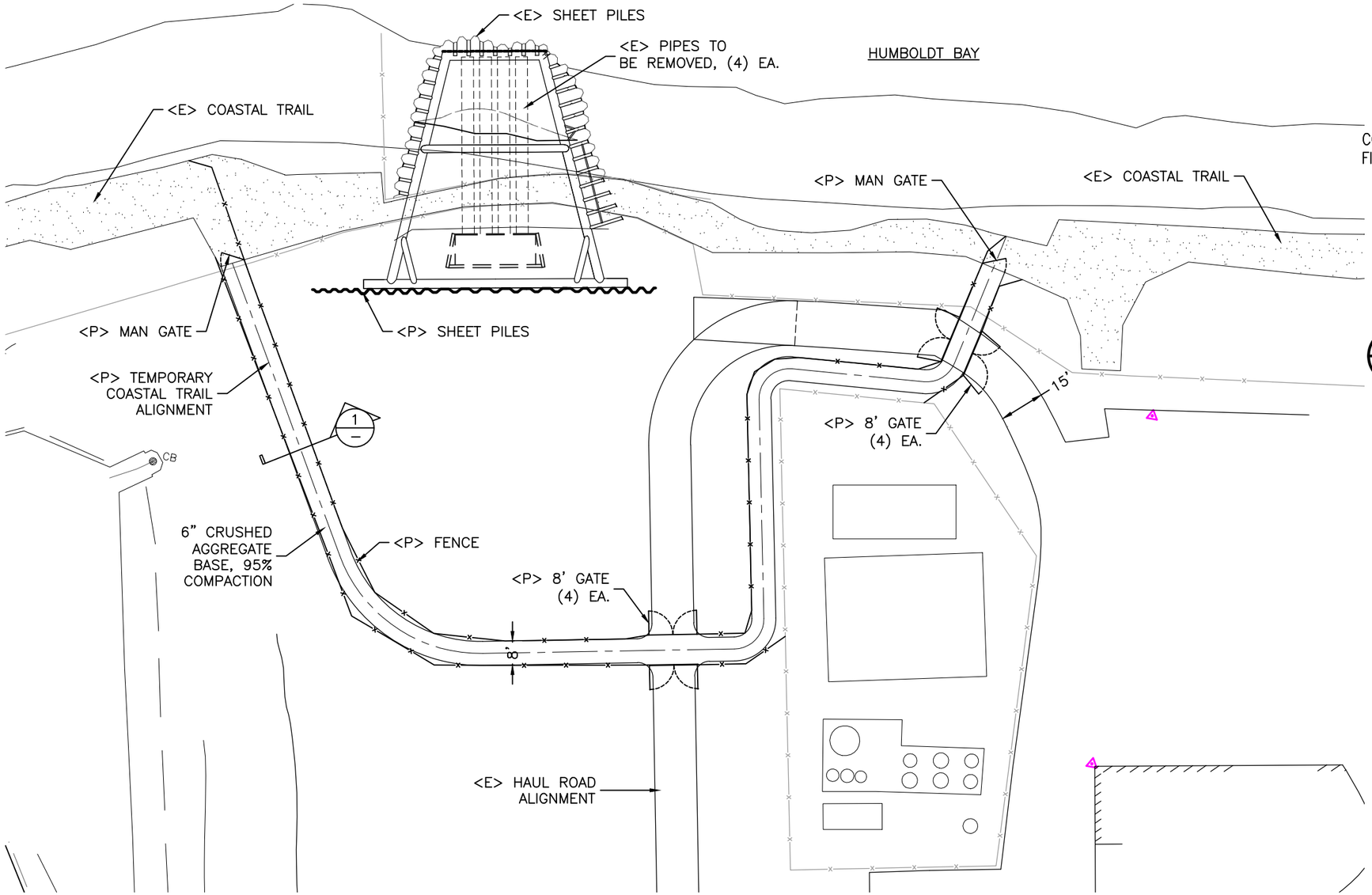
Pursuant to the California Code of Regulations—Title 14, Division 5.5, Volume 19, section 13166(b)—the Executive Director has determined this amendment to be IMMATERIAL.

Pursuant to section 13166(b)(1), if no written objection to this notice of immaterial amendment is received at the Commission office within ten (10) working days of mailing said notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

Pursuant to section 13166(b)(2), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the Commission at its next regularly scheduled meeting. If any three (3) Commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the Commission for action as set forth in section 13166(c). Otherwise, the immaterial amendment shall become effective.

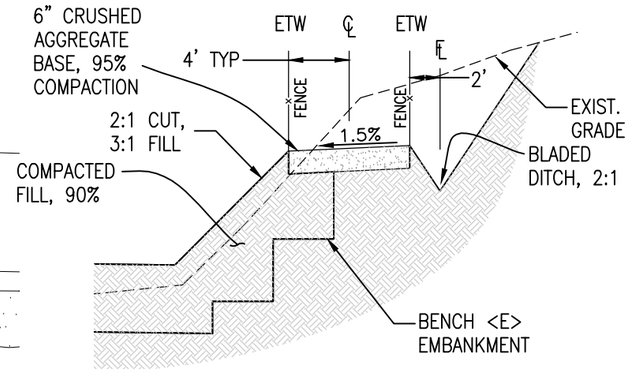
Pursuant to section 13166(b)(3), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the Commission for action as set forth in section 13166(c).

If you wish to register an objection to this notice, please send the objection in writing to Tom Luster at the above address. If you have any questions, you may contact him at (415) 904-5248 or via email at tluster@coastal.ca.gov.



SITE PLAN

SCALE: 1"=40'



1 — TYP. SECTION, PED. PATH

SCALE: HORIZ. 1"=10', VERT. 1"=3'

LEGEND

<E>	EXISTING
<P>	PROPOSED
TBR	TO BE REMOVED
℄	CENTERLINE
ETW	EDGE OF TRAVELED WAY
℉	FLOW LINE
~~	SHEET PILES
—x—x—	FENCE

1 INCH

HORIZONTAL DATUM: NAD83
VERTICAL DATUM: NAVD88

REGISTERED PROFESSIONAL ENGINEER
DARIN P. STREGE
C59686
CIVIL
STATE OF CALIFORNIA

NO.	REVISION	BY	CK'D	APPD	DATE
0	IMMATERIAL AMENDMENT				

CB&I

BY: MBC | CK'D: | APPD: | DATE: 1/19/16 | SCALE: AS NOTED

HBPP DECOMMISSIONING & DEMOLITION

TEMPORARY COASTAL TRAIL ALIGNMENT

DWG NO.: CBI-150216-WP52-DWG-003 | REV: 0

PROJ NO: 150216 | SHT #: 1 OF 1

Z:\Shared\administrative\2015 docs\C B I\WP-52 — DC-Coffer Dam\dwg\wp-52 discharge canal trail realign.dwg

Form: CMS-830-00-FM-02102 CBI ANSI B.DWG

NOTICE OF PROPOSED IMMATERIAL AMENDMENT

9-14-1735-A2 /

A-3-MRA-14-0050-A2

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

NOTICE OF PROPOSED IMMATERIAL PERMIT AMENDMENT

9-14-1735-A2 / A-3-MRA-14-0050-A2

TO: All Interested Parties

FROM: John Ainsworth, Acting Executive Director

DATE: April 1, 2016

SUBJECT: Application to amend Coastal Development Permit No. 9-13-1735 / A-3-MRA-14-0050 granted to California American Water Company ("Cal-Am") for constructing, operating, and decommissioning a test well, along Monterey Bay shoreline, Monterey County.

The Acting Executive Director has determined that the requested project change described herein may be approved as an immaterial amendment to the above-referenced coastal development permit ("CDP"). The amendment would result in a minor change to the approved CDP, which allowed Cal-Am to conduct activities related to constructing, operating, and removing a test slant well project at the CEMEX site in the City of Marina along the Monterey Bay shoreline.

Background and Project Description: In November 2014, the Commission approved CDPs for Cal-Am to construct, operate, and decommission a test slant well and associated monitoring wells and other infrastructure near the shoreline of Monterey Bay in the City of Marina.[1] Cal-Am is conducting a pump test program for up to about two years to obtain data regarding the geologic, hydrogeologic, and water quality characteristics in aquifers underlying the project area. In February 2015, Cal-Am completed installation and started the pump test, which ran until June 2015 when monitoring detected that groundwater levels were approaching a permit threshold that required Cal-Am to shut down the test and obtain a permit amendment. In November 2015, the Commission approved an amendment to modify the groundwater monitoring requirements and Cal-Am restarted its pump test.[2]

On February 29, 2016, Cal-Am reported that a portion of its discharge pipe had become exposed due to coastal erosion along this section of the Monterey Bay shoreline. The pipe had been connected to a port on an outfall owned and operated by the Monterey Regional Water Pollution Control Agency ("MRWPCA"). Pursuant to **Special Condition 6** of Cal-Am's CDP, if test well

[1] The project is partially within the Commission's retained jurisdiction and partially within the jurisdiction of the City of Marina's certified Local Coastal Program. The Commission accepted an appeal of the City CDP decision and approved the portions of Cal-Am's project within both jurisdictions.

[2] See Commission's Final Adopted Findings for 9-14-1735-A1 and A-3-MRA-14-0050-A1, November 2015.

components become exposed, Cal-Am is to immediately take steps to reduce any hazards to the public and marine life and submit a permit amendment application to address the exposure. On March 2, 2016, Cal-Am submitted its application; however, a few days later, Cal-Am informed Commission staff that additional erosion and exposure to wave action had caused a break in the most seaward 50 feet of the discharge pipe. Although **Special Condition 14** of the CDP allows for certain construction and replacement activities such as those needed to replace the pipe, Cal-Am then modified its amendment request, as described below, to include a description of the proposed re-installation measures. During the same period, MRWPCA obtained an emergency CDP to place temporary sheetpiling around this area of its outfall.[3]

Requested Amendment: As described below, Cal-Am has proposed that its permit be amended in two ways – first, to include additional monitoring for any exposed project components; and second, to modify its project description to include the measures it will use to reconnect its discharge pipe:

- **Special Condition 6** would be modified as shown below in strikethrough and bold underline text:

> "***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~~.* ***When components of the discharge pipeline below the connection to the outfall are exposed, the Permittee shall conduct monitoring, including photographic documentation of the exposed components, at least once per day until the components are naturally reburied, after which erosion monitoring shall be done no less than once per week. When components are exposed, the Permittee shall also post notices at the nearest upcoast and downcoast vertical public access points informing the public of the exposed components. The Permittee shall provide monitoring records, photographs, and proof of the above public notices to the Executive Director upon request.***
>
> ***Prior to conducting any repairs or reinstallation of exposed equipment that require construction methods other than the hand methods described in Amendment 2 of this permit, the Permittee shall apply for and obtain a permit amendment unless the Executive Director determines no such amendment is necessary.***
>
> *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*

[3] See CDP G-9-16-0031, initially issued by phone March 4, 2016 with written follow-up on March 17, 2016.

*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.*"

- Cal-Am's project description would be modified to include activities needed to reconnect the discharge pipe to the outfall. Those activities, which are further described in the attached Work Plan, include conducting biological surveys prior to and during work to ensure Western snowy plovers would not be disturbed, using hand tools to dig a trench on top of the existing outfall and to the connection point of the discharge pipe, hand-carrying new ductile iron pipe to the site, reconnecting the pipe sections by hand, and using hand tools to rebury the pipe. Any such reinstallation would occur in areas that are affected by tidal waters, but would be done in the dry during lower tide cycles. The currently proposed replacement work is expected to take three to four workers one to two days, and all scrap and excess material will be removed from the site.

FINDINGS: THE PROPOSED AMENDMENT HAS BEEN DEEMED "IMMATERIAL" FOR THE FOLLOWING REASONS:

- Public Access: The proposed work would take place along the beach within and adjacent to areas affected by tidal waters. Because work would be done primarily in areas already occupied by existing infrastructure – i.e., the MRWPCA outfall – and would be done by hand instead of with vehicles or heavy equipment, it is not expected to reduce or adversely affect public access to the shoreline. The additional coastal erosion monitoring work will also be done without vehicles or heavy equipment and would not adversely affect public access. Further, when project components are exposed, Cal-Am will post notices on the nearest public access points to the beach to ensure the public is aware of the exposed components.

- Biological and Marine Resources: The proposed work will be subject to the existing special conditions, including **Special Condition 14**, which requires that an approved biologist survey the areas at and near the work site prior to and during the activities to ensure no species of concern are present. To further reduce potential disturbances and to avoid potential spills, all work will be done by hand. The discharge pipe will be placed on top of the existing outfall and as close as possible to the outfall valve to avoid gaps between the structures that could harm marine life. The Permittee will also conduct ongoing monitoring to ensure that any future exposure of project components will be detected and addressed. The proposed work plan is also based on consultation between the Permittee and staff of the Coastal Commission, Monterey Bay National Marine Sanctuary, and U.S. Fish and Wildlife Service.

Immaterial Permit Amendment

Pursuant to the California Code of Regulations—Title 14, Division 5.5, Volume 19, section 13166(b)—the Executive Director has determined this amendment to be IMMATERIAL.

Pursuant to section 13166(b)(1), if no written objection to this notice of immaterial amendment is received at the Commission office within ten (10) working days of mailing said notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

Pursuant to section 13166(b)(2), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the Commission at its next regularly scheduled meeting. If any three (3) Commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the Commission for action as set forth in section 13166(c). Otherwise, the immaterial amendment shall become effective.

Pursuant to section 13166(b)(3), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the Commission for action as set forth in section 13166(c).

If you wish to register an objection to this notice, please send the objection in writing to Tom Luster at the above address. If you have any questions, you may contact him at (415) 904-5248 or via email at tluster@coastal.ca.gov.

Work Plan
for
Cal-Am Test Slant Well Discharge Pipe Repair

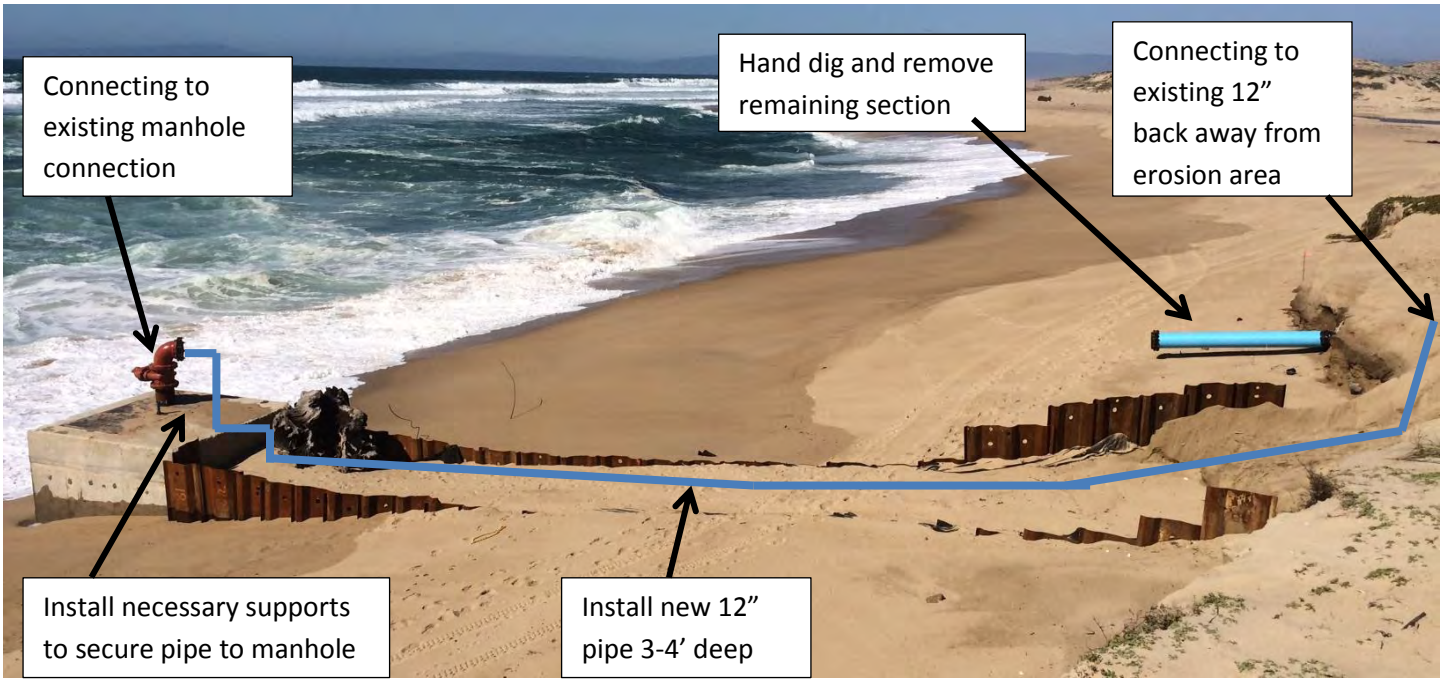
Snowy Plover and Biological Monitoring:

1. Prior to any work activity beginning, Cal-Am will coordinate with Pointe Blue to perform Snowy Plover surveys to determine presence of plover that may be disturbed by planned work. If Pointe Blue determines that Plovers are present (near-by nests or line-of-sight) or as otherwise determined by Pointe Blue, than no work shall take place until such time that Pointe Blue gives clearance for work to begin.
2. Cal-Am will retain Zander Associates and/or Pointe Blue to provide for continued on-site biological monitoring during the duration of the work activity, estimated 2-3 days, daylight hours only.

