

CALIFORNIA COASTAL COMMISSION

NORTH CENTRAL COAST DISTRICT
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F18a

A-2-MAR-21-0053 (NORTH MARIN WATER DISTRICT WELL)

OCTOBER 15, 2021

CORRESPONDENCE



VIA EMAIL: Sara.Pfeifer@coastal.ca.gov

October 1, 2021

999 Rush Creek Place
P.O. Box 146
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California Coastal Commission
455 Market Street, Suite 300
San Francisco, CA 94105

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Re: Response to Save Our Seashore Appeal of Marin County Board of Supervisors' Approval of the NMWD Gallagher Well No. 2 Project Coastal Permit (Assessor's Parcel 119-050-17)

Dear Commissioners:

This letter concerns the North Marin Water District's (NMWD) proposed Gallagher Well No. 2 Project and the appeal by Save our Seashore (hereafter referred to as "the Appellant") of the Marin County Board of Supervisors' conditional approval¹ of a coastal permit for the project. As summarized herein, the project is a necessary water supply project that has been analyzed, sited, and designed to minimize effects on coastal resources. The Marin County Deputy Zoning Administrator, Planning Commission, and Board of Supervisors has each found the project consistent with the applicable policies of the Marin County Local Coastal Program. In each instance, the Appellant has challenged the approving body's decision, and in each forum presented new and varied allegations about the project, none of which concerns the project's conformity with the LCP. Substantial evidence in the record fully supports the County's decision to approve the project.

In addition, NMWD believes the analysis of the Substantial Issue Determination as set forth in the Commission's September 21, 2021 staff report dated is soundly reasoned and is fully supported both factually and legally.²

¹ The County approved the coastal permit with Special Condition 10 which states: "10. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant must provide written evidence that all appropriate permits and authorizations have been secured for this project from the Bay Conservation and Development Commission, the California Department of Fish and Game, the Regional Water Quality Control Board, the California Coastal Commission, the California State Lands Commission, the Bay Area Air Quality Management District, and/or the United States Army Corps of Engineers."

² As summarized on page 13 of the Commission staff report, analysis of the five factors set forth in Section 13115(c) of the Commission's regulations (14 CCR § 13115) "support[s] a conclusion that the appeal does not raise a substantial issue as to the County-approved project's consistency with the L[ocal] C[oastal] P[lan]. As found by the County, the project would not lead to loss of wildlife habitat, including riparian habitat, and would minimize impacts to stream functions and fish habitat, consistent with protections for such resources as required by the L[ocal] C[oastal] P[lan]. The project IS/MND analyzes the cumulative impact of the new well on habitat and water quality and the County conditioned the project to adequately address any potential resource impacts.... As approved, impacts to coastal resources will be minimized, avoided, and mitigated, and the project does not significantly threaten coastal resources."

DIRECTORS: JACK BAKER · RICK FRAITES · JAMES GROSSI · MICHAEL JOLY · STEPHEN PETTERLE

OFFICERS: DREW McINTYRE, General Manager · TERRIE KEHOE, District Secretary · JULIE BLUE, Auditor-Controller · TONY WILLIAMS, Asst. GM/Chief Engineer

Project Overview

NMWD supplies water to the communities of Point Reyes Station, as well as Olema, Point Reyes National Seashore, Inverness Park, and Paradise Ranch Estates. The source of this water consists of three wells at two sites adjacent to Lagunitas Creek. Two of those wells are currently located on the former U.S Coast Guard property in Point Reyes Station (Coast Guard Wells), and a third well is located at the Gallagher Ranch, approximately one mile upstream (Gallagher Well No. 1). Historically, NMWD has relied primarily upon the Coast Guard Wells; however, because they are within the tidal reach of Lagunitas Creek, they are subject to periodic salinity intrusion of increasing duration and occasionally subject to flooding. NMWD proposes to construct a new well (Gallagher Well No. 2) at the Gallagher Ranch site, inland of areas susceptible to seawater intrusion or flooding. The new well would reduce NMWD's reliance on the Coast Guard Wells, while helping maintain its water supply reliability and quality.³

Standard of Review

The Coastal Act sets forth the permissible grounds for an appeal from a local government's permitting decision after a local coastal program (LCP) has been certified by the Commission. Coastal Act section 30603 (b)(1) states that such an appeal "shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division." The Marin County LCP standards for issuance of a coastal permit are listed in Marin County Interim Development Code section 22.56.130I.⁴ The staff reports prepared by the Marin County Community Development Agency's Planning Division for the DZA, Planning Commission and Board of Supervisors' hearings includes findings which address project conformity with each of the standards contained in section 22.56.130I.⁵

The proposed well site and design were selected after careful consideration of engineering feasibility (e.g., viability of the site to produce sufficient quantities of water), coastal resources (e.g., avoiding or minimizing impacts on habitat and streamflow), and environmental regulatory compliance (e.g., conformity with the LCP and other applicable regulations). These considerations are extensively documented in various technical studies, reports, and memoranda, which were provided to the Planning Division as part of the coastal permit application package and in response to the Appellant's petitions. These materials comprise the substantial evidence in the administrative record upon

³ NMWD is in full agreement with the following conclusion on page 11 of the Commission staff report: "the County appropriately recognized this as a necessary water supply project, and ensured through CDP terms and conditions that its installation and use (as well as former well decommissioning) would not significantly adversely affect Lagunitas Creek resources, by minimizing stream alterations that could affect aquatic species and imposing best mitigation measures feasible to minimize impacts to riparian habitat."

