

## **CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT  
455 MARKET STREET, SUITE 300  
SAN FRANCISCO, CA 94105  
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# **F18a**

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

**OCTOBER 15, 2021**

### **EXHIBITS**

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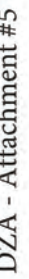
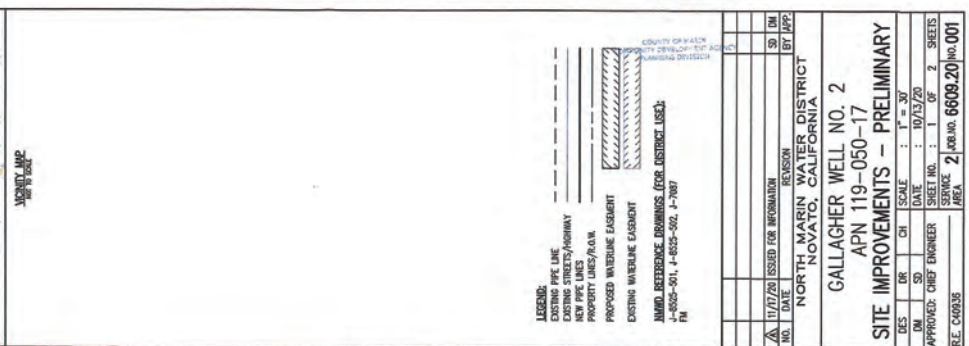
Test well and location of proposed well, looking southwest toward Point Reyes Station



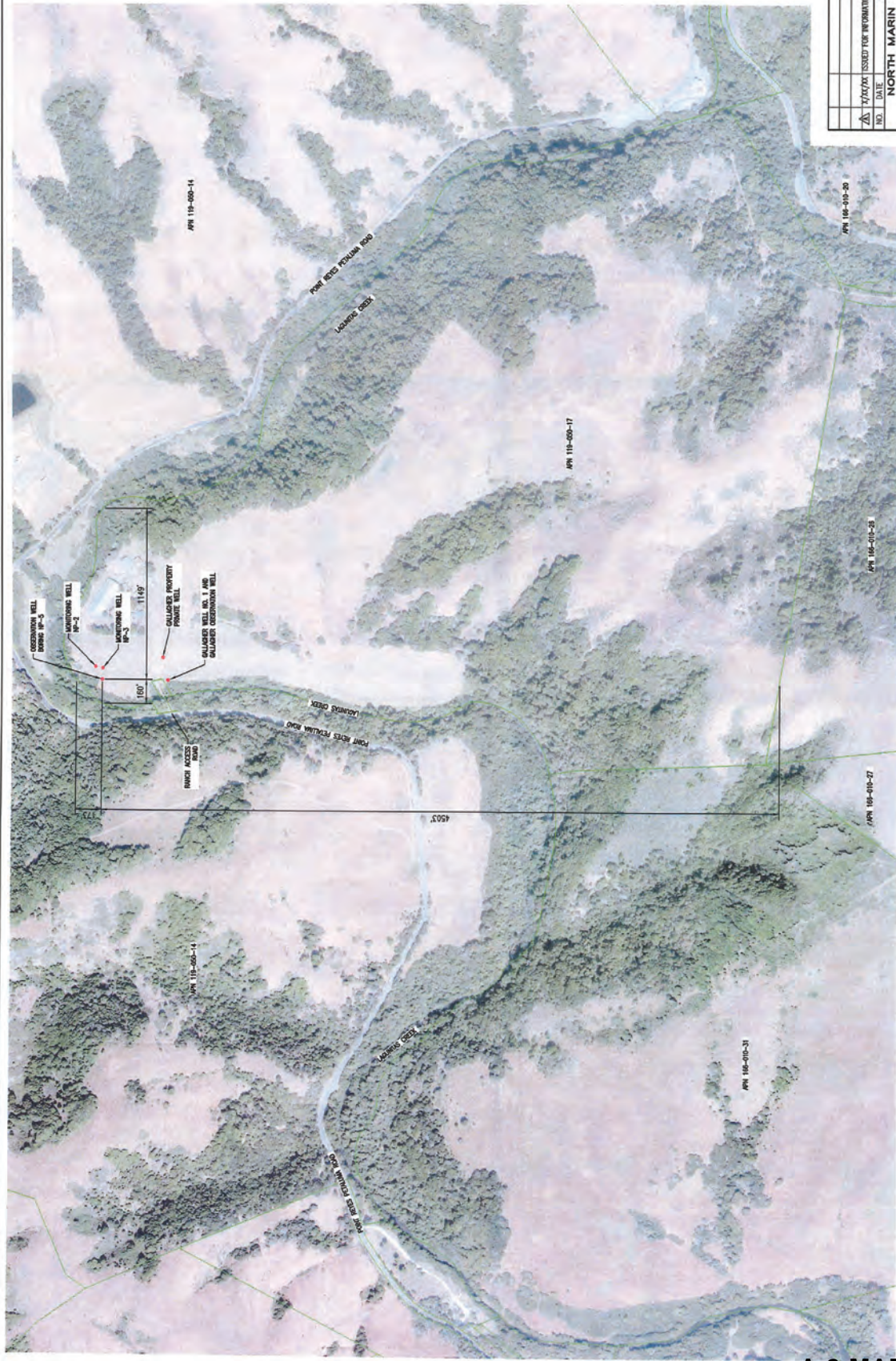
Location of proposed 500-foot pipeline, looking southwest toward Point Reyes Station