Scope of Work:

1. Replace broken section of 12" PVC pipe with new 12" Ductile Iron & PVC pipe from existing manhole stub to the remaining existing 12" discharge pipe. The 12" pipe would extend inside and across the sheet pile area recently installed by MRWPCA to protect the sanitary sewer pipe line. The 12" pipe would be dug by hand with shovels to bury it 3-4' below current sand level. Once 12" pipe reach end of the sheet piles, install 45 or 90 degree bends to direct pipe towards remaining existing 12" discharge while shoveling and maintaining 3-4' of cover until connection to existing 12" pipe is made. **See Figure 1.**
2. Estimated 2-3 days of work during daylight hours only.
3. Work to be completed with hand tools only (shovels and powered hand tools).
4. Material carried by hand or delivered by other means from inland disturbed CEMEX roadway to repair area.
5. Any scrap material cleaned and removed from site.

FIGURE 1



CORRESPONDENCE

9-14-1735-A2 /

A-3-MRA-14-0050-A2

Objection Letters from:

- **Michael Baer**
- **M.J. Del Pierro**
- **David Beech**

Luster, Tom@Coastal

From:	Michael Baer <mroso@stanfordalumni.org>
Sent:	Monday, April 11, 2016 8:24 AM
To:	Luster, Tom@Coastal
Subject:	Baer objects to repermit of MPWSP test slant well
Attachments:	CCC Objection .2.pdf

Dear Mr. Luster,

Please find herein and submit the following items as objection to the immaterial repermit application for CalAm's test slant well, currently agendized for Friday afternoon, April 15.

1) An attached pdf document labelled "CCC Objection .2" (scroll down below the pictures to end of email for attachment, thanks)

2) The following USGS article on subsidence, linked here:
http://geochange.er.usgs.gov/sw/changes/anthropogenic/subside/

3) Three pictures taken April 2, 2016 at the outfall site, with my sister who is 5', 1.5 " for reference.

Please deliver to the Executive Director and all Coastal Commissioners today.

Please confirm receipt and delivery of this objection.

Many thanks, Tom

Michael Baer
Monterey California

April 9, 2016

Executive Director
California Coastal Commission

Dear Mr. Director,

I raise objection to the immaterial re-permit on the repairs to the MPWSP test slant well discharge connecting line for several reasons, in no particular order.

1. The slant well test is a proven failure. It was supposed to run continuously for 18-24 months as a stress test. As of April 15, 2016, the pump has run for 169 days, and been idle for 190 days, a 47% track record. By any industry standard this is "a fail."
2. Whatever repairs are made now, they are unlikely to prove adequate. King tides will return in the late fall and stop the testing work again (see point 1). Depending on your point of view, this is a good or a bad thing.
3. Reporting of data on the public internet site, montereywatersupply.org, has been wholly inadequate and nontransparent. HWG is conducting poor science, with a predetermined specific outcome in mind. One reason is because of the conflict of interest of the chief investigator, Dennis Williams. Some of the incongruencies, again in no particular order, are listed below.
    a. Specific conductivity graphs do not align with specific conductivity lab data, which are more accurate than transducers. The smooth steady line of the graph is not reflective of actual total dissolved solids (tds) fluctuations. No explanation of the anomaly has been given.
    b. No explanations as to how taking 288 transducer readings per day (every 5 minutes) translates to a single point on the specific conductivity line for the MW4M monitoring well in the 180 ft. aquifer.
    c. Additional pumps were installed in MW4 in Mid February 2016. No explanation on the website. When questioned, Mr. Luster responded (on behalf of HWG or GeoSciences???) that installation of pumps was an attempt to improve accuracy because of vertical mixing in the monitoring well. No discussion posted if that had any bearing on future results. It remains as a note on a graph, nothing more.
    d. North Well at CEMEX "collapsed" on November 13, 2015. This was not reported on line until mid-Januay 2016. No investigation as to cause.
    e. In the re-permit of Oct 13, 2015, "regional trends" were introduced as factors. Yet there is no quantifiable, objective measurement of these factors.
    f. Gravimetric Lab readings of tds at MW4 were suspended between July and December of 2015. This data would have been invaluable in learning about how the aquifer responds through the dry summer months with no pumping. More poor science and points to the predetermined nature of the testing "scientists."
4. The Monterey Peninsula Water Regional Authority (MPWRA) , an ad-hoc group of the peninsula mayors, headed by the outgoing mayor of Carmel, Jason Burnett, reported to

a town hall type meeting on March 29, 2016 that "the CPUC requires no more data from the slant well for the DEIR to proceed."

5. The water that is being discharged into the ocean at approximately 2.9 million gallon per day (when the pump is running), is *real property* that belongs to the overlaying landholders above the cone of depression created by the pump, including a reversionary right to the federal government on AgLand Trust groundwater. That groundwater, no matter how saline, belongs to someone else, and is being careless tossed to sea.
6. Water takes space. To date, 65 million cubic feet of water has been extracted from the aquifers during the test. It is unknown how quickly the water replaces those spaces. ***Subsidence***, the collapse and compression of those spaces, is a possibility. Perhaps that is a factor in the North Well collapse (see point 3d).
7. The possibility of ***subsidence*** is significantly increased because the terminus of the slant well is not under the ocean as was proposed. The center point for the cone of depression is at the shoreline. It makes a real difference that CalAM and GeoSciences did not build this slant well to the specifications as delineated in the original DEIR, for which all of Williams' model is based on. If executed as modeled, it would have placed the center point of the cone (and the direct vertical gravity feed of the replacement water) 200-400 feet or more off-shore.
8. No CEQA review has been performed on this slant well test since the CCC overturned the Marina City Council and took on this dog. Despite the real damage being done to the environment, you are wading further and further into illegal, unchartered territory without any environmental review.

Please forgive my lack of legal knowledge about how any or all of the above violates the Coastal Act. But I imagine as Director, you are pretty familiar and could find the appropriate statutes if you were inclined to do so. But I will take a stab at it with section 30001c

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

Respectfully submitted,

Michael Baer
Monterey California

Objection Letter from

MJ Del Pierro

9-14-1735-A2 /

A-3-MRA-14-0050-A2

Luster, Tom@Coastal

From:	MJDelPiero@aol.com
Sent:	Monday, April 11, 2016 1:41 AM
To:	Luster, Tom@Coastal; Luster, Tom@Coastal; dicknutter@earthlink.net; aaron@lg-attorneys.com; kellie@lssmc.net
Cc:	sarahcoastalcom@yahoo.com; zimmerccc@gmail.com; mmcclureccc@co.del-norte.ca.us; cgroom@smcgov.org; Gregcoastal@sdcounty.ca.gov; sdarington@redshift.com; steclIns@aol.com; dbeech@comcast.net; mgbisme@yahoo.com; chuck_cech@hotmail.com
Subject:	Objection to Designation of Cal Am Permit Amendment as Immaterial CDP 9-13-0621
Attachments:	BoardofDirectors.pdf; Maps.pdf; NoticeofObjection.pdf; Oppositioncorrespondence.pdf; AgLandTrustwelllogs.pdf

10 April 2016

TO: Jack Ainsworth, Acting Exec. Director, California Coastal Commission (CCC)
CC: Tom Luster-(PLEASE DELIVER TO ALL CCC COMMISSIONERS AND STAFF ASAP)

FROM: Monterey County Ag Land Trust (THE AG LAND TRUST)

RE: Monterey Co. Ag Land Trust Objection to Designation of Cal Am Permit Amendment by CCC staff as Immaterial CDP 9-13-0621 / A-3-MRA-14-0050

April 10, 2016

California Coastal Commission

Dear Commissioners:

This Objection, as referenced above, is hereby submitted by the nine members (collectively and individually) of the Board of Directors of the Ag Land Trust of Monterey County. The Board members are identified in the attachments and biographies submitted herewith. The Ag Land Trust hereby includes and incorporates by reference each and every fact, statement, attachment, document, e-mail correspondence, and map which is herewith attached and/or referenced herein as part of our comments and objections both to the Notice of Proposed Cal-Am Immaterial Permit Amendment 9-14-1735-A2/ A-3-MRA-14-0050-A2 and to the consideration by the CCC of the approval of said permit without the prior preparation of a full and complete EIR pursuant to CEQA which is necessitated by the massive adverse impacts that have caused by Cal-Am's wrongful pumping since the initial CEQA determination. We ask that a full CEQA document be prepared and certified **before** any more wrongful well pumping and contamination of potable groundwater takes place.

The Ag Land Trust objects on the following grounds:

1. The Notice (see Footnote 1 of the Notice) which was published by CCC staff is knowingly flawed in that the massive cone of depression created by the pumping of the test well, and the "taking" of potable groundwater that is being pumped and dumped (wasted) into the ocean, has been now proven to be located largely within the North Monterey County Local Coastal plan area. Failure to acknowledge now that the "project" (including the previously undisclosed, massive and unmitigated cone of depression) which is subject to the amendment directly and adversely affects protected coastal resources in the North Monterey County LCP area is a violation of both CEQA and the Coastal Act. Before the permit can be

considered by the CCC, a new, full, and comprehensive supplemental EIR is required to be prepared. See CEQA Guidelines Sec. 15162 et seq.

2. As noted in the e-mail correspondence (regarding the adverse contamination of groundwater aquifers during the test well pumping) to the California Public Utilities Commission consultant Eric Zigas (Wednesday, September 30, 2015 - 4:57 pm) located below, Cal-Am has and is knowingly contaminating protected potable groundwater aquifers, and knowingly polluting the protected potable groundwaters therein, so as to contrive a method to take groundwater rights from innocent property owners. Cal-Am has no groundwater rights in the Salinas Valley. Unfortunately for Cal-Am, the U.S. federal government holds a reversionary interest in the groundwater resources below the Ag Land Trust farms that are being adversely polluted by Cal-Am's pumping and, federal law is very clear that a private utility is prohibited from adversely acquiring any water rights and/or aquifer storage rights against the federal government. The failure of the Coastal Commission staff (due to their inadequate staff investigations and incomplete environmental reviews) to recognized, in its initial CEQA review, that it is now complicit with Cal-Am in their effort to wrongfully pollute protected, potable groundwater, which has been exclusively protected by certified coastal regulation for coastal agricultural uses, places the CCC as an accessory to violation of federal real property rights. The remedy for this massive mistake is to prohibit the re-initiation of the test well pumping until a comprehensive EIR is prepared and certified.
3. During the initial CCC hearing on the test wells in November, 2014, and in response to a question by Commissioner Mary Shallenberger, Tom Luster told the CCC that he had been advised that there was only "one closed groundwater well" on the Ag Land Trust property. The California-American Water Company attorneys and representatives, and various supporters of Cal-Am including Mayor Jason Burnett, provided intentionally false information to Mr. Luster of the CCC staff prior to the initial CEQA determination so as to deceive the CCC as to the gravity of the significant adverse effects that would result on the Trust's protected groundwater resources and wells from the destructive pumping of Cal-Am's test wells. The CCC relied on these falsehoods and the Trust's aquifer is now being polluted and exploited. These facts were disclosed during the pumping last fall. **(See link to video of Trust water wells pumping 2000 gpm of potable water below).**There are in fact two operable Trust agricultural wells that draw potable water from the groundwater aquifer underlying the Trust property, which has now been shown as being wrongfully polluted as a consequence of the Cal-Am test well pumping. A full EIR must be prepared and certified before further destructive test well pumping is allowed to be re-started.
4. The test well and its much heralded pumping test is a proven and abject failure. It was supposed to run continuously for 18-24 months as a stress test. As of April 15, 2016, the pump has run for 169 days, and been idle for 190 days, a 47% track record. By any industry standard this is a massive failure that has left significant and wrongful groundwater pollution and intentional damage to both private and federal property/groundwater resources and rights in its' wake. The engineering failure of the outfall, we believe, is because of both great subsidence due to the excessive pumping of the test well by Cal-Am and the unanticipated effects and consequences of King tides. Both of these significant environmental issues, and the consequences resulting therefrom, should have been addressed in a full EIR before millions of ratepayers dollars were spent on this failed engineering debacle. In 2014, the Ag Land Trust asked both CCC staff and the CCC to prepare a full EIR, prior to allowing Cal-Am to contaminate the aquifer of the Salinas Valley, expressly so as to avoid these adverse and expensive mistakes, <u>but we were ignored</u>. We ask again that the test pumping not be allowed to resume until a full EIR on the test wells program is prepared and certified.
5. Finally, we hereby incorporate by reference herein, and adopt as our own, the significant letters of objection, grave comments regarding permit violations, and objections to this Notice and requested permit amendment filed by Mr. Michael Baer (dated 9 April 2016), and Mr. David Beech (dated 11 March 2016 and 9 April 2016), and WRAMP with the CCC and the CCC staff.

Respectfully,

Marc Del Piero for the Board of Directors of the Ag Land Trust of Monterey County

-----Original Message-----
From: mjdelpiero <mjdelpiero@aol.com>
To: MPWSP-EIR <MPWSP-EIR@esassoc.com>; EZigas <EZigas@esassoc.com>
Sent: Wed, Sep 30, 2015 4:57 pm
Subject: Comments regarding Cal-Am slant wells/de-sal project EIR

ON behalf of the Ag Land Trust of Monterey County, we hereby present these comments (and each and all attachments, documents, past e-mails, and links attached and/or referred to herein and included hereto) as our initial comments regarding the CPUC proposed EIR, The Ag Land Trust is a 501(c)(3) non profit corporation that holds and protects over 26,000 acres of prime and productive farmlands in Central California. The proposed project will result in massive and unmitigable adverse impacts to the Salinas Valley, California agriculture, and groundwater resources. Please see the attachments hereto for background on the Trust, its' members, and its functions.

We ask that each and all of the data, facts, documents, and all information of every type included herewith be specifically addressed and analyzed in detail in the EIR that is to be prepared. We further request that full mitigations for each and all of Cal-Am's unlawful takings and adverse environmental impacts , including full financial compensation to all affected land owners and individuals, be mandated and required of Cal-Am as mitigations so as to make whole said adversely affected landowners, water rights holders, and the community interests, and to fully mitigate Cal-Am's taking of property rights and the significant adverse impacts of the project.

WE ARE herewith providing to you a non-comprehensive summary of our prior comments (with numerous attachments) that have been provided since 2005 to many regulatory agencies, including the CPUC, regarding the proposed unlawful taking of our overlying groundwater rights, property rights, and groundwater storage rights by the California American Water Company (Cal-Am) through the use of their slant wells. Cal-Am has no groundwater rights in the overdrafted Salinas Valley. We incorporate each and every one of these documents, attachments, and prior comments, and the contents thereof, into this comment letter. **In violation of CEQA, NEPA, and California and federal laws, Cal-Am is causing a nuisance and is intentionally causing massive pollution and permanent contamination of potable groundwater resources (as defined and identified in the legislatively mandated and adopted CCRWQCB Basin Plan and the legislatively mandated and state certified North Monterey County Local Coastal Plan) which are held by innocent overlying landowners, in order to allow Cal-Am to "take storage rights from said landowners without compensation".**

THE AG LAND TRUST IS NOT A PARTY TO ANY EXISTING CPUC PROCESS OR PROCEEDING. HENCE, THE CPUC HAS THE STANDARD OBLIGATIONS AND LEGISLATIVELY MANDATED DUTIES TO US AND ALL AFFECTED ADJACENT PROPERTY OWNERS AS ANY LEAD AGENCY UNDER CEQA. WHEN THE CPUC DECIDED TO GET INTO THE "DE-SAL EIR/EIS" BUSINESS, THE CPUC LOST ITS SELF-CREATED REGULATORY PROTECTIONS FROM THE UNREGULATED PUBLIC WHOSE GROUNDWATER RIGHTS THE CPUC APPEARS TO INTEND TO GIVE TO CAL-AM WITHOUT REQUIRING MITIGATION OR COMPENSATION TO AFFECTED LANDOWNERS AND WATER RIGHTS HOLDERS. THE CPUC CANNOT COMPEL THE AG LAND TRUST, NOR ANY OTHER INNOCENT "OVERLYING RIGHTS' HOLDER/LANDOWNERS THAT ARE NOT CURRENTLY RECEIVING SERVICE FROM A REGULATED UTILITY, TO APPEAR BEFORE IT. NOR MAY THE CPUC CONCLUDE THAT THOSE INNOCENT WATER RIGHTS HOLDERS HAVE CONSTRUCTIVE NOTICE FOR CEQA PURPOSES OF CAL-AM'S INTENDED TAKING, WITHOUT COMPENSATION, OF THEIR GROUNDWATER RESOURCES FROM THE OVER-DRAFTED, AND NON-ADJUDICATED GROUNDWATER BASIN. NOW, THE PROJECT THAT THE CPUC IS

REQUIRED TO EVALUATE IS NOT JUST THE WELLS CAL-AM INTENDS TO DRILL, BUT THE TOTAL ADVERSE ENVIRONMENTAL IMPACTS OF THE ENTIRE PROJECT, INCLUDING THE MAGNITUDE AND MASSIVE ADVERSE ENVIRONMENTAL IMPACTS ON ALL OVERLYING PROPERTIES INCLUDING STATUTORILY PROTECTED PRIME COASTAL FARMLANDS) OF THE PERMANENT TAKING, WITHOUT COMPENSATION, OF MASSIVE AMOUNTS OF GROUNDWATER FROM THE OVERDRAFTED BASIN. FURTHER, THE MASSIVE ADVERSE IMPACTS UPON COMMERCIAL AGRICULTURE, AND THE LIKELY CONVERSION OF THOSE LANDS TO MASSIVE URBAN DEVELOPMENT, FROM A REGULATED GROUNDWATER BASIN THAT WILL RESULT IF CAL-AM IS SUCCESSFUL IN ITS EFFORTS TO "TAKE" SALINAS VALLEY GROUNDWATER STORAGE CAPACITY MUST BE EVALUATE NOW, BECAUSE SUCH FORSEEABLE IMPACTS MUST BE EVALUATED AT "THE EARLIEST POSSIBLE TIME IN THE CEQA/NEPA PROCESS" PURSUANT TO EXISTING REGULATIONS AND GUIDELINES.

THE CPUC NOW, PURSUANT TO THE NOTICE MANDATES OF CEQA, HAS AN OBLIGATION AND REQUIREMENT TO SEND OUT MAILED NOTICES TO EVERY POTENTIALLY AFFECTED LANDOWNER (WITH OVERLYING GROUNDWATER RIGHTS) AND EVERY APPROPRIATOR WITH VESTED GROUNDWATER RIGHTS OF THE MASSIVE CONES OF DEPRESSION AND REGIONAL DRAWDOWN THAT IS NOW RECOGNIZED AS A CONSEQUENCE OF THE PROPOSED PROJECT IN THE EXISTING CA. COASTAL COMMISSION PERMIT SPECIAL CONDITION 11) RESULTING FROM THE MAXIMUM BUILD-OUT OF THE MULTITUDE OF PROPOSED CAL-AM WELLS THAT ARE PLANNED FOR ITS' PROJECT. (SEE COASTAL COMMISSION DOCUMENTS AND STAFF RECOMMENDATIONS AT http://documents.coastal.ca.gov/reports/2015/10/Tu15a-10-2015.pdf WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR CEQA ANALYSIS PURPOSES). EACH OF THESE PARTIES MAY HAVE THEIR RIGHTS TAKEN BY CAL-AM. THEN, AFTER ALL OF THOSE WATER RIGHTS HOLDERS HAVE RECEIVED NOTICE, THEN THE CPUC MUST RE-INITIATE THE CEQA PROCESS FROM THE BEGINNING. THIS IS TO INSURE MAXIMUM PUBLIC PARTICIPATION AS MANDATED BY THE LEGISLATIVE INTENT OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PURSUANT TO THE COMMENTS INCLUDED HEREIN, THE AG LAND TRUST REQUESTS THAT THE CPUC COMPLY WITH ITS' ONGOING LEGAL OBLIGATION PURSUANT TO CEQA, WHICH IT HAS FAILED TO PERFORM, TO PROVIDE ACTUAL MAILED NOTICE TO EACH AND EVERY LANDOWNER IN THE SALINAS VALLEY WHOSE GROUNDWATER RIGHTS AND SUPPLIES ARE OR WILL BE AFFECTED AND/OR TAKEN BY CAL-AM AS PART OF ITS TOTAL PROJECT. THE CPUC CANNOT HIDE BEHIND ITS INAPPLICABLE REGULATORY RULES, WHICH ONLY APPLY TO UTILITIES, TO TAKE PRIVATE PROPERTY RIGHTS WITHOUT FULL COMPENSATION TO THE PRIVATE LANDOWNERS WHOSE GROUNDWATER RESOURCES ARE BEING INTENTIONALLY STOLEN WITHOUT NOTICE. Our property is the closest privately held farmland to the slant well, and our groundwater supplies and rights are being taken and sacrificed by the regulatory agencies including, but not limited to the CPUC and the California Coastal Commission, in violation of the legislative intent articulated in the 2014 California Groundwater Management Act. In spite of our proximity to the slant well, no governmenal agency , including the CPUC, has sought the necessary environmental information that we have repeatedly offered. so as to advance their political agenda of favoring slant wells over seawater intakes. We assert this because, the CCC's own appointed advisory committee of technical de-sal experts flatly rejected slant wells as violative of privately held groundwater rights and property rights in Huntington Beach (for the Poseidon project).

In spite of our comment letters over the past 10 years, and in spite of our extensive legal and factual documentation of Cal-Am's actual illegal conduct, conflicts of interest, and failed slant well test pumping, no representative of any regulatory agency has ever called us, met with us, nor have they solicited any information from us regarding the massive adverse environmental impacts upon groundwater resources and our ongoing beneficial uses thereof, cultivated agriculture, loss of farm jobs, the unlawful (under both the CA. Civil Code and federal law), illegal takings of groundwater rights by Cal-Am wherein the United States Government holds deeded reversionary interests, and impacts upon governmentally required coastal dune habitat restoration programs. The only contact of any kind that we have received, that was not completed, was the e-mail that we received from Eric Zigas (below). After the e-mail, he never called. The project will and has already resulted in the taking of our groundwater, the drawdown of our two irrigation wells, loss of our use of our groundwater for our existing and ongoing beneficial uses of our groundwater, and the pollution of our aquifer. The CCC stopped the pumping of the slant well after less than 45 days because it was inducing drawdown and seawater intrusion into the onshore

aquifer in direct contradiction to the promises made by Cal-Am's representatives in CPUC public meetings, to the CPUC and Coastal Commission members, and under oath in CPUC filings.

We have additional information that is not included herewith that we will share with the regulatory agencies when and if they perform their statutory obligations by demonstrating that they are interested in collecting
as much environmental information as possible in the preparation of a full, complete, and untainted EIR.

Sherwood Darington, the Managing Director of the Ag Land Trust, may be reached at 831-422-5868. Marc Del Piero may be reach at 831-2671-0718 or 831-644-0602.

Respectfully submitted, Marc Del Piero, Board Member for the Ag Land Trust of Monterey County

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-----Original Message-----
From: Eric Zigas <EZigas@esassoc.com>
To: mjdelpiero <mjdelpiero@aol.com>
Cc: steclIns <steclIns@aol.com>; andrew.barnsdale <andrew.barnsdale@cpuc.ca.gov>; Michael Burns <MBurns@esassoc.com>; bvillalobos <bvillalobos@geoscience-water.com>; ashimko <ashimko@bwslaw.com>; Kelly White <KWhite@esassoc.com>; Peter Hudson <PHudson@esassoc.com>; sdarington <sdarington@redshift.com>; dicknutter <dicknutter@earthlink.net>; aaron <aaron@lg-attorneys.com>; stamp <stamp@stamplaw.us>; erickson <erickson@stamplaw.us>
Sent: Fri, May 29, 2015 12:10 pm
Subject: RE: Ag Land Trust well site visit

Thank-you. We will be in touch with Mr. Darington.
--EZ

From: mjdelpiero@aol.com [mailto:mjdelpiero@aol.com]
Sent: Tuesday, May 26, 2015 10:02 AM
To: Eric Zigas
Cc: steclIns@aol.com; andrew.barnsdale@cpuc.ca.gov; Michael Burns; bvillalobos@geoscience-water.com; ashimko@bwslaw.com; Kelly White; Peter Hudson; sdarington@redshift.com; dicknutter@earthlink.net; aaron@lg-attorneys.com; stamp@stamplaw.us; erickson@stamplaw.us
Subject: Re: Ag Land Trust well site visit

Mr. Zigas - I just received your e-mail of Saturday morning (23 May 2015).. I left for Northern California for the Memorial Day weekend on Friday, May 22, and I did not see it before this morning (May 26) when I returned.

As you may know, I am the bankruptcy trustee for the U.S. Department of Justice for Monterey and San Benito Counties.

Unfortunately, I am not available to meet with you this week because I am scheduled to conduct fourteen (14) Meetings of Creditors for fourteen separate Chapter 7 bankruptcy cases.

The Ag Land Trust, in compliance with CEQA, is already preparing comments on your draft EIR and we will submit those comments and all documents previously delivered to the CPUC before your deadline of June 30, 2015.

The Trust willing to arrange to show our farm to you after the comment period is completed so that you may fully evaluate our comments, and any others that you may receive, with the facts and physical conditions that exist near

the "project area" prior to your determinations regarding both the adequacy of the Draft and/or the significant adverse impacts to adjacent potable groundwater resources and productive coastal farmland (and loss of farm workers

jobs) that would be required to be identified/mitigated in the Final EIR.

Please contact our Managing Director Sherwood Darington at 831-422-5868 to arrange a tour in July.

Most Respectfully, Marc Del Piero

P.S. Mr.Stephen Collins is not a member of the Ag Land Trust board of directors, nor has he ever worked for the Trust. He does, however, have a wealth of knowledge regarding the water resources of the Salinas Valley, and regarding the past conduct and past actions of the principals/staff of the County of Monterey, the California-American Water Company, and MCWD, and the representatives of the CPUC.

-----Original Message-----
From: Eric Zigas <EZigas@esassoc.com>
To: Marc J. Del Piero <mjdelpiero@aol.com>
Cc: Steve Collins <steclins@aol.com>; Andrew Barnsdale <andrew.barnsdale@cpuc.ca.gov>; Michael Burns <MBurns@esassoc.com>; Brian Villalobos <bvillalobos@geoscience-water.com>; Anna Shimko <ashimko@bwslaw.com>; Kelly White <KWhite@esassoc.com>; Peter Hudson <PHudson@esassoc.com>
Sent: Sat, May 23, 2015 9:00 am
Subject: Ag Land Trust well site visit

Good morning Marc.
Several members of the CPUC CEQA team will be in Monterey next week for the DEIR public meetings. We would like to follow up with you and learn more about the wells on your property. If possible, we'd appreciate your showing our hydrogeologists the location of the wells, and your providing whatever information we might need to incorporate your concerns into the Final EIR.

We have time on either Wed or Thursday morning of next week, May 27 or May 28. We could meet you anytime up until around noon on either day, so we can be back in time for our 1pm public meetings. If neither of those days works for you, let's try and find a time that does.

We look forward to your positive response to our request. Thank you in advance.

Eric Zigas
ESA | Water
550
Kearny Street
San Francisco, CA. 94108
Ezigas@esassoc.com
415-896-5900
(office)
415-706-3949 (cell)
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-----Original Message-----
From: mjdelpiero <mjdelpiero@aol.com>
To: tom.luster <tom.luster@coastal.ca.gov>; tluster <tluster@coastal.ca.gov>; secretary <secretary@resources.ca.gov>; sdarington <sdarington@redshift.com>; dicknutter <dicknutter@earthlink.net>
Sent: Wed, Sep 30, 2015 11:05 am
Subject: Cal-Am de-sal slant well permit change 9-14-1735-A1 and A-3-MRA-14-0050-A1

Director Luster - **On behalf of the Ag Land Trust of Monterey County, why are this e-mail and attachments (below) that were forwarded to you (for distribution to the Commission members) from the Ag Land Trust NOT included in the link to the CCC staff report?** We herewith incorporate by reference all of our prior submittals (see attachments and links) into this correspondence and comment letter on the proposed change to Special Condition 11.

As The Ag Land Trust has indicated and again asserts, the proposed modification of Special Condition 11 must not be allowed and necessitates the preparation of a new, and full CEQA analysis (including an independent review of the statistical problems disclosed by Ron Weitzman that the CCC consultant failed to uncover) and a full EIR before any modification to the permit is allowed. This proposal constitutes a major and material change that is likely to result in massive regional adverse impacts to groundwater resources because of the "Cal-Am-written changes" that have been incorprorated into the CCC staff recommendations.

The slant well pumping was stopped because "it did not work as advertised". All of Cal-Am's promises and assurances made in 2014 before the CCC and the public have been broken. We have provided you with information demonstrating this massive violation of the public's trust that have been ignored and not even included in in the CCC board packet.

IN THE LAST YEAR, neither your staff, nor CPUC representatives, nor your Hydrologic Working Group (whose impartiality is completely compromised because its' individual members are bound by side agreements (out-of- court settlements) by their employers with Cal-Am that bind the employers and their consultants to supporting Cal-Am's positions) have taken the time to contact us for the hydrologic and well information that we have offered and which demonstrates the significant adverse LOCALIZED effects of the slant well on the potable aquifers of the Salinas Valley that are identified, pursuant to legislative mandate, in the adopted CCRWQCB Basin Plan.

We hereby submit these final comments for distribution to the Commission members and await your response.

Respectfully, Marc Del Piero, Board Member for the Ag Land Trust of Monterey County

-----Original Message-----
From: mjdelpiero <mjdelpiero@aol.com>
To: Tom.Luster <Tom.Luster@coastal.ca.gov>; tluster <tluster@coastal.ca.gov>

Sent: Tue, Sep 22, 2015 2:35 pm
Subject: Fwd: Objection to Cal-Am appeal/application for test slant well

-----Original Message-----
From: mjdelpiero <mjdelpiero@aol.com>
To: tluster <tluster@coastal.ca.gov>; sdarington <sdarington@redshift.com>
Sent: Tue, Sep 22, 2015 11:08 am
Subject: Fwd: Objection to Cal-Am appeal/application for test slant well

Dear Mr. Luster: On behalf of the Ag Land Trust of Monterey County, I have been asked to send this letter to the California Coastal Commission so as to document the unmitigated and significant adverse impacts on the Trust's two operable agricultural irrigation wells from the uncontrolled pumping of the California American Water Company's so-called slant well. The conduct of Cal-Am constitutes a nuisance and a massive unmitigated adverse impact upon protected coastal resources and our property interests and rights. Cal-Am has no overlying groundwater rights in the over-drafted Salinas Valley. Moreover, we must point out that the California Public Utilities Commission has effectively abandoned all past environmental work conducted by its "conflicted and suspect" consultants whose testimony motivated the CCC to ignore our original objections to the slant well. Further, we are aware that numerous parties have requested a criminal investigations (including "qui tam" investigations) by the Attorney General of Cal-Am, its management, its conflicted consultants, members of the Hydrologic Working Group, and certain state and county employees who have cooperated with Cal-Am until their massive conflicts of interests were disclosed by members of the public.

The pumping of the Cal-Am slant well, without any "beneficial use" of the groundwater pumped (it was dumped/wasted into the ocean), has wrongfully taken (without groundwater rights) a massive amount of groundwater from beneath our property. It has also induced seawater intrusion and pollution into our protected groundwater supplies. This wrongful pumping, "dumping", wasting,, and wrongful taking of our groundwater resources has caused significant and unmitigated adverse impacts and damages to our groundwater resources, and to our protected prime coastal farmlands, and to our active dune habitat restoration program. We use our well water for recognized "beneficial" uses on our overlying property and dune habitat lands. Protection and perpetuation of these priority coastal resources are mandates imposed upon the Ag Land Trust by the CA. Coastal Conservancy and the US Department of Agriculture. Sadly, no member of the CCC staff has ever contacted us to determine the validity of our recorded documentation mandating the protection of our coastal resources.

We strongly object to any further pumping of the slant well for the following reasons:

1. The Trust has herewith attached documents that have previously been publicly presented, and ignored, to Coastal Commission staff and the CA. Coastal Commission (CCC). They were presented at the meeting wherein the CCC approved the slant well's construction in the fall of 2014. These previously submitted documents, that disclosed that Cal-Am's wasteful pumping of the slant well would wrongfully and intentionally pull fresh water from the overdrafted Salinas Valley aquifers, are hereby incorporated by reference into this letter of objection to Cal-Am's request to re-start the deleterious pumping.

2. Also attached and submitted herewith are the well logs for the operable Ag Land Trust irrigation wells (the Big Well and the Small Well) that have been adversely affected by the pumping of the Cal-Am slant well. During the CCC hearing in 2014, CCC staff indicated that it believed Cal-Am's Hydrologic Working Group's representation that our wells did not exist. The CCC staff stated that the information received from Cal-Am's consultants indicated that there was only one Ag Land Trust well and it was non-operable. This statement was unsubstantiated at the time, and has since been proven to be false. We believe these misstatements were made so that Cal-Am would not have to bear the environmental and financial responsibility of the damage that it has caused and further intends to cause to our overlying groundwater rights. Our groundwater is protected by the North Monterey County Certified Local Coastal Plan (see attachments) and mandates of the State Water Resources Control Board.

3. During the Cal-Am pumping of its slant well in late spring and early summer, Ag Land Trust Board Members Sherwood Darington (the Managing Director) and Marc Del Piero personally monitored the effects of the Cal-Am slant well pumping on the Trust's Big Well. The static groundwater level in the Big

Well dropped by 12 inches during the pumping by Cal-Am. No other pumping of our wells took place during that period, and, we believe, all farming activities surrounding our wells for at least a one mile radius relied upon reclaimed water from the MRWPCA "purple valve" system during that period of time. The wrongful "drawdown" of 12 inches of our protected groundwater from beneath our property by Cal-Am resulted in the wrongful "taking" and wasting of over 160 acre/feet of our groundwater resources in less than 60 days. The Ag Land Trust annually is billed by the Monterey County Water Resources Agency for its water projects to recharge, restore, and preserve our potable groundwater which Cal-Am is polluting with its slant well. Cal-Am's conduct (taking of groundwater without any payment or mitigation requirements) is intentionally interfering with and violating an adopted governmental program intended to protect statutorily protected coastal resources.

4. The MCWRA staff, that is bound (by the out of court settlement between the Board of Supervisor and Cal-Am) to basically do or say whatever Cal-Am tells them to do or say, has alternatively publicly said that the Ag Land Trust wells "did not exist", "were closed", "were capped", "were sealed and unusable", or were :"legally prohibited from being used because of the Ag Land Trust's agreement to purchase supplemental "purple valve water" for irrigation". These statements are false. MCWRA staff has never been on our property or inspected our wells, nor has the Cal-Am Hydrologic Working Group, nor have the contractors for the CPUC. Further, it is well established law in California that an overlying landowner/water rights holder does no lose their groundwater rights if they purchase supplemental supplies, particularly reclaimed waste water. This conduct is described in case law as "WATER CONSERVATION" and is legally/legislatively protected conduct. Our wells are operable; for years, we have owned a water truck to deliver water from the wells to our dune restoration areas; we have and continue to use our groundwater for "beneficial" uses; and the MCWRA has been forced to admit that it does not have any contract that limits or restricts the use of our irrigation wells (none of our wells are in their easements).

***See attached correspondence from MCWRA in the Ag Land Trust well logs attachment herewith.
ALSO SEE : Monterey Bay Partisan - "Phantom Well Produces an Inconvenient gusher for Cal-Am" By Royal Calkins on May 18, 2015. http://www.montereybaypartisan.com/2015/05/18/phantom-well-produces-an-inconvenient-gusher-for-cal-am/

We have previously offered to provide documentation of our assertions to CCC staff. We have never receive any contact from the CCC. We ask that no further pumping of the Cal-Am slant well be allowed that will result in further unmitigated damage to our existing overlying water rights, groundwater supplies and our protected coastal resources and farmland. Should the CCC staff decide that it is willing to fully investigate the factual situation regarding our property, we always remain available to meet.

Respectfully, on behalf of the Ag Land Trust of Monterey County,

Marc Del Piero, Board Member

-----Original Message-----
From: MJDelPiero <MJDelPiero@aol.com>
To: Tom.Luster <Tom.Luster@coastal.ca.gov>; sarahcoastalcom <sarahcoastalcom@yahoo.com>; zimmerccc <zimmerccc@gmail.com>; mmcclureccc <mmcclureccc@co.del-norte.ca.us>; cgroom <cgroom@smcgov.org>; Gregcoastal <Gregcoastal@sdcounty.ca.gov>; tom.luster <tom.luster@coastal.ca.gov>; tluster <tluster@coastal.ca.gov>; virginia.jameson <virginia.jameson@gmail.com>
Sent: Tue, Nov 11, 2014 7:49 pm
Subject: Fwd: Objection to Cal-Am appeal/application for test slant well

From: MJDelPiero@aol.com
To: tluster@coastal.ca.gov
Sent: 11/11/2014 7:39:42 P.M. Pacific Standard Time
Subj: Fwd: Objection to Cal-Am appeal/application for test slant well

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From: MJDelPiero@aol.com
To: sarahcoastalcom@yahoo.com, zimmerccc@gmail.com, mmcclureccc@co.del-norte.ca.us, cgroom@smcgov.org, Gregcoastal@sdcounty.ca.gov, tom.luster@coastal.ca.gov, tluster@coastal.ca.gov, virginia.jameson@gmail.com
Sent: 11/10/2014 7:09:15 A.M. Pacific Standard Time
Subj: Objection to Cal-Am appeal/application for test slant well

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 Ag 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

Preserving Farm Land Since 1984

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.

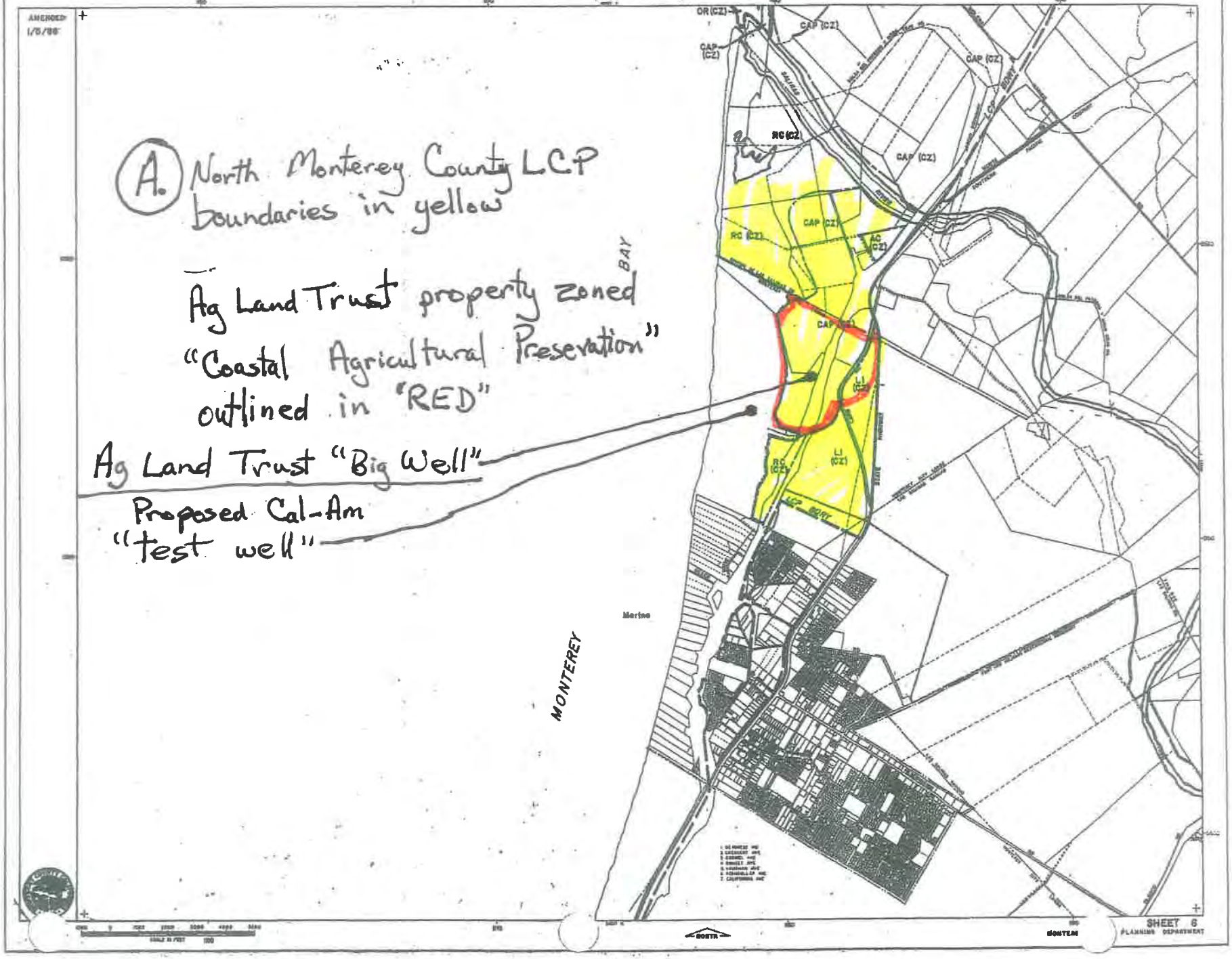
D. Cal-Am map with notation of corrected location for "test well" and location of Ag Land Trust "Big Well". Adjusted "cone of depression" covers 75% of the Ag Land Trust property and shows seawater intrusion into "Big Well".

E. Cal-Am map that falsely indicated Ag Land Trust property as within the designated "Project Area". Insert is not to scale.

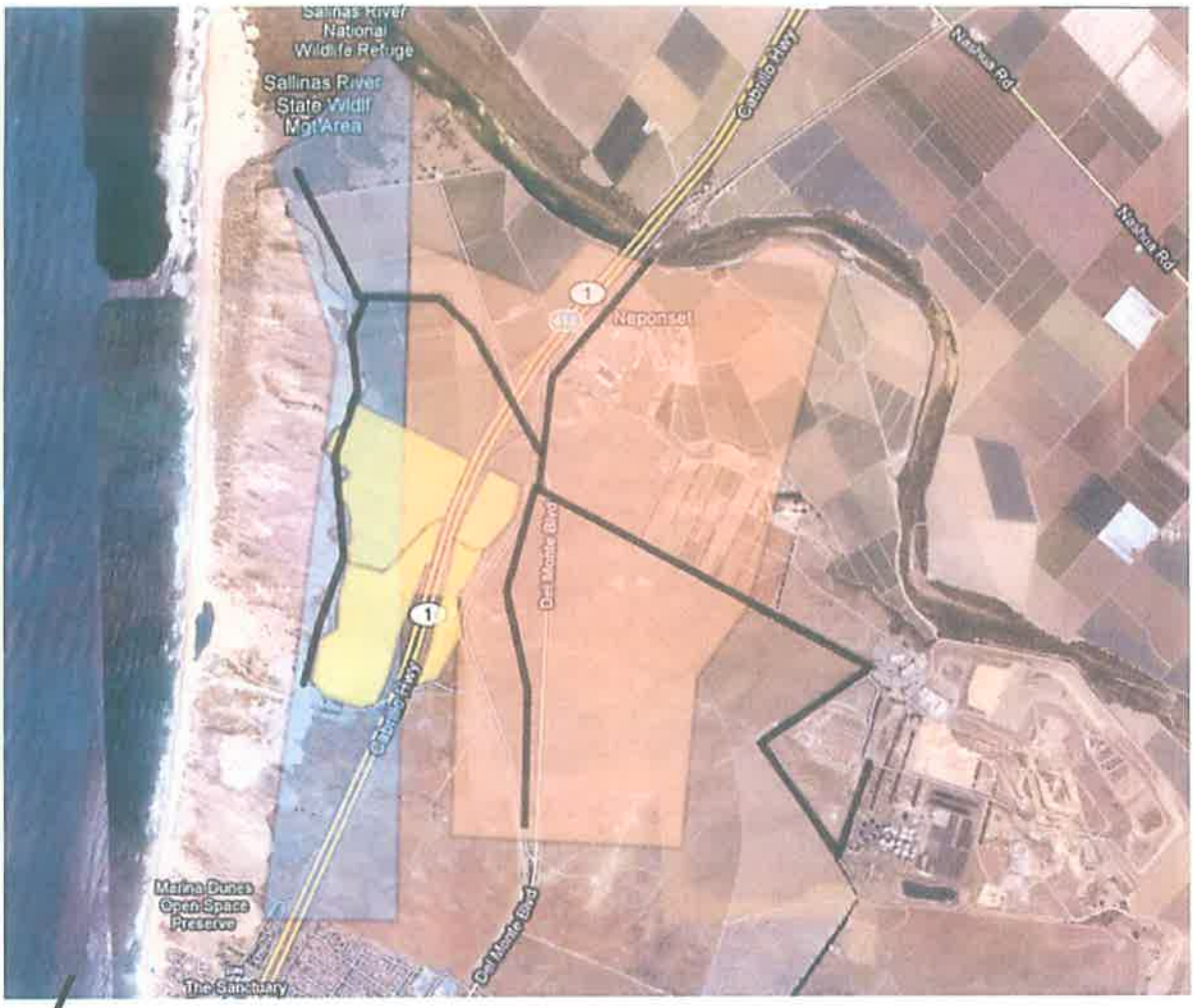
(A.)

North Monterey County LCP

SECTION 6 OF THE ZONING PLAN OF THE COUNTY OF MONTEREY



B



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

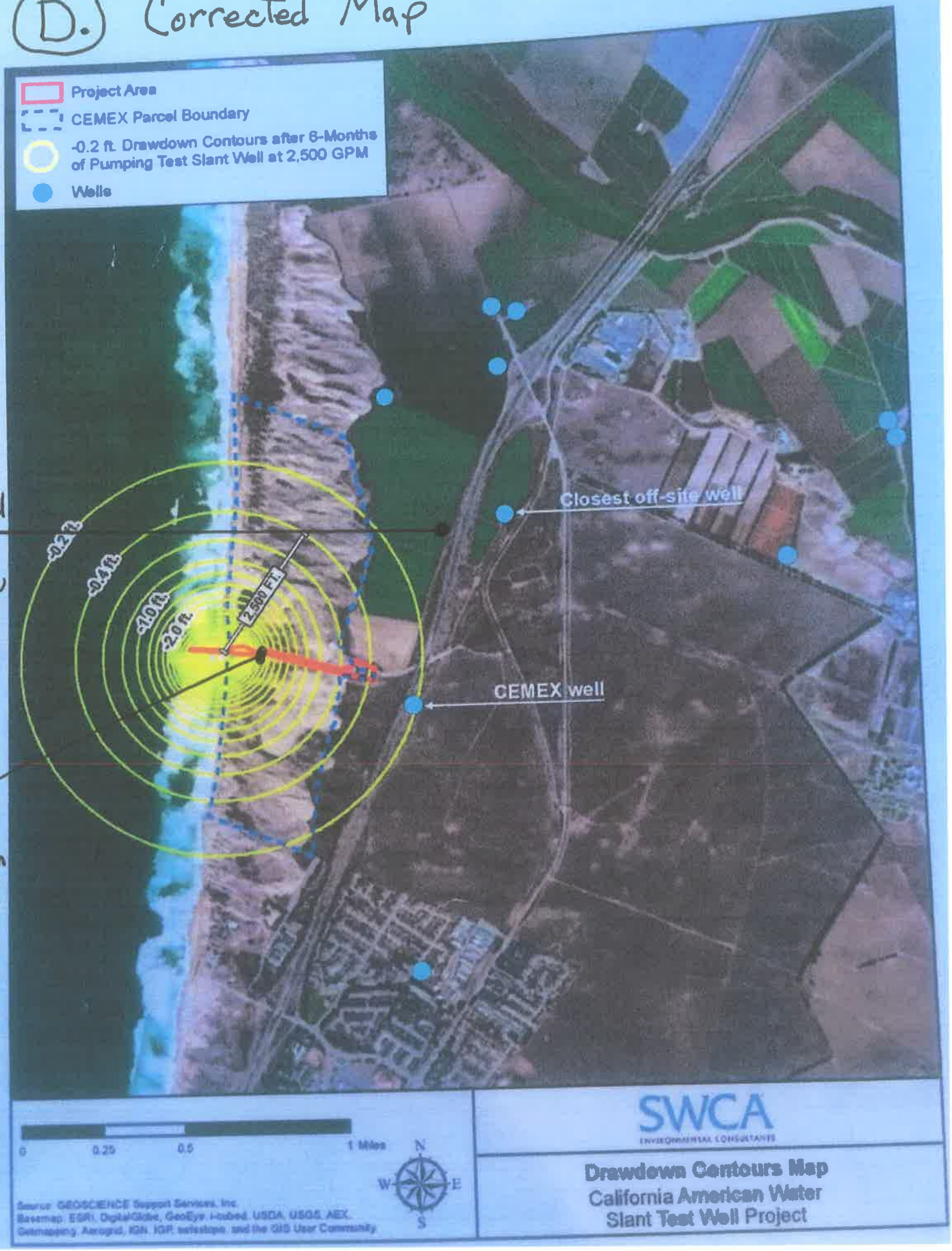
Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

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.

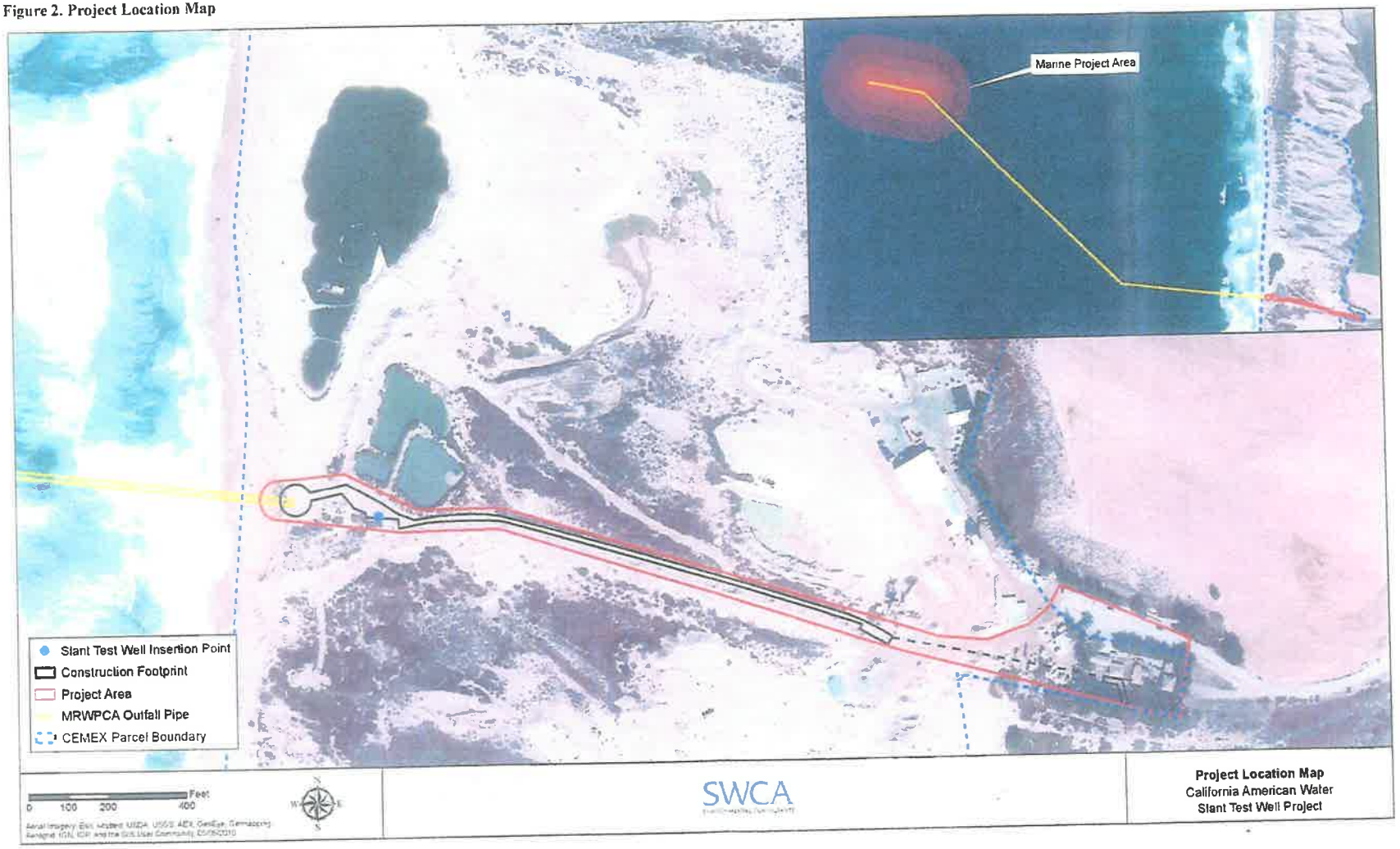

Project Area
CEMEX Parcel Boundary
-0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
Wells
-0.2 ft.
-0.4 ft.
-1.0 ft.
-2.0 ft.
2,500 Ft.
Closest off-site well
CEMEX well
0
0.25
0.5
1 Miles
N
W
E
S
Source: GEOSCIENCE Support Services, Inc.
Basemap: ESRI, DigitalGlobe, GeoEye, 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



E.

Figure 2. Project Location Map



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

AG LAND TRUST
Preserving Farm Land Since 1984

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

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 Desalinization 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 re-iterated 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

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[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,

Signature on File

Marc Del Piero,

Attorney at Law

Signature on File

Richard Nutter, Monterey County

Monterey Co. Agricultural Commissioner (ret.)

cc: California Coastal Commission staff

Exhibit 3 – Ag Land Trust Exhibits -

Opposition correspondence – 2006 - Present

AG LAND TRUST
Preserving Farm Land Since 1984

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-iterates 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

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,

Signature on File

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 "ulta 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 quality 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.

Signature on File

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

Signature on File

Kerry W. Mulligan
Executive Officer
State Water Resources
Control Board

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,

Signature on File

David Kimbrough
Chief of Admin Services/Finance Manager

Encls.

cc: Curtis V. Weeks

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 or 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,

Signature on File

Molly Erickson

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 EIR[3] 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

Signature on File

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.

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)..

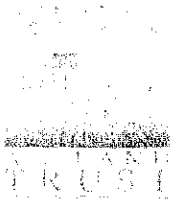
The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

Signature on File

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 [illegible]
Salinas, CA 93902
tel [illegible]
fax 831 [illegible]

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 results in a taking of our Trust's groundwater rights. Further, although we have requested that these issues be addressed, it appears that they have been ignored and it further appears that the CPUC is now advancing a project (preferred alternative) that constitutes an illegal taking of groundwater rights as well as violations of existing Monterey County General Plan policies, existing certified Local Coastal Plan policies and Monterey County Environmental Health code.

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

Respectfully,

Signature on File

Virginia Jamgotchian
Ag Land Trust

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,

Signature on File

Brian Rianda, Managing Director

MONTEREY COUNTY

WATER RESOURCES AGENCY

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

DAVID E. CHARDAVOYNE
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

May 13, 2015

Mr. Sherwood Darington
Managing Director
Ag Land Trust
1263 Padre Drive
Salinas, CA 93901

Re: Your Public Records Act Request dated May 4, 2015

Dear Mr. Darington,

This letter is in response to your Public Records Act Request wherein you requested a copy of the "agreement or contract to receive CSIP water" to the property described in the Grant Deed you provided with the APN numbers 203-011-10, 203-011-11, 203-011-13 and 203-011-14.

As there were no specific agreements or contracts with landowners to receive CSIP water the Agency has no records responsive to this request.

However, I am providing you with copies of the Ordinances numbered 3535, 3626 and 3789 and Resolution No. 172 and Resolution No. 05-192, all of which provide the Agency with the authority to levy assessments on properties within Zone 2B. In addition, you will find a copy of the Agency Act which defines the powers of the Agency.

Please be advised that every effort has been made to provide you with all of the records which might fall within the scope of your inquiry, I believe our attempts to identify responsive records have been quite thorough, however, if you have knowledge of a specific document which has not been provided in response to your inquiry, please notify me and I will be happy to provide a copy of the document to you, if in our possession, unless it would be exempted from disclosure pursuant to Government Code Section 6254.

Sincerely,

Signature on File

Alice Henault
Public Records Coordinator

PROCUREMENT, 1. Source Water Slant Wells RFP, Contract Drawings. The converte test well is seen slanting down from top center, labelled EXISTING TEST SLAN WELL (STAND-BY 1).

5. CCC Investigation and Action Requested

Investigation and appropriate CCC action are requested in light of the above perm violations. In order to penalize the apparent intent to mislead, and to effect the require decommissioning of the test well, since the existing SC 6 and 17 have failed t "guarantee" this, some stronger action appears to be required, possibly with th Commission's Enforcement Unit recommending to the Executive Director rescission c the permit, in addition to tracking that the decommissioning is actually carried out befor the specified deadline date of February 28, 2018.

Respectfully submitted,

Signature on File

David Beech,
Monterey

LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

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: PRMR - 3/3/10

MONTEREY COUNTY

WATER RESOURCES AGENCY

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

CURTIS V. WEEKS
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

March 24, 2010

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

Re: Your Letter of March 22, 2010

Dear Ms. Erickson:

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

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

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

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

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,

Signature on File

David Kimbrough
Chief of Admin Services/Finance Manager

Encls.

cc: Curtis V. Weeks

LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

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.

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 or 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,

Signature on File

Molly Erickson

LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

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

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,

> 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.)
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> 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

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

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 SVWP Phase II would be in place.

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[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 adequate describe the environmental setting, as well as a failure to investigate potential

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[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

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

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.

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-PSMCSD-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-PSMCSD-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

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

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.

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 EIR[3] 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

Signature on File

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.

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 "voo doo 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)..

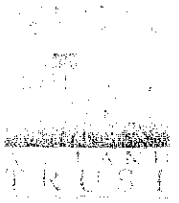
The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

Signature on File

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 [illegible]
Salinas, CA 93902
tel [illegible]
fax 831 [illegible]

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 results in a taking of our Trust's groundwater rights. Further, although we have requested that these issues be addressed, it appears that they have been ignored and it further appears that the CPUC is now advancing a project (preferred alternative) that constitutes an illegal taking of groundwater rights as well as violations of existing Monterey County General Plan policies, existing certified Local Coastal Plan policies and Monterey County Environmental Health code.

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

Respectfully,

Signature on File

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

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

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

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

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

Respectfully,

Signature on File

Brian Rianda, Managing Director

MONTEREY COUNTY

WATER RESOURCES AGENCY

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

DAVID E. CHARDAVOYNE
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

May 13, 2015

Mr. Sherwood Darington
Managing Director
Ag Land Trust
1263 Padre Drive
Salinas, CA 93901

Re: Your Public Records Act Request dated May 4, 2015

Dear Mr. Darington,

This letter is in response to your Public Records Act Request wherein you requested a copy of the "agreement or contract to receive CSIP water" to the property described in the Grant Deed you provided with the APN numbers 203-011-10, 203-011-11, 203-011-13 and 203-011-14.

As there were no specific agreements or contracts with landowners to receive CSIP water the Agency has no records responsive to this request.

However, I am providing you with copies of the Ordinances numbered 3535, 3626 and 3789 and Resolution No. 172 and Resolution No. 05-192, all of which provide the Agency with the authority to levy assessments on properties within Zone 2B. In addition, you will find a copy of the Agency Act which defines the powers of the Agency.

Please be advised that every effort has been made to provide you with all of the records which might fall within the scope of your inquiry, I believe our attempts to identify responsive records have been quite thorough, however, if you have knowledge of a specific document which has not been provided in response to your inquiry, please notify me and I will be happy to provide a copy of the document to you, if in our possession, unless it would be exempted from disclosure pursuant to Government Code Section 6254.

Sincerely,

Signature on File

Alice Henault
Public Records Coordinator

Big Well
Ag Land Trust

ORIGINAL
File with DWR

STATE OF CALIFORNIA
THE RESOURCES AGENCY
EPARTMENT OF WATER RESOURCES
/ATER WELL DRILLERS REPORT

Do Not Fill In
№ 121665
State Well No.
Other Well No.

(1) OWNER: Armstrong E
Name c/o M. L. Dubach, Jr
Address PO Box P, Davis, Ca. 95616

(2) LOCATION OF WELL:
County Monterey (Owner's number, if any)
Township, Range, and Section: Between Marina & Castroville
Distance from cities, roads, railroads, etc.: So. of Twin Bridges on Hwy 1, off Lapis Road

(3) TYPE OF WORK (*check*):
New Well ☒ Deepening ☐ Reconditioning ☐ Destroying ☐
If destruction, describe material and procedure in Item 11.

(4) PROPOSED USE (*check*):
Domestic ☐ Industrial ☐ Municipal ☐
Irrigation ☒ Test Well ☐ Other ☐

(5) EQUIPMENT:
Rotary ☒
Cable ☐
Other ☐

(6) CASING INSTALLED:
STEEL: OTHER:
SINGLE ☒ DOUBLE ☐

From ft.	To ft.	Diam.	Gage or Wall
0	303	14"	1/4
303	306	14"x12" reducer	
306	870	12	1/4

If gravel packed

Diameter of Bore	From ft.	To ft.
26	0	870

Size of shoe or well ring:
Size of gravel: 1/4 pea
Describe joint: welded

(7) PERFORATIONS OR SCREEN:
Type of perforation or name of screen

From ft.	To ft.	Perf. per row	Rows per ft.	Size in. x in.
6 66	834	8	4½	1/8" std louvre

(8) CONSTRUCTION:
Was a surface sanitary seal provided? Yes ☒ No ☐ To what depth? 300 ft.
Were any strata sealed against pollution? Yes ☒ No ☐ If yes, note depth of strata
From 0 ft. to 300 ft.
From ft. to ft.
Method of sealing concrete

(9) WATER LEVELS:
Depth at which water was first found, if known ft.
Standing level before perforating, if known ft.
Standing level after perforating and developing ft.

(10) WELL TESTS: to be tested
Was pump test made? Yes ☐ No ☒ If yes, by whom?
Yield: gal./min. with ft. drawdown after hrs.
Temperature of water Was a chemical analysis made? Yes ☐ No ☒

(11) WELL LOG:
Total depth ft. Depth of completed well 870 ft.
Formation: *Describe by color, character, size of material, and structure*

ft. to	
0	75 fine sand
75	to 100' coarse gravel
100	125 gravel-streaks clay
125	150 clay rock
150	175 coarse gravel
175	200 ~~fine sand streak clay~~ coarse gravel
200	225 fine sand streak clay
225	250 fine sand streak clay
250	275 gravel
275	300 fine sand & streak clay
300	325 white sand
325	350 sand-clay streaks
350	375 sand
375	400 fine sand
400	425 sand gravel
425	450 sand gravel
450	475 sand streaks clay
475	500 coarse gravel-clay
500	525 sand clay
525	550 sand clay
550	575 sandy clay
575	600 fine sand clay
600	625 sand
625	650 Red clay gravel
650	675 yellow clay
675	700 yellow clay
700	725 fine gravel
725	750 coarse gravel
750	775 coarse gravel
775	800 fine gravel
800	825 coarse gravel
825	850 coarse gravel
850	875 yellow clay
875	890 yellow clay
890	913 yellow clay

Work started 7-2-74 19 Completed 7-6-74 19

WELL DRILLER'S STATEMENT:
This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.
NAME Salinas Pump Co.,
(Person, firm, or corporation) (*Typed or printed*)
Address 1128 Madison Lane, Salinas, Ca. 93901
[SIGNED] (Well Driller)

Ag Land TR. Small Well

14/2-18 P-400'

1 of 4

ORIGINAL
File with DWR

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

WATER WELL DRILLERS REPORT

Do Not Fill In

No 126555

State Well No. 14S/2E-18C1

Other Well No.

(1) OWNER:

Name Hugo Totini

Address

Castroville, CA

(2) LOCATION OF WELL:

County Monterey Owner's number, if any

Township, Range, and Section

Distance from cities, roads, railroads, etc. Corner of Highway 1 and Lapis Road

(3) TYPE OF WORK (check):

New Well [X] Deepening [ ] Reconditioning [ ] Destroying [ ]

If destruction, describe material and procedure in Item 11.

(4) PROPOSED USE (check):

Domestic [ ] Industrial [ ] Municipal [ ]
Irrigation [X] Test Well [ ] Other [ ]

(5) EQUIPMENT:

Rotary [X]
Cable [ ]
Other [ ]

(6) CASING INSTALLED:

STEEL OTHER:
SINGLE [ ] DOUBLE [ ]

From ft.	To ft.	Diam.	Gage or Wall
+2	598	16"	¼

If gravel packed

Diameter of Bore	From ft.	To ft.
26	0	600

Size of shoe or well ring

Size of gravel pea

Describe joint weld

(7) PERFORATIONS OR SCREEN:

Type of perforation or name of screen

From ft.	To ft.	Perf. per row	Rows per ft.	Size in. x in.
330	598			1/8

(8) CONSTRUCTION:

Was a surface sanitary seal provided? Yes [X] No [ ] To what depth 320 ft.

Were any strata sealed against pollution? Yes [X] No [ ] If yes, note depth of strata

From ft. to ft.

From ft. to ft.

Method of sealing

(9) WATER LEVELS:

Depth at which water was first found, if known ft.

Standing level before perforating, if known ft.

Standing level after perforating and development ft.

(10) WELL TESTS:

Was pump test made? Yes [ ] No [ ] If yes, by whom?

Yield: gal./min. with ft. drawdown after hrs.

Temperature of water Was a chemical analysis made? Yes [ ] No [ ]

Was electric log made of well? Yes [ ] No [ ] If yes, attach copy

(11) WELL LOG:

Total depth 600 ft. Depth of completed well 600 ft.

Formation: Describe by color, character, size of material, and structure

Material	From	To
Top soil	0	2
Clay	2	12
Monterey sand	12	16
Coarse sand	16	41
Grayish clay(sticky)	41	46
Montery sand & gravel w/ 3/4" rock	46	77
Fine sand	77	81
Gravel & gray clay(sticky)	81	87
Monterey sand	87	89
Cemented sand	89	91
Sandy clay	91	97
Monterey sand&gravel	97	142
Brn cemented sand	142	222
Brn sandy clay w/gravel mixed	222	232
Brwn sticky clay	232	238
Gray clay	238	243
Cemented sand	243	250
Brown sandy clay w/ gravel mixed	250	251
Sand & gravel	251	254
Gray sandy clay	254	261
Blue sandy clay	261	276
Brown sandy clay	276	281
Yellow sticky clay	281	296
Sand & gravel	296	316
Yellow clay	316	321
Gray clay (sticky, slow)	321	330
Sand & gravel	330	339
Gravel, hard gray clay mixed	339	342
Sand & gravel	342	436
Cemented sand	436	474
Gray sandy clay w/gravel mixed	474	486
Brown sticky clay	486	493
Yellow clay	493	505

Work started 10-18 19 76 Completed 10-22 19 76

WELL DRILLER'S STATEMENT:

This well was drilled under my jurisdiction and this report is true to the best of my knowledge and belief.

NAME Ben Barrow Co. Inc
(Person, Firm, or corporation) (Typed or printed)

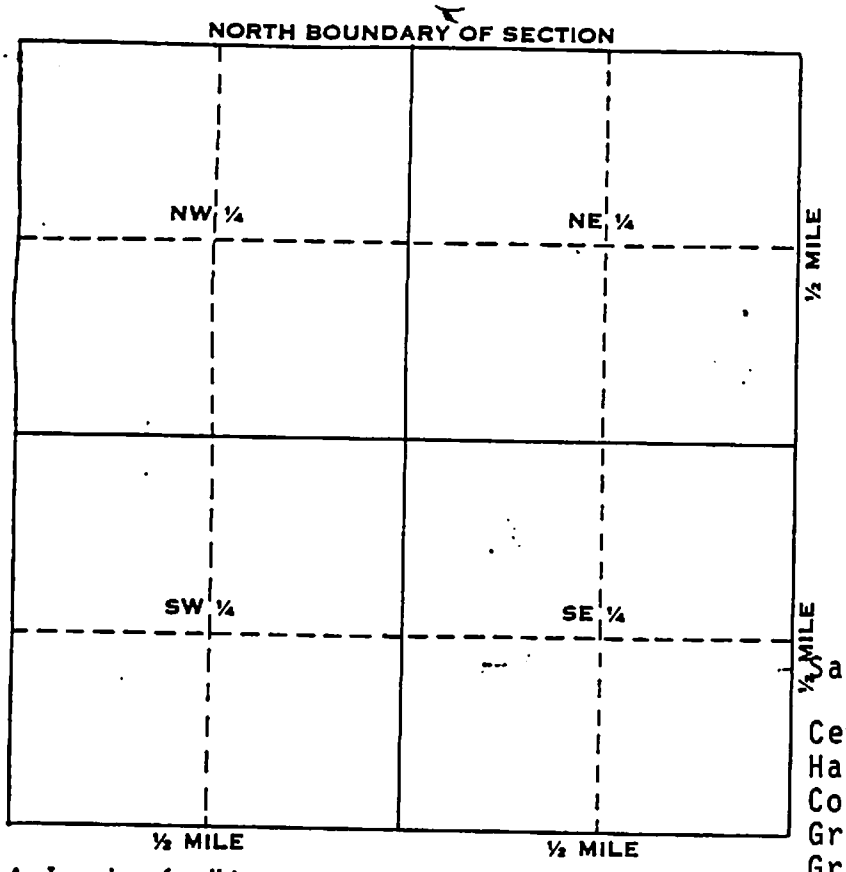
Address P.O. Box [illegible]
Woodland, CA

[SIGNED] G. B. Barrow
(Well Driller)

License No. Dated 10/27 19 76

SKETCH LOCATION OF WELL ON REVERSE SIDE

WELL LOCATION SKETCH



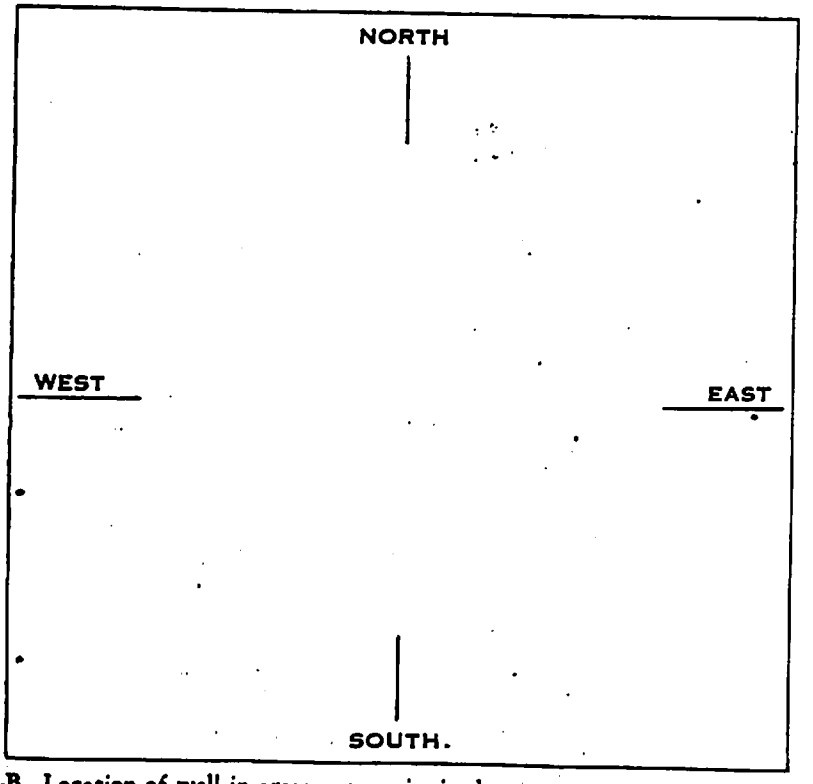
A. Location of well in sectionized areas.
Sketch roads, railroads, streams, or other features as necessary.

Township _____ N/S

Range _____ E/W

Section No. _____

	From	To
Sandy clay & gravel mixed	505	511
Cemented sand	511	513
Hard, gray sticky clay	513	519
Coarse sand & gravel	519	547
Gray clay	547	555
Gravel & coarse sand	555	587
Cemented sand	587	600



B. Location of well in areas not sectionized.
Sketch roads, railroads, streams, or other features as necessary.
Indicate distances.

Objection Letter from

David Beech

9-14-1735-A2 /

A-3-MRA-14-0050-A2

Luster, Tom@Coastal

From:	David Beech <dbeech@comcast.net>
Sent:	Monday, April 11, 2016 1:10 PM
To:	Luster, Tom@Coastal
Cc:	Carole Groom
Subject:	URGENT: Timely Objection to Immateriality of Cal Am Permit Amendment
Attachments:	Ainsworth20160411.docx; Lester20160117.docx; Traylor20160311.docx

Hello Tom,

As you requested, I am sending this timely objection via you for forwarding.,

This is an official submission on behalf of WRAMP (the Water Ratepayers' Association of the Monterey Peninsula).

Please confirm that you have forwarded this message together with the three attachments to all addressees (Mr Ainsworth, Chair Kinsey, all Commissioners, Ms Dettmer) today - in light of the tight schedule you have set for us all!

As ever, with best regards,

David

To: Jack Ainsworth
Acting Executive Director,
California Coastal Commission

11 April, 2016

Cc: Chair Steve Kinsey and all Commissioners
Deputy Director Alison Dettmer

From: David Beech
on behalf of WRAMP
(Water Ratepayers' Association of the Monterey Peninsula)

URGENT
Objection to Designation of Cal Am Permit Amendment as Immaterial
CDP 9-13-0621 / A-3-MRA-14-0050

Dear Mr Ainsworth,

1 Objection

In response to your memo of April 1st 2016, I submit this timely objection regarding Cal-Am's request for a permit amendment. The deadline for this objection to reach you was set as 10 working days, i.e. April 15th, which is also the date of the agenda section Energy, Ocean Resources, and Federal Consistency in which the Deputy Director is due to report on this amendment request. Hence the need for your urgent attention to this objection, which has been filed within 6 working days!

The grounds for objection are that there is clearly a **material** issue of public safety involved here, and hence of conformance to the Coastal Act.

Special Condition 6, to which the amendment is requested, currently states: "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."

Therefore the proposed amendment is required, under the existing permit, "to remedy the exposure". This it signally fails to do, in at least two ways. First, it requires no action beyond monitoring, "until the components are naturally reburied", which would allow the public hazard to persist for an indefinitely long time, and might even never remedy it. Second, it proposes to delete the existing action in response to future exposure ("and shall submit within one week of detecting the exposed components a complete application for a new or amended permit to remedy the exposure."), and

replace it by monitoring and notice posting, without any substantive requirement at all to remedy the exposure, and hence the potential danger to the public.

For the above reasons, the proposed permit amendment cannot be considered immaterial, and needs to be further revised and processed as a material amendment at a future Commission meeting, in accordance with Code 13166 (c).

2. **Previous Unanswered Submission to Executive Director (Dr Lester)**

Please find attached a submission that I made to the Executive Director (Dr Lester) earlier this year, without receiving any response. ("Termination of Cal Am Slant Well Test", dated January 17, 2016.)

I hope that you have, *ex officio*, inherited this document of record, and would be kind enough to consider it, and place the issue on a future agenda. It would be much appreciated by Monterey Peninsula residents if this could be at the same meeting as the processing of the above material permit amendment, to minimize our travel requirements.

The document addresses serious problems with the above Cal Am slant well testing, which is intended to validate a desalination project currently slated to cost $320 million. Ratepayers are expected by the CPUC to fund this, at an average charge of approximately $8,000 to be borne by each of the 40,000 connections, with Cal-Am owning the assets at the end of the day. Even the cost of the testing has risen from $4 million to $11 million (and counting), but the test is clearly conflicted and unscientific and failing, and needs to be terminated before more ratepayer money is spent on it.

3. **Cal-Am Permit Violation Filed with CCC Enforcement Division**

I attach also the submission I made to the Commission's Enforcement Division ("Permit Violation re Decommissioning of Cal-Am Test Slant Well", dated March 11, 2016). The case number V-3-16-0032 has been assigned to this, and the investigation is proceeding.

The evidence for Cal-Am's intent not to decommission the test well has been further strengthened by their recent submission of an amended Project Description to the CPUC, in which they explicitly state that the test well will be converted to a backup well in the production system.

Respectfully submitted,

David Beech
dbeech@comcast.net

To: Dr. C. Lester
Executive Director,
California Coastal Commission
Via Tom Luster
From: David Beech
dbeech@comcast.net

17 January, 2016

Termination of Cal Am Slant Well Test

Dear Dr Lester,

1 Introduction

I write to notify you of a severe problem with the Cal Am Slant Well Test at the Cemex site in Marina, CA, for which CCC granted a permit at their November 2014 meeting (renewed in October 2015 after a halt in testing).

In fact, I aim to demonstrate that the newly-discovered problem is so severe that CCC should rescind that permit. After various serious problems already reported by others, I submit that a "killer" has now surfaced, as shown in boldface below.

Please confirm that submission of this letter is sufficient notice to become part of the public record, and for the issue to be investigated and acted upon by CCC.

Otherwise, please indicate what other formalities are required to achieve this.

2 Executive Summary

- The slant well concept was introduced to CCC as an ecologically-friendly way to draw ocean water from Monterey Bay for desalination
- The design was altered in a bait-and-switch manner until just before permit approval, such that **the test well no longer has subocean intake, but now draws entirely the brackish water of the already overdrafted 180 foot aquifer beneath the beach and dunes of Marina**
- **The eight intended production wells are similarly located**
- **With the abandonment of subocean intake, there is absolutely no good reason to employ the exceedingly risky and expensive slant well technology to draw water from beneath the beach and dunes**
- CCC should rescind the testing permit before any more ratepayer money is spent on this wasteful and deceptive project
- CCC should encourage the competing People's Project and DeepWater Desal, both using a genuine seawater intake at Moss Landing, to submit their DEIRs as soon as possible, and request any CCC permits necessary

2. Precise Location of Test Slant Well

At the December 2015 CCC meeting in Monterey, I spoke briefly in initial Public Comment to alert the Commission to the fact that the Cal Am test slant well did not have subocean intake, but was now "subsurface" at the shoreline. In your Director's Report, Dr. Lester, you were kind enough to refer to this, and said that you had been assured that although the well had been shortened, the intake was "in the surf zone".

This led me to search the official documentation accessible on line, to discover the more precise facts that I am reporting in this submission.

The first illustration I encountered was Exhibit 3 of the package that Commissioners would have seen in deciding the Appeal and granting the test well permit in November 2014.

This gives an immediate impression that the well extends way under the OCEAN as it says (barely legibly, even in the original – see http://documents.coastal.ca.gov/reports/2014/11/W14a-s-11-2014.pdf). This illustration, besides being "Not to Scale", was not kept up to date with the text of the permit, so it says along the well bore "1000 LINEAL FEET", and, given the position of the original WELLHEAD VAULT at 450 feet inland from mean sea level, the well length is exaggerated to look as though it is over 2000 feet. This would not matter so much were it not for the fact that most of the Coastal Commissioners, with their almost impossible reading load, would have formed their main impression from this picture. Probably most CalAm customers still

think this is roughly the slant well that is being tested – it was only a few months ago that I personally began to discover that it was not.

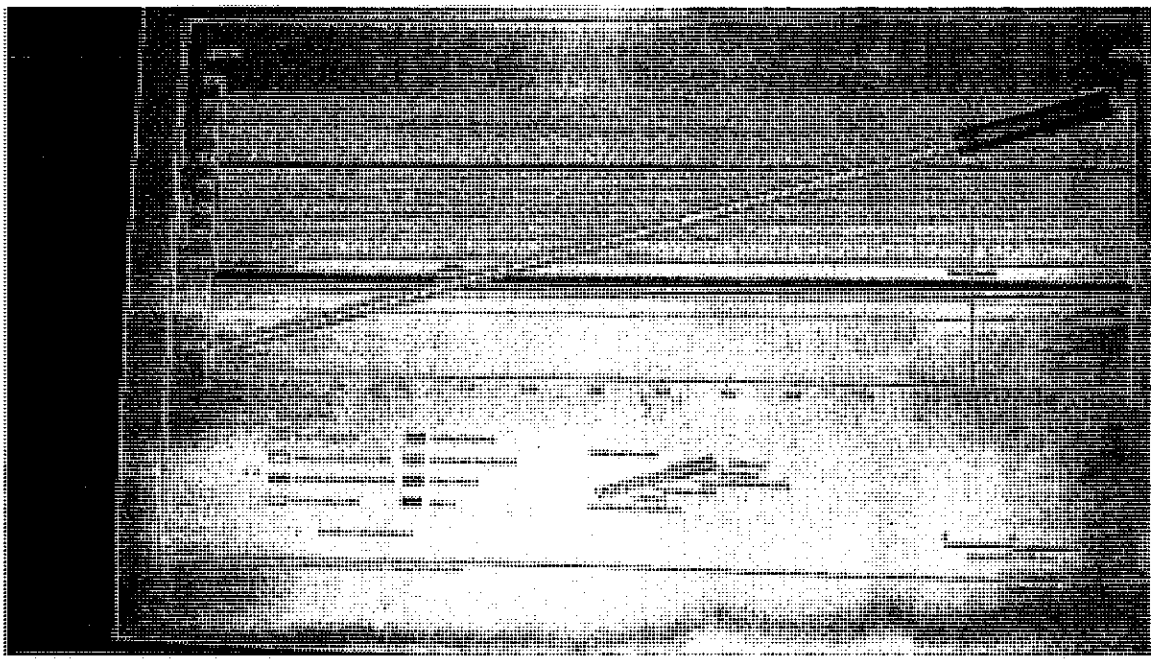
In addition to the textual changes of the well length, which resulted in a test well of 724 lineal feet as built, the following change was introduced at the last moment in the Addendum to the staff report
http://documents.coastal.ca.gov/reports/2014/11/W14a-s-11-2014.pdf

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."

This apparently trivial change brought the whole well 200 feet further inland.

Seen in cross-section, the actual test well is shown below:

http://documents.coastal.ca.gov/reports/2015/10/Tu15a-10-2015.pdf
EXHIBIT 2



Note that the horizontal length of the well is shown as less than 700 feet, consistent with the following calculation:

Test well bore length = 724 feet (reduced from 1000 feet)
Horizontal distance = 724 x cosine 19 degrees = 724 x 0.9455 = 685 feet
Horizontal distance from wellhead to mean sea level = 650 feet (increased from 450 feet)

Therefore, end of well = 685 – 650 = **35 feet beyond mean sea level**

From the above cross-sectional schematic, it is clear that **the screened intake extends (in this approximate diagram) from top to bottom of the 180 foot aquifer, beneath the beach and dunes, rather than being subocean.**

I was surprised to discover on www.watersupplyproject.org , under PROCUREMENT, that Cal Am has already completed the RFP process and signed contracts for slant well drilling, desalination, and transport pipelines, long before slant well testing is complete, let alone project approval. But you must be already aware of this, and of the alteration of the slant angles from 19 degrees to 14 degrees, without any apparent testing of the latter,

The following illustration of the 8 production wells confirms that the wells are intended to stop far short of the surf zone.

3. Disappearance of Any Need for Slant Wells

In making these progressive changes to the location of the test slant well, **CalAm appears to have shot itself in the foot**, since the only justification for experimenting with that technology was the hope that it would provide ocean water with less potential impact on marine life than open-ocean intake, Now that the source water is from a simple aquifer under land, there is no reason to enter the realm of the high risk and high cost of slant well experiments, and every reason to terminate the testing before it becomes even more costly to ratepayers

(including the new prospect of the evaluation being double-checked by the use of supercomputers at the Lawrence Berkeley Lab. – at whose expense?)

That is not to say that Cal Am should plan instead to drill vertical wells at the Cemex site, since there is no need for anyone to be making extensive demands on the already-overdrafted 180 foot aquifer, which is apparently protected by a 1975 California Supreme Court decision. Moreover, Cal Am should not be rewarded for yet another failed and potentially ruinous project, by being allowed to start over, and again prioritize profit over successful production of water.

Fortunately, there are better solutions awaiting the encouragement of the California Coastal Commission.

4 Additional Reasons for Termination of Testing

If other reasons for termination are needed, you are probably aware that several submissions have been made to the CCC and/or CPUC on other serious problems with the slant well testing, including conflict of interest, data tampering, scientific incompetence, and delay in producing source data as ordered by ALJ Weatherford. I support all of those complaints, for the reasons that have been given by others, and I \need not repeat them.

5 Recommended Way Forward for CCC

The two projects at Moss Landing, the People's Project and DeepWater Desal, are making good progress towards their DEIRs, and both plan seawater intake. One or both of them could become suppliers of desalinated water to Cal Am, with the potential for being publicly owned and more cheaply financed. Both have goals more consistent with those of CCC for the Central Coast than does Cal Am. For example, the People's Project would be cleaning up much of a disused industrial site, and reusing existing infrastructure with existing rights.

After 20 years of failing to meet the CDO, it is time for Cal Am to step aside from attempted production and allow someone else to succeed. It would be timely for the CCC to encourage rapid progress in this direction, and emerge from an unfortunate interlude of seemingly being misled by Cal Am.

Respectfully submitted,

David Beech

Monterey residential ratepayer
dbeech@comcast.net

To: Sharif Traylor, 11 March, 2016
Enforcement Officer
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060
Sharif.Traylor@coastal.ca.gov

From: David Beech
dbeech@comcast.net

Permit Violation re Decommissioning of Cal-Am Test Slant Well
Coastal Development Permit #A-3-MRA-14-0050

Dear Mr. Traylor,

This letter is to notify you formally of an apparent permit violation concerning the decommissioning of the Cal-Am Test Slant Well, whose Permit \was approved at the CCC November 2014 meeting, and revised in October, 2015, after a halt in testing. The issue only came to my attention by accident in January when I was researching the facts on the slant well project to present at an informational community outreach meeting in Carmel, and looked at the map for the intended production system.

Executive Summary

1. The Test Slant Well Permit requires that the test well be decommissioned on completion of testing.
2. Consequently, as a temporary structure, the test well escaped CEQA requirements, such as an Environmental Impact Report.
3. The Findings in the original permit recommendation already make a contradictory mention of possibly not decommissioning the test well.
4. Cal-Am has subsequently issued an RFP for construction of the production wells, and accepted a bid, including use of the test well as one of two backup wells.
5. CCC investigation and action are requested regarding this permit violation.

1. Decommissioning Required by Permit

In the documentation of permit A-3-MRA-14-0050, the decommissioning of the test well is mentioned in the one-sentence description of the project (p.1),

Details of the mandatory ("shall") decommissioning are given in Special Condition 6, para. 2 (p.6), and the posting of a $1,000,000 bond "to guarantee the Permittee's compliance" is required in Special Condition 17 (p.12). (When was this bond in fact posted?)

2. Escaping CEQA Review

In the FINDINGS AND DECLARATIONS (http://www.coastal.ca.gov/meetings/mtg-mm14-11.html, item 15a) section V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (p.63), the summary (without any supporting detail), refers to the "seventeen special conditions necessary to avoid, minimize, or mitigate these [significant adverse environmental] impacts." Special Conditions 6 and 17, cited above, were thus a factor in the Commission's finding that "the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA." If SC 6 is not honored, this finding would need to be revisited.

3. Contradictory Findings

Unaccountably, there is discussion in FINDINGS AND DECLARATIONS IV.A. (p.16) regarding the "long-term use of the well, including converting the well to use as a water source for the separately proposed MPWSP." This directly contradicts the commitment to decommissioning of the test well, which was a factor in the CEQA mitigation. As a discussion of what "these Findings ...do not authorize", it does not have any force in this document to override the "shall" commitment and the Bond requirement for the decommissioning described above. The full paragraph in FINDINGS is as follows:

"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."

It is disturbing that someone, at least, was already, at the time of the original permit commitment to decommission the test well, thinking in terms of the Permittee later walking away from the commitment. Can any Commission Staff Member shed light on this? Who introduced this material? Are there working documents in the Commission's files that can help resolve this issue of good faith in the adoption of the original permit?

4. Map Showing Converted Test Well

Cal-Am has subsequently issued an RFP for construction of the production wells (ahead of approval of the test results), where the test well was explicitly allowed to be "converted into a production well." A bid from Boart Longyear was accepted, including use of the test well as a backup well in the production system. The map below is taken from the official documentation of the project at http://www.watersupply.org under

PROCUREMENT, 1. Source Water Slant Wells RFP, Contract Drawings. The converte test well is seen slanting down from top center, labelled EXISTING TEST SLAN WELL (STAND-BY 1).

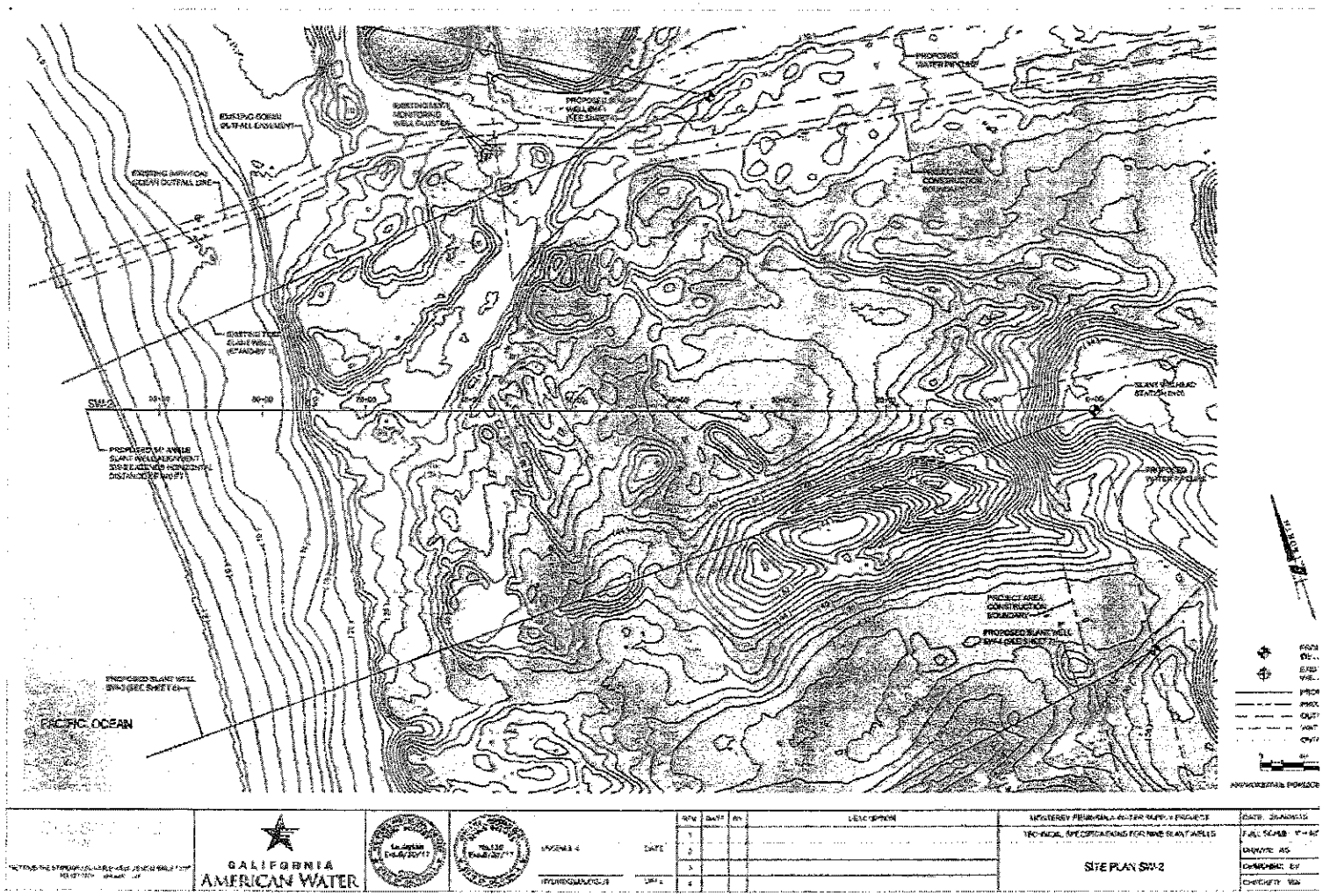
5. CCC Investigation and Action Requested

Investigation and appropriate CCC action are requested in light of the above penn violations. In order to penalize the apparent intent to mislead, and to effect the require decommissioning of the test well, since the existing SC 6 and 17 have failed t "guarantee" this, some stronger action appears to be required, possibly with th Commission's Enforcement Unit recommending to the Executive Director rescission c the permit, in addition to tracking that the decommissioning is actually carried out befor the specified deadline date of February 28, 2018.

Respectfully submitted,

Signature on File

David Beech,
Monterey


EXISTING MPWSP OCEAN OUTFALL LINE
PROPOSED SLANT WELL
PROJECT AREA CONSTRUCTION BOUNDARY
PACIFIC OCEAN
CALIFORNIA AMERICAN WATER
SITE PLAN SW-2

NOTICE OF PROPOSED

IMMATERIAL PERMIT AMENDMENT

E-09-010-A4

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

NOTICE OF PROPOSED IMMATERIAL PERMIT AMENDMENT

E-09-010-A4

TO: All Interested Parties

FROM: John Ainsworth, Acting Executive Director

DATE: April 1, 2016

SUBJECT: Application to amend Coastal Development Permit No. E-09-010 granted to Pacific Gas & Electric (PG&E) allowing initial demolition and decommissioning at the Humboldt Bay Power Plant, near King Salmon, Humboldt County.

The Acting Executive Director has determined that the requested project change described herein may be approved as an immaterial amendment to the above-referenced coastal development permit (CDP). The amendment would result in a minor change to the approved CDP – a three-year time extension for PG&E to use the Groundwater Treatment System ("GWTS") it installed as part of its power plant decommissioning project.

Background and Project Description: On December 10, 2009, the Commission approved CDP No. E-09-010 allowing PG&E to conduct initial demolition and decommissioning of the Humboldt Bay Power Plant. Work approved by the CDP includes constructing access roads, equipment laydown areas, and staging areas, demolishing the existing power plant structures and associated facilities, and conducting initial site cleanup and remediation. On October 15, 2010, the Commission approved the first immaterial amendment to the CDP allowing conversion of an on-site parking area at the site to a covered equipment storage area. On September 18, 2012, the Commission approved a second immaterial amendment to the CDP allowing PG&E to construct and operate a GWTS to treat shallow groundwater and stormwater encountered during project excavation activities. The GWTS consisted of a 21,000 gallon receiver tank, pumps and pipelines to convey water, and a treatment system that included storage tanks, clarifiers, filters, sampling equipment, and other components. It was to be located on a paved area near the power plant's discharge canal. The system was designed to treat up to about 300 gallons per minute, though most operations would be at 100 gallons per minute or less. The GWTS was expected to operate until 2016, after which it would be removed. On May 9, 2013, the Commission approved a third amendment to the CDP allowing additional excavation and cleanup needed to complete site remediation.

Requested Amendment: PG&E has requested its permit be amended to allow the GWTS to continue operating through 2019, which is when it expects final site remediation activities will be completed.

FINDINGS: THE PROPOSED AMENDMENT HAS BEEN DEEMED "IMMATERIAL" FOR THE FOLLOWING REASONS:

- Marine Resources and Water Quality: Discharges from the GWTS are subject to Best Management Practices and other requirements established as protective of marine resources and water quality in CDP E-09-010, and are additionally subject to the concentration limits of the state's Construction Storm Water General Permit (WDID 12C357418), National Pollutant Discharge Elimination System Permit No. 005622, and Nuclear Regulatory Commission requirements.

- Visual Resources and Public Access: The GWTS is located on an existing laydown area near a public shoreline access trail on the site's western boundary, though is similar to, and smaller than, much of the other industrial equipment at the site and does not significantly alter the site's existing visual character. Additionally, PG&E placed the more visually neutral components of the GWTS towards the shoreline where they would partially block other equipment from public views. Overall, the GWTS represents only a relatively minor visual component of the ongoing site activities, and extending its operating period will have a de minimis effect on both visual resources and public access.

Immaterial Permit Amendment

Pursuant to the California Code of Regulations—Title 14, Division 5.5, Volume 19, section 13166(b)—the Executive Director has determined this amendment to be IMMATERIAL.

Pursuant to section 13166(b)(1), if no written objection to this notice of immaterial amendment is received at the Commission office within ten (10) working days of mailing said notice, the determination of immateriality shall be conclusive and the amendment shall be approved.

Pursuant to section 13166(b)(2), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does not raise an issue of conformity with the Coastal Act or certified local coastal program if applicable, the immaterial amendment shall not be effective until the amendment and objection are reported to the Commission at its next regularly scheduled meeting. If any three (3) Commissioners object to the executive director's designation of immateriality, the amendment application shall be referred to the Commission for action as set forth in section 13166(c). Otherwise, the immaterial amendment shall become effective.

Pursuant to section 13166(b)(3), if a written objection to this notice of an immaterial amendment is received within ten (10) working days of mailing notice, and the executive director determines that the objection does raise an issue of conformity with the Coastal Act or a certified local coastal program if applicable, the immaterial amendment application shall be referred to the Commission for action as set forth in section 13166(c).

If you wish to register an objection to this notice, please send the objection in writing to Tom Luster at the above address. If you have any questions, you may contact him at (415) 904-5248 or via email at tluster@coastal.ca.gov.

NEGATIVE DETERMINATIONS

AND

NO EFFECT LETTERS

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

March 9, 2016

Richard F. Edwing
Director, Center for Operational Oceanographic
Products and Services
National Ocean Service
National Oceanic and Atmospheric Administration
ATTN: Michael Michalski
1305 East West Highway, SSMC4
Silver Spring, MD 20910

Subject: Negative Determination ND-0003-16 (Temporary Water Level Station at Shelter Cove, Humboldt County)

Dear Mr. Edwing:

The Coastal Commission staff has reviewed the above-referenced negative determination. NOAA proposes to install a temporary water level station at Shelter Cove in Humboldt County. NOAA will use the station to collect new water level observations in order to update the tidal and geodetic elevations along the coast between Eureka and Fort Bragg. NOAA has no published water level measurements for this region and obtaining data at Shelter Cove will help to fill this 100-mile-long data gap. The water level data, tidal datums, bench mark elevations, and tide predictions will be made publically available on the NOAA website. The Shelter Cove station will be temporary, with scheduled installation in April or May 2016, data collection for three calendar months, and then removal of all upland and in-water equipment.

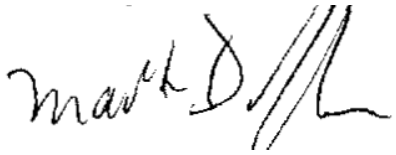
The project includes the installation of one primary and one backup water level gauge. Each upland gauge (placed on private property on the bluff above the shoreline) consists of an electronics box with a data logger, a satellite radio for data telemetry, a small air compressor, and a pressure sensor. Each gauge will be powered by two 12V batteries that can be recharged by a solar panel. A 3/8-inch air hose will run from the gauge to an offshore rock underwater. The compressor will push one dime-sized bubble through the air hose per second. The pressure sensor will measure the air pressure in the hose and calculate the water height above the end of the hose.

The two upland gauges will together occupy approximately 12.5 square-feet. Both air hoses will run through a single 1-inch flexible conduit to the ocean. The hoses will exit the conduit in the

water and run with a steel cable to give them strength and make then sink to the ocean floor. The end of each hose will be temporarily bolted to the offshore rock underwater. Four new tidal bench marks (small brass disks set in rock or existing concrete) will also be established in the immediate project area, and will serve as permanent references for the tidal elevations determined from this project.

In conclusion, the Commission staff **agrees** that the proposed temporary water level station at Shelter Cove will not adversely affect coastal resources. We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Larry Simon at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,



(for) John Ainsworth
Senior Deputy Director

cc: CCC – North Coast District

STATE OF CALIFORNIA -- NATURAL RESOURCES AGENCY EDMUND G. BROWN, *Governor*

CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

March 11, 2016

Dave Stalters, Chief
Environmental Branch Chief
U.S. Coast Guard
Civil Engineering Unit Oakland
1301 Clay St., Suite 700N
Oakland, California 94606-5337

Attn: Dennis Mead

Re: **ND-0004-16**, Negative Determination, U.S. Coast Guard maintenance dredging in Humboldt Bay, with disposal at HOODS, Humboldt Co.

Dear Mr. Stalters:

The Coastal Commission has reviewed the above-referenced negative determination submitted by the U.S. Coast Guard (USCG) for maintenance dredging of the boat basin at USCG Station Humboldt Bay. The Coast Guard states that the breakwaters protecting the boat basin from wave action have caused sediment accumulation within the basin, limiting the draft of boats that can operate out of the facility. The volume of material to be dredged is less than 2000 cu. yds. (up to 1,730 cu yds.). Dredging would take place for approximately 10 days over a period of 2 weeks. The Coast Guard intends to use a clamshell dredge, with disposal at the historically used (for Humboldt Bay dredging) Humboldt Open Ocean Disposal Site (HOODS).

Use of a clamshell dredge will avoid concerns raised in the past few years over other types of hydraulic dredging in the bay, which can cause entrainment of sensitive species. In addition, the project will be scheduled during the preferred work window of August 1 to Oct. 30. Eelgrass impacts would be minimal to non-existent.

In consultation with the National Marine Fisheries Service, and to avoid and minimize potential effects to sensitive species, the Coast Guard will implement the following measures:

1. Dredging activities will be scheduled from August 1st through October 30th to avoid the migration season for salmonids in the Action Area.

2. Use of a clamshell dredge avoids the potential for entrainment that is inherent with hydraulic dredging. The cable-arm or equivalent style of clamshell dredge further avoids and minimizes potential impacts by minimizing sediment dispersion through engineered vents to decrease downward water pressure that

roils bottom materials as the bucket approaches. Using a controlled descent speed also reduces the potential for direct contact between the bucket and marine life and reduces sediment dispersion.

3. Implementation of standard in-water construction BMPs will minimize the potential for adverse effects on aquatic organisms from sedimentation and degraded water quality.

4. Vehicles and equipment will be kept in good repair, without leaks of hydraulic or lubricating fluids. Spill containment and cleanup materials will be present on site, and if leaks or drips do occur, they will be cleaned up immediately.

5. In-water operations would be limited to the designated work areas to minimize disturbance to sediment, vegetative communities, and marine habitats.

6. Prior to dredging activity, the USCG will conduct a contractor education session to ensure that onsite personnel are informed of the sensitive biological resources associated with the action area and to ensure compliance with measures planned for avoidance and minimization of effects on these resources.

7. Material will not be removed to a depth greater than depicted on the permit drawings and characterized during sediment sampling.

8. Water quality monitoring will occur during dredging to assure compliance with water quality certification requirements.

9. The dredging will be completed in compliance with applicable State water quality standards for turbidity. Dredging technique, equipment type, work rate, and timing relative to tidal cycle and wind conditions will be adjusted to control turbidity, as necessary.

10. Refueling and repair of vehicles and other equipment will be restricted to construction staging areas designated on the barge, and requirements for safe handling and disposal of hazardous wastes will be implemented.

11. Monitoring will occur during disposal to check compliance with water quality certification requirements. Work rate, timing, depth, and location will be adjusted, as necessary, to maintain compliance.

12. Eelgrass Mitigation Measures:

    a. Silt Curtain: A silt curtain shall be deployed around the existing eelgrass bed limits during dredging operations. The silt curtain shall have a freeboard of 8 inches to 12 inches above the water surface and be positioned

to enclose the eelgrass bed to minimize turbidity; extend below water to within 2 feet of mudline at mean lower low water (MLLW); and be suitably anchored to prevent movement.

b. Light Monitoring: If a silt curtain cannot be deployed, light monitoring shall be conducted per U. S. Army Corps of Engineers, San Francisco District and National Marine Fisheries Service, Southwest Region Programmatic Consultation (http://swr.nmfs.noaa.gov/hcd/HCD_webContent/nocal/Santa%20Rosa%20Dredge%20KMLs/EFHDredgeProgrammatic_071410_final.pdf). The Contractor shall follow the Light Monitoring protocol found in Appendix 3 of Programmatic Consultation.

c. Eelgrass Surveys: Conducting a pre- and post-construction eelgrass survey, in accordance with Southern California Eelgrass Mitigation Policy's protocol for mapping and format, http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11_final.pdf.

1) SURVEY: Conduct the Pre and Post Dredge Eelgrass Surveys of the eelgrass beds that are adjacent to dredge footprint, see appendix E for baseline Eelgrass Survey.
2) REPORT: Prepare a report for each survey. As part of the pre-construction, calculate the square meters of eelgrass in the project area. In the post construction survey, calculate the area impacted by the project and, if necessary, locate a transplant site for mitigation. The report shall include maps that clearly show the location(s) of the eelgrass beds. Include a brief discussion of the dates work was done, weather conditions, depths of water, and personnel involved.

Under the federal consistency regulations (Section 930.35), a negative determination can be submitted for an activity "which is the same as or similar to activities for which consistency determinations have been prepared in the past." The Coast Guard notes the Commission concurred with past Coast Guard consistency determinations for previous similar maintenance dredging/disposal, as well as for the original construction of the breakwaters and boat basin (CD-109-94 and CD-033-83).

With the above measures, we **agree** with your conclusion that the proposed project would avoid adverse effects on coastal zone resources, and would be "the same as or similar to" the above-referenced consistency determination for boat basin dredging activities at the

station (CD-109-94). We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. If you have any questions, please feel free to contact Mark Delaplaine of the Commission staff at (415) 904-5289.

Sincerely,

(for) JACK AINSWORTH
Acting Executive Director

cc: Arcata District
Corps of Engineers, S.F. District

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

March 16, 2016

Dave Stalters
Chief, Environmental Management Branch
U.S. Coast Guard
ATTN: Gilda Barboza
1301 Clay Street, Suite 700N
Oakland, CA 94612-5203

Subject: Negative Determination ND-0005-16 (Maintenance and Repairs at Point Loma Lighthouse, San Diego County)

Dear Mr. Stalters:

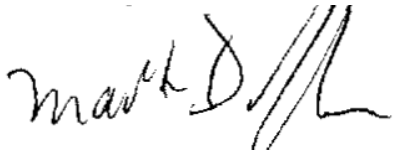
The Coastal Commission staff has reviewed the above-referenced negative determination. The Coast Guard proposes to undertake maintenance and repairs to address safety and structural deficiencies at its Point Loma Lighthouse, which serves as an operating Aid to Navigation (ATON) at the entrance to San Diego Bay. The lighthouse is in a severely deteriorated state and it is unsafe for Coast Guard personnel to access and maintain primary and secondary lights. The Coast Guard states that the project is required to prevent catastrophic failure of the structure, provide a safer environment for personnel, restore the ATON, and allow continued Coast Guard operations at the lighthouse.

Proposed maintenance and repairs to the skeletal structure, tower windows, and the watch and lantern rooms would include grit blasting and hazardous materials abatement, structural stabilization, restoration, and painting. The project includes restoration of the lantern room to make it fully operational by returning the navigation lights to this room. Currently, the lantern room is inoperable as it lacks the structural integrity to support the aid to navigation lights, which are temporarily attached to the outside of the watch room. However, the Coast Guard states that potential budgetary restrictions may force it to mothball the lantern room for up to five years and defer complete restoration of this element of the lighthouse until additional funding is secured. In that case, the lantern room will receive minimal structural repairs, hazardous materials abatement, and painting before it is protected within a temporary weatherproof plywood enclosure (painted to be uniform with the rest of the lighthouse).

The Coast Guard has initiated consultation with the State Historic Preservation Officer pursuant to Section 106 of the National Historic Preservation Act. The proposed project will not change land uses at U.S. Coast Guard Station Point Loma, will not affect cultural or biological resources in the project area, and will not adversely affect the scenic and visual qualities of the lighthouse and surrounding areas.

In conclusion, the Commission staff **agrees** that the proposed maintenance and repairs at the Point Loma Lighthouse will not adversely affect coastal resources. We therefore **concur** with your negative determination made pursuant to 15 CFR 930.35 of the NOAA implementing regulations. Please contact Larry Simon at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,



(for) John Ainsworth
Acting Executive Director

cc: CCC – San Diego Coast District

CALIFORNIA COASTAL COMMISSION
45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105- 2219
VOICE (415) 904- 5200
FAX (415) 904- 5400
TDD (415) 597-5885

March 9, 2016

Michael Keenan
Director of Planning and Strategy
Port of Los Angeles
P.O. Box 151
San Pedro, CA 90733-0151

Subject: No-Effects Determination NE-0003-16 (Dredged Material Disposal at LA-2 Ocean Disposal Site).

Dear Mr. Keenan:

The Coastal Commission staff received the above-referenced no-effects determination for disposal at the EPA-approved LA-2 ocean disposal site of approximately 21,800 cubic yards of sediment dredged from Berths 214-220 in the Port of Los Angeles. The proposed dredged sediments are not suitable for beach nourishment or nearshore disposal due to grain size incompatibility. The Southern California Dredged Material Management Team, including representatives from USEPA, the Los Angeles Regional Water Quality Control Board, and the Coastal Commission, determined that the sediments are suitable for unconfined ocean disposal based on sediment chemistry and biological testing results.

The Commission staff concurs with your no-effects determination. Please contact Larry Simon at (415) 904-5288 should you have any questions regarding this matter.

Sincerely,

(for) John Ainsworth
Acting Executive Director

cc: CCC – South Coast District