⁴ Coastal access is among the standards set forth in this section, which can be accessed at https://library.municode.com/ca/marin_county/codes/municipal_code?nodeId=TIT22IZOIN_CH22.56ICDI,

⁵ Marin County, 2021. Gallagher Family Coastal Permit and User Permit (P3010). Planning Division Project Webpage. Available at: https://www.marincounty.org/depts/cd/divisions/planning/projects/west-marin/gallagher-family_cpup_p3010_prs.

which the Deputy Zoning Administrator, Planning Commission, and Board of Supervisors relied in approving the project.

The Appellant has raised various arguments as to why the project should not proceed, but has not challenged any of the County's findings related to the project's LCP conformity. Among the bases for appeal, the Appellant alleges conflicts with policies of the Marin Countywide Plan, the standard of review for a county use permit. The Countywide Plan is not a component of the LCP. The County, not the Coastal Commission, is the entity responsible for implementing the Countywide Plan. The County's action on the use permit is final and the time for challenging the County's findings regarding Countywide Plan conformity has passed. Appellant has provided no substantive argument or substantial evidence to support the assertion that the project would cause coastal resource impacts not already considered and addressed through the prior proceedings and the County's conditional approval of the coastal permit.

Substantial Evidence in the Record Supports County Decision

The Appellant's arguments opposing the project have meandered and evolved over the past 6 months, ranging from claims that the CEQA analysis and technical studies are inadequate, to questions of whether the project is really needed, to allegations of water rights violations, and concerns over impacts on streamflow and habitat. At the heart of the Appellant's challenge appears to be a general concern that the project will adversely impact instream habitat, and specifically that the project would indirectly result in flow reductions that would be detrimental to special status fish species.

NMWD appreciates and takes these concerns seriously. However, we also note that such concerns are shared by the state agencies with jurisdiction over creek flows and fish and wildlife habitat – the State Water Resources Control Board (SWRCB) and California Department of Fish and Wildlife (CDFW). Indeed, NMWD's water license (4342B) and water rights permits (19724 and 19725) applicable to the Gallagher Well No. 2 project include stipulations that protect fish and wildlife by prohibiting diversion when streamflow in Lagunitas Creek is solely comprised of water released for the purposes of preserving or enhancing fish and wildlife resources in the water. These concerns have also been addressed by NMWD in the project's 2009 IS/MND, 2019 Addendum to the IS/MND, and a 2020 technical memorandum presenting the results of a groundwater and streamflow response analysis following a 7-day pump test at the proposed Gallagher Well No. 2 site. ⁶These materials were provided to the County with the coastal permit application and constitute substantial evidence in the record upon which the County relied in approving the project.

⁶ As aptly noted on page 12 of the Commission staff report, "[t]he County addressed the potential cumulative effects of operating a new well in its permit decision and based its findings regarding cumulative impacts on a 2020 Sutro Science aquifer survey. [footnote omitted] *The survey found that the project would not decrease stream flows, either individually or cumulatively, at a pumping rate of 300 gpm total for the simultaneous operation of Gallagher Wells No. 1 and 2. Specifically, survey results represented the worst-case scenario rather than typical conditions, and these results demonstrated a low likelihood of impacts to surface water levels even under stressed conditions.*" [Emphasis added.]

As explained in the Board of Supervisors' resolution approving the project (section 14.G, on page 7 of 12), the proposed Gallagher Well No. 2 would comply with the Marin County Interim Zoning Code section 22.56.130I.G., which concerns impacts on streams from diversion, including well projects. Section 22.56.130I.G states:

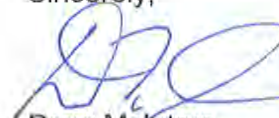
Before any such activities are permitted, minimum flows necessary to maintain fish habitat and existing water quality, and to protect downstream resources (e.g., riparian vegetation, groundwater recharge areas, receiving waters, estuarine habitats, spawning areas) and other downstream users shall be determined by the Department of Fish and Game and the Division of Water Rights of the State Water Resources Control Board.

Accordingly, the County conditioned the permit's issuance on NMWD's having obtained all appropriate environmental regulatory permits, including from the CDFW. NMWD has applied for and is currently in the final stages of securing a Lake and Streambed Alteration Agreement from CDFW. The final agreement, anticipated in October or November 2021, prior to commencement of well construction, will include any additional conditions deemed necessary by CDFW – the agency with primary responsibility for implementing the California Fish and Game Code, including the California Endangered Species Act.