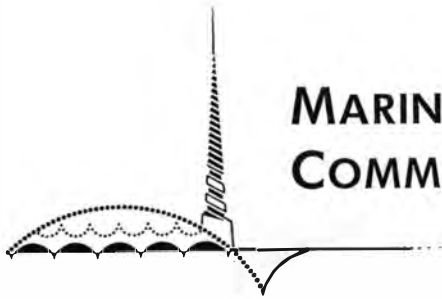
Location of existing Gallagher Well No. 1, looking southwest toward Point Reyes Station



**Exhibit 3**  
**Page 1 of 2**



NO.	DATE	ISSUED FOR INFORMATION	BY	APP
1	12/27/2020	ISSUED FOR INFORMATION	BY	APP
NORTH MARIN WATER DISTRICT				
NOVATO, CALIFORNIA				
GALLAGHER WELL NO. 2				
SITE PLAN				
AND ADJACENT PROPERTIES				
DES.	DR.	CH.	SCALE	1"=300'
DR.	CH.	SCALE	1"=300'	
APPROVED: CHIEF ENGINEER	SHEET NO.	7/27/2020	2	SHEETS
S.E. C75950	AREA	2	6609.20	NO. 002



**MARIN COUNTY**

**COMMUNITY DEVELOPMENT AGENCY**

**THOMAS LAI, DIRECTOR**

**RECEIVED**  
JUL 22 2021

CALIFORNIA  
COASTAL COMMISSION

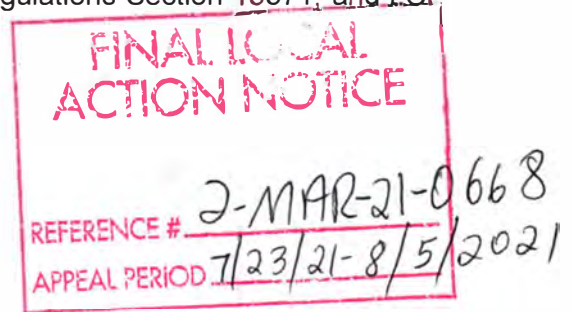
**NOTICE OF FINAL LOCAL (BOARD OF SUPERVISORS) DECISION**

Pursuant to Coastal Act Section 30603(d), Coastal Commission Regulations Section 13571, and LCP Policy and/or Implementation Plan.

July 19, 2021

**California Coastal Commission**  
**455 Market Street, Suite 300**  
**San Francisco, CA 94105**

Attention: Coastal Planner



Applicant's Name: **Gallagher Family (North Marin Water District) Coastal Permit and Use Permit**

Coastal Permit Number: Coastal Permit [P3010]

Assessor's Parcel Number: 119-050-17

Project Location: 14500 Point Reyes-Petaluma Road, Point Reyes Station, CA

Determination: Approved With Conditions  
(Resolution of the July 13<sup>th</sup> Board of Supervisors' hearing is attached specifying action.)

Decision Date: July 13, 2021

County Appeal Period: N/A – Final appeal to Board of Supervisors

**Local review is now complete.**

This permit IS appealable to the California Coastal Commission (see Marin County Code Section 22.56.080 attached); please initiate the California Coastal Commission appeal period.

Any correspondence concerning this matter should be directed to Immanuel Bereket, Sr. Planner at (415) 473-2755.

Sincerely,

Immanuel Bereket  
Sr. Planner

Attachment1- Resolution

22.56.080 APPEALS TO THE CALIFORNIA COASTAL  
COMMISSION

For those coastal project permits which are approved for developments defined as "appealable" under California Public Resources Code, Section 30603 (a), an appeal may be filed with the California Coastal Commission by: (1) an aggrieved party; (2) the applicant; or (3) two members of the coastal commission. Such appeals must be filed in the office of California Coastal Commission not later than 5:00 p.m. of the tenth working day following the date of action from which the appeal is taken. In the case of an appeal by an applicant or aggrieved party, the appellant must have first pursued appeal to the county appellate body (or bodies) as established in Section 22.56.074 of the Marin County Code to be considered an aggrieved party.

**RESOLUTION NO. 2021-53**  
**RESOLUTION OF THE MARIN COUNTY BOARD OF SUPERVISORS**  
**DENYING THE SAVE OUR SHORES APPEAL AND APPROVING THE GALLAGHER**  
**FAMILY (NORTH MARIN WATER DISTRICT) COASTAL PERMIT AND USE PERMIT**  
**14500 PT. REYES-PETALUMA ROAD, POINT REYES STATION**  
**ASSESSOR'S PARCEL 119-050-17**

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**SECTION I: FINDINGS**

1. **WHEREAS**, Drew McIntyre, on behalf of the North Marin Water District (NMWD) and the Gallagher Family, is requesting Coastal Permit and Use Permit approval to construct and operate a municipal well to provide water for customers in the community of Point Reyes Station. Two wells are located on U.S. Coast Guard property in Point Reyes Station (Coast Guard Wells), while the third well (Gallagher Well No. 1), is located on the project site. The proposed project is to construct Gallagher Well No. 2 as part of the Gallagher Wells, located approximately 500 feet north of the existing Gallagher Well No. 1. The purpose of the proposed project is to increase the reliability of domestic water supply to offset the loss of water production at the NMWD's other wells located on the U.S. Coast Guard property. The proposed well would tie into the existing water transmission pipeline located south of the private Gallagher Ranch access road. The proposed well and distribution pipelines would occur within 100 feet of Lagunitas Creek, which traverses the project site.

As part of this project, the NMWD would abandon an existing well (the Downey Well), which lies within the Lagunitas Creek stream channel. The Downey Well was initially constructed on the bank of the Lagunitas Creek stream. However, the creek has migrated over time such that the well is now located at the center of the creek channel. As a result, the Downey Well produces unsafe water quality for domestic consumption. Other improvements proposed include the construction of water distribution pipelines, pump stations, a well field, and other components both within and outside the project site.

The proposed municipal water well will serve the public's critical need by creating a reliable water source for the communities of Point Reyes Station, Olema, Inverness Park, and Paradise Ranch Estates.

The property is located at 14500 Pt. Reyes-Petaluma Road, Point Reyes Station, and is further identified as Assessor's Parcel 119-050-17.

2. **WHEREAS**, on March 25, 2021, the Marin County Deputy Zoning Administrator held a duly noticed public hearing to take public testimony and consider the project and approved the Gallagher Family Coastal Permit and Use Permit.

3. **WHEREAS**, on April 1, 2021, Mr. Gordan Bennett, on behalf of Save Our Shores, submitted a timely appeal of the Gallagher Family Coastal Permit and Use Permit approval.

4. **WHEREAS**, on March 24, 2021, the Marin County Planning Commission held a duly noticed public hearing to take public testimony and consider the project and denied the appeal, and approved the project.

5. **WHEREAS**, on May 29, 2021, Mr. Gordan Bennett, on behalf of Save Our Shores, submitted a timely appeal of the Gallagher Family Coastal Permit and Use Permit approval.
6. **WHEREAS**, on July 13, 2021, the Marin County Board of Supervisors held a duly noticed public hearing to take public testimony and consider the project.
7. **WHEREAS**, the bases of appeal are insufficient to overturn the Planning Commission's decision, for the reasons discussed below.

**A. The appellant asserts that the 2009 Mitigated Negative Declaration is inadequate for the proposed modification, and a new environmental impact report must be prepared.**

Under the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq.) and the CEQA Guidelines contained in Title 14 of the California Code of Regulations (Cal. Code Regs. Tit. 14, Section 15000), a state or local agency typically assumes one of two roles in CEQA implementation: Lead Agency or Responsible Agency. A Lead Agency has the principal responsibility for carrying out or approving a project. Therefore, has the lead responsibility for implementing the CEQA process and preparing the CEQA document for that project (Cal. Code Regs. tit. 14, Section 15050). A Responsible Agency is an agency other than the Lead Agency with some discretionary authority over a project or a portion of it, but which is not designated the Lead Agency (State CEQA Guidelines Section 15381.). CEQA also requires Lead Agencies to consult with relevant trustee agencies with jurisdiction by law when preparing CEQA documents (Cal. Code Regs. tit. 14, Section 15086). Trustee agencies, such as the Department of Fish and Wildlife (DFW), have jurisdiction over resources held in trust for California (Cal. Code Regs. tit. 14, Section 15386).

In this case, the NMWD is the public agency responsible for carrying out the proposed project and is the Lead Agency, while Marin County is a Responsible Agency. As a Lead Agency, the NMWD has the authority to determine what level of CEQA review is required for the project and for preparing and approving the appropriate document [e.g., negative declaration (ND), mitigated negative declaration (MND), or Environmental Impact Report (EIR)]. The Lead Agency's decision is normally binding on all Responsible Agencies.

The role of a Responsible Agency is much narrower than that of a Lead Agency. While the Lead Agency must consider all environmental impacts of the project before approving it, a Responsible Agency has a much more specific charge: to consider only those aspects of the project that are subject to the Responsible Agency's jurisdiction. (State CEQA Guidelines Section 15096). In other words, the County needs to rely on the environmental review adopted by the Lead Agency, but that does not mean that the County has to approve the project.

**B. The appellant asserts that the Planning Commission erred in approving the project without preparation of a new Environmental Impact Report.**

The State CEQA Guidelines allow the Lead Agency to prepare an addendum to an adopted negative declaration "if only minor technical changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred" (14 C.C.R., CEQA Guidelines Section 15164 (b)).

The Addendum that the NMWD prepared, circulated for public review, and adopted concluded that there will be no new impacts. Additionally, the proposed change to the project would not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects in the 2009 MND. Further, as explained in the Addendum, all environmental effects would be reduced to less than significant levels with the incorporation of mitigation measures adopted in the 2009 MND. The appellant chose not to challenge the NMWD's CEQA determination in court, and the time limit for such a challenge has since lapsed.

**C. The appellant asserts that the North Marin Water District has not fully studied the effects of multiple wells, and additional wells may not be necessary to serve its customers.**

In this appeal point, the appellant raises no issues related to the project conformity with standards outlined in the Coastal Act, the Marin County Local Coastal Program (LCP), or the Interim Zoning Code. Instead, the appellant questions whether the NMWD completed the appropriate level of studies and whether an additional well is necessary to serve the NMWD's customers.

Pursuant to Interim Zoning Code Section 22.89.120I, this appeal is de novo. For the Board's "de novo" review of the application, the standard of review for the subject Coastal Permit and Use Permit is the policies and provisions of the County of Marin Local Coastal Program, the Countywide Plan and the Interim Zoning Code, which applies to the coastal areas.

As described in detail in Section 13 below, the project conforms to all applicable requirements of the Countywide Plan and is consistent with the mandatory findings for approving a Coastal Permit, as discussed in Section 14 below. Approval of the proposed project would not adversely impact biological and coastal resources, including coastal access and recreational facilities. Further, as discussed in Section 15 below, the proposed project is consistent with the governing C-APZ-60 zoning district and required findings under Section 22.57.036I of Interim Zoning Code because it would be compatible with and accessory to the existing agricultural uses on the property. Finally, as discussed in Section 16 below, the proposed project meets the mandatory findings to approve a Use Permit (under Section 22.88.010I.2 of the Interim Zoning Code) because public utilities, such as public wells, may be permitted with a Use Permit under Section 22.88.010I.2 of the Interim Marin County Code when it is found to be necessary for public health, safety, convenience, or welfare.

The Planning Commission approved the Coastal Permit application because it met the legal requirements and findings for approving such a permit. The Board's purview does not include a determination of whether a project is necessary. Instead, as

discussed above, the standard of review is confined to the project's consistency with all applicable regulations. Based on the substantial evidence on record, including project plans and environmental studies, the project meets the required findings for approval.

**D. The appellant asserts that the NMWD is unlawfully pumping water reserved for salmon when it has other alternative water sources that would not impact salmon nor violate its water permits.**

The State Water Board's Division of Water Rights administers California's water rights system (SWRCB). The Division of Water Rights also processes petitions submitted by wastewater treatment plant operators who wish to increase or decrease their discharges to a stream. The County lacks jurisdiction over matters related to water rights. Matters related to water rights and violation of any applicable covenants, agreements, or restrictions are within the purview of other agencies, notably the SWRCB and the California Department of Fish and Wildlife. Since the appellant raises no issues related to the project conformity with standards outlined in the Coastal Act, the Marin County Local Coastal Program (LCP), the Interim Zoning Code, or other matters subject to the County's purview, the Board should dismiss this appeal point.

8. **WHEREAS**, the NMWD prepared and adopted a Mitigated Negative Declaration (NMD) in 2009 in accordance with the requirements of the California Environmental Quality Act Guidelines (14 Cal. Code Regs. 15000, et seq.).

9. **WHEREAS**, on February 7, 2021, the NMWD prepared an Addendum to the 2009 MND, which was circulated for a 30-day public review period and adopted by the NMWD Board on March 2, 2021.

10. **WHEREAS**, under State CEQA Guidelines Section 15367, the NMWD is the Lead Agency responsible for carrying out or approving a project and implementing the CEQA process, and preparing the CEQA document for the project (Cal. Code Regs. tit. 14, Section 15050).

11. **WHEREAS**, the County is a Responsible Agency under the State CEQA Guidelines Section 15381.

12. **WHEREAS**, The Addendum that the NMWD prepared, circulated for public review, and adopted concluded that there the proposed change to the project would not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects in the 2009 MND. The County's review determined that the 2009 MND and 2021 Addendum adequately evaluate the aspects of the project subject to County approval. Therefore, further environmental review cannot be required by the County as a Responsible Agency.

13. **WHEREAS**, the project is consistent with the goals and policies of the Marin Countywide Plan for the following reasons:

- A. As discussed in Section 15 below, the proposed project is compatible with the C-APZ land use designation for the project site. It would not interfere with the existing use of the ranch property for livestock grazing. The project will involve the

construction of a municipal well that is accessory to the existing use. The design, location, size, and operating characteristics of the proposed facility will be compatible with the allowed uses in the vicinity.

- B. As discussed in Section 16 below, the mandatory findings to approve a Use Permit can be made to allow a public utility to serve the public and is necessary for public safety, convenience, and welfare.
- C. The project is consistent with the CWP woodland preservation policy (BIO-1.3) because it would not entail the irreplaceable removal of a substantial number of mature, native trees. No vegetation removal is proposed with this project.
- D. The project is consistent with the CWP special-status species protection policy (BIO-2.2) because the subject property does not provide habitat for special-status species of plants. Protected species are in Lagunitas Creek, but potential impacts to those fish would be reduced to less than significant impacts because the Mitigation and Monitoring Program would be implemented.
- E. The project is consistent with the CWP natural transition and connection policies (BIO 2.3 and BIO 2.4) because it would not substantially alter the margins along riparian corridors, wetlands, baylands, or woodlands. As documented in the MND, two components of the proposed project would require work within the stream channel of Lagunitas Creek. Removing the existing wellhead of the Downey Well will require that an excavator, working from the top of the bank, remove the existing wellhead. No riparian vegetation would be removed to abandon the well. The relocated gauging station would be constructed on the edge of the Gallagher Ranch pasture and would not require removal of riparian or vegetation other than annual grasses.
- F. The project is consistent with the CWP stream and wetland conservation policies (BIO-3.1 and CWP BIO-4.1) because the proposed municipal water well is one of the types of improvements permitted within the wetland conservation area and stream conservation area, provided such projects would not result in any significant adverse direct or indirect impacts on wetlands and minimize impacts to stream function and to fish and wildlife habitat.
- G. As discussed above, the proposed project is to construct a municipal well to serve the public. Although the proposed project would be located adjacent to Lagunitas Creek, which is identified as a blue-line stream, no stream impoundments or direct diversions would occur as part of the project, nor would the project alter the stream channel or stream banks. Further, construction activities would not conflict with any Habitat Conservation Plans, Natural Conservation Community Plans, or any approved local, regional, or State habitat conservation plans. Additionally, the project proposes to dedicate certain water rights for instream flows to protect, preserve, restore, and recover aquatic organisms and wildlife habitat. This water dedication would benefit the wetland habitat in West Marin by allowing the National Park Service to implement its planned Olema Marsh restoration by availing additional water, enabling full implementation of the Giacomini Wetland Restoration Project.

Strict adherence to the adopted Mitigation Monitoring and Reporting Program (MMRP) would ensure no impacts on the CWP stream and wetland conservation policies.

- H. The project is consistent with CWP water quality policies and would not result in substantial soil erosion or discharge of sediments or pollutants into surface runoff (WR-1.3, WR-2.2, WR-2.3) because the grading and drainage improvements would comply with the Marin County standards and best management practices required by the Department of Public Works.
- I. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or their services.

14. **WHEREAS**, the project is consistent with the mandatory findings for Coastal Permit approval (Marin Interim Zoning Code Section 22.56.130I).

**A. Water Supply.**

The NMWD historically has relied on the two Coast Guard Wells (located to the south of its treatment plant, which is located approximately 500 feet from the end of Commodore Webster Drive at the Point Reyes Station former Coast Guard Housing Facility) to supply water for the West Marin service area. Due to the wells' location in the upper tidal reach of Lagunitas Creek, they are under the influence of flows in the tidal reach of Lagunitas Creek and subject to periodic salinity intrusion and occasional flooding. The Gallagher Ranch site is upstream of any flooding and tidal reaches of Lagunitas Creek. However, the existing NMWD Gallagher Well No. 1 has a limited flow capacity (170 gallons per minute) and is not currently connected to the West Marin distribution system. This project would increase the water supply from the Gallagher site and integrate those wells into the NMWD distribution system. Because both Coast Guard Wells mostly have acceptable water quality, offer reliable water supply during most months, and have ample capacity to recharge, the Coast Guard Wells will continue to be the primary source.

The proposed Gallagher Well No. 2 would be used during periods of high tides, avoiding saltwater intrusion into the water supply system. By establishing a reliable emergency backup source of water upstream of the high tide water influences of Tomales Bay, water service reliability will increase with the implementation of the proposed project. The proposed well will serve West Marin communities of Point Reyes Station (including the Coast Guard housing area), Inverness Park, Paradise Ranch Estates, Bear Valley (including the Point Reyes National Seashore), and Olema. The NMWD has an agreement to assist the Inverness Public Utilities District during emergency water shortages. The development of this supplementary supply, therefore, stands to benefit that community.

The project would be consistent with planned development and planned growth in the region. The LCP describes existing and projected growth in the region. The LCP also describes existing and projected water supply and demand in keeping with this projected growth. The proposed project is consistent with the LCP in that it is not growth-inducing and would not increase the NMWD's water supply. Instead, the proposed project is intended to secure a reliable and safe source of domestic water for the NMWD's customers. The project would offset pumping volumes obtained at the Coast Guard

Wells only when unavailable due to salinity intrusion or other operational conditions preventing pumping. The amount of water pumped from all wells would remain within the limits set in the water rights permits.

#### **B. Septic System Standards.**

The Marin County Environmental Health Services Division staff reviewed the proposed project and determined that the existing septic system would not be affected by the project.

#### **C. Grading and Excavation.**

The project site has various slopes, and the project is designed to fit the site's topography and existing soil conditions. The project would include digging an approximately 500-foot-long trench to place the pipeline and digging the 59-foot deep well. The land exposed at any one time during construction will be kept to the shortest possible time. As required by the mitigation measures, the area must be restored to a similar condition as before the project. All excavated soil and excess material will be hauled to NMWD's Corporation Yard in Novato for future use. The well pad would be the only impervious surface created by the project. Chemicals, fuels, and any other materials onsite would be used only for construction and would be properly disposed of within an authorized landfill.

#### **D. Archaeological Resources.**

The project site was surveyed for archaeological and historical resources in connection with the 2009 MND and the Gallagher Ranch bank stabilization projects. No archaeological resources were identified as part of this survey or subsequent implementation of the Gallagher Well No. 1 or bank stabilization, both of which were completed in 2010. While it is unlikely that the project would result in disturbances to cultural resources, in the event archeological resources are uncovered during construction, all work shall immediately cease. The services of a qualified consulting archaeologist must be engaged to assess the value of the resource and develop appropriate mitigation measures.

#### **E. Coastal Access.**

The proposed project is not located adjacent to a shoreline. Therefore, the project would not have any impact upon coastal access.

#### **F. Housing.**

The proposed project would not remove a residential unit that would provide housing opportunities for low or moderate-income people.

#### **G. Stream and Wetland Resource Protection.**

A municipal well is allowed within stream or wetland area under the Marin County Interim Zoning Code Section 22.56.130I.G.1, which provides "[s]tream diversions shall be limited to necessary water supply projects..." and the minimum flows necessary to

maintain fish habitat, existing water quality, and protect downstream resources are maintained, as determined by the Department of Fish and Game and the Division of Water Rights of the State Water Resources Control Board (SWRCB). Additionally, under the LCP's Natural Resources Policy 3.a, development of water supply infrastructure within mapped perennial or intermittent streams, including impoundments, diversions, channelizations, and other substantial alterations, are permitted, provided such projects minimize impacts on sensitive coastal resources. The LCP's Natural Resources Policy 3.b provides that for such water supply projects must "incorporate the best mitigation measures feasible, including erosion and runoff control measures, and revegetation of disturbed areas with native species. Disturbance of riparian vegetation shall be held to a minimum."

As described in the project documents, the project could result in a reduction in creek discharge. However, the magnitude of this reduction would be negligible and would not substantially reduce streamflow or lower water surface to the degree that would adversely impact stream habitat, and thus would not decrease stream flows, individually or cumulatively, below the minimum flow level required by the SWRCB.

#### **H. Dune Protection.**

The project site is located east of the community of Point Reyes Station. There are no naturally occurring dunes on or within the vicinity of the project site.

#### **I. Wildlife Habitat Protection.**

As described in the 2009 MND and subsequent Addendum, no vegetation or special-status species and sensitive natural communities would be removed or impacted by the project. Special-status animal species, including Steelhead and Coho, were identified as present in the project area along Lagunitas Creek. However, the proposed project would be sited to avoid wildlife habitat areas and to provide buffers for such habitat areas. Additionally, mitigation measure 12-25 requires protection measures for special-status species. Adherence to the required mitigation measures described in the MND would minimize impacts to special status species.

#### **J. Protection of Native Plant Communities.**

The proposed project itself would not adversely impact native plant communities because the project is proposed to occur in an area where no vegetation exists. However, according to the 2009 MND, the project site includes special-status species and non-indigenous, naturalized annual grass species. These non-indigenous grasses threaten the re-establishment of native plant species. As required by the project mitigations, the project would include reseedling of disturbed areas with native vegetation appropriate for the habitat type following construction.

#### **K. Shoreline Protection.**

The subject property is not adjacent to the shoreline, and the proposed project would not result in adverse effects on the coastline. The project would not require additional shoreline protection.

#### **L. Geologic Hazards.**

The project is located in a Seismic Shaking Amplification Hazard Area Zone 2, but is not located within the vicinity of any known fault lines.

#### **M. Public Works Projects.**

The proposed project is not located near Highway 1, nor would it include any roadway improvements. As described in the application material, the purpose of the project is to protect the safety and reliability of NMWD's water supply for its consumers. The project would not increase NMWD production capacity but would provide a supplemental supply source when the other well sites are unavailable. The project would not expand utility service beyond the existing service limits and would conform with the resource and visual policies of the LCP and Marin municipal code.

#### **N. Land Division Standards.**

The project does not include a land division or property line adjustment.

#### **O. Visual Resources and Community Character.**

Once the construction of the project is completed, project improvements would not be visible from public vantage points because of topography and existing vegetation. The small gauging station enclosure would be screened by vegetation between Point Reyes-Petaluma Road and the creek. The wellhead vault would be almost flush with the ground surface. Piping would be underground, except where it is attached to the underside of the Gallagher Ranch bridge. The pump control steel cabinet would be aboveground but screened for public view by roadside vegetation from Point Reyes/Petaluma Road. The project would not alter existing open space views in the area.

#### **P. Recreational/Commercial/Visitor Facilities.**

The project site is governed by C-APZ-60 (Coastal, Agricultural Production Zone) zoning regulations and would not provide commercial or recreational facilities.

#### **Q. Historic Resource Preservation.**

The project site is not located within an identified historic area of the LCP. The project site was surveyed for archaeological and historical resources in 2009 for the Gallagher Ranch bank stabilization project, and no historical resources were identified.

A California Historical Resources Information System (CHRIS) records search identified one existing resource of the Black Mountain Historic era ranch. The bridge over Lagunitas Creek was identified as a new historic resource. The project would not impact these resources because the well and the mains would be primarily underground.

15. **WHEREAS**, the proposed project is consistent with the governing C-APZ-