In conclusion, NMWD appreciates and shares the Appellant's concerns for protection of stream habitat and special status fish species. Towards that end, NMWD has worked closely with the SWRCB and CDFW over the past several decades to reach agreement on the terms of its current water rights license and permits. These are complex arrangements that take into consideration the rights and obligations of other creek users and fish and wildlife habitat. In its decision to conditionally approve the project, the County recognized the complexity of these arrangements, the technical specialization of SWRCB and CDFW, the agencies with primary jurisdiction, and the potential for inadvertently complicating the administration of those agreements through the introduction of additional mitigation measures. For the reasons presented, and based upon the administrative record, it is respectfully submitted that the County has acted in accordance with the Local Coastal Program, and that a fourth de novo review of the application will further delay this critical water supply project without any corresponding benefit to Coastal resources, for such review is unlikely to yield an outcome different from that of the County's.

If you have any questions feel free to contact me at (415) 897-4133.

Sincerely,



Drew McIntyre
General Manager

FW: Public Comment on October 2021 Agenda Item Friday 18a - Appeal No. A-2-MAR-21-0053 (North Marin Water District Well, Point Reyes Station)

NorthCentralCoast@Coastal <NorthCentralCoast@coastal.ca.gov>

Mon 10/4/2021 10:40 AM

To: Pfeifer, Sara@Coastal <Sara.Pfeifer@coastal.ca.gov>

-----Original Message-----

From: mara stolurow <covergirlsupholstery@gmail.com>

Sent: Sunday, October 3, 2021 11:51 AM

To: NorthCentralCoast@Coastal <NorthCentralCoast@coastal.ca.gov>

Subject: Public Comment on October 2021 Agenda Item Friday 18a - Appeal No. A-2-MAR-21-0053 (North Marin Water District Well, Point Reyes Station)

Thank you for accepting comments on the proposal for a new water well at the Gallagher ranch in Point Reyes. Many of us have been struggling with the water quality for the past year or more. We had to install 2 reverse osmosis systems (at our own cost) because of sodium related health issues. I go deaf if too much sodium is in my diet. Others have other issues. I hope you will support this project quickly and get it done as fast as is possible while maintaining the quality we need. It looks like all the proper work is being done with CEQ4 to maintain fish, wildlife and habitat. Thank you.

FW: Public Comment on October 2021 Agenda Item Wednesday 18 - Deputy Director's Report -- Gallagher #2 Well

Prahler, Erin@Coastal <Erin.Prahler@coastal.ca.gov>

Mon 10/4/2021 7:40 AM

To: Pfeifer, Sara@Coastal <Sara.Pfeifer@coastal.ca.gov>

Sara - see email below for F18a / A-2-MAR-21-0053.

-----Original Message-----

From: jeff felix <felix2468@horizoncable.com>

Sent: Sunday, October 3, 2021 5:50 PM

To: SanDiegoCoast@Coastal <SanDiegoCoast@coastal.ca.gov>

Subject: Public Comment on October 2021 Agenda Item Wednesday 18 - Deputy Director's Report -- Gallagher #2 Well

Bonnie and Jeff Felix SUPPORT the development of the GALLAGHER WELL 2 PROJECT near Point Reyes Station.

Without this well our community will most likely not have drinkable water as our current wells increasingly have saline in the water. This situation is unlikely to change for the better and will only get worse.

We also understand that developing this well will NOT impact negatively on the wild life in our region as questioned.

Thank you for your consideration,

Jeff & Bonnie Felix
Point Reyes Station, CA
(415)663-1867

FW: Public Comment on October 2021 Agenda Item Friday 18a - Appeal No. A-2-MAR-21-0053 (North Marin Water District Well, Point Reyes Station)

NorthCentralCoast@Coastal <NorthCentralCoast@coastal.ca.gov>

Fri 10/1/2021 3:33 PM

To: Pfeifer, Sara@Coastal <Sara.Pfeifer@coastal.ca.gov>

From: Ken <klevin13@gmail.com>**Sent:** Friday, October 1, 2021 1:57 PM**To:** NorthCentralCoast@Coastal <NorthCentralCoast@coastal.ca.gov>**Subject:** Public Comment on October 2021 Agenda Item Friday 18a - Appeal No. A-2-MAR-21-0053 (North Marin Water District Well, Point Reyes Station)

Commissioners:

As president of the Point Reyes Station Village Association, I write on behalf of our members and neighbors served by the North Marin Water District (NMWD). In addition to those who live in Point Reyes Station, residents of Olema, Inverness Park and Paradise Ranch Estates rely on the water supplied by NMWD as well. We urge you to support the staff recommendation and find that Appeal Number A-2-MAR-21-0053 raises no substantial issue with respect to the grounds on which the appeal has been filed. Please vote YES.

The original permit was issued because existing wells cannot provide adequate safe drinking water for the residents of the area, nor for the hundreds of thousands of visitors annually. (Point Reyes National Seashore visitation in 2020 was 2,252,424.) The appeal alleges possible damage to riparian habitat and stream flow impacts. These matters are already being competently addressed by the State Water Resources Control Board and the California Department of Fish and Wildlife. These agencies must issue their final approval of the project prior to construction.

The above safe guards adequately protect our valuable wildlife and natural resources and will allow NMWD to continue to provide clean water to residents and visitors alike.

Please vote YES on the Resolution to Find No Substantial Issue.

Thank you,
Ken Levin
Point Reyes Station Village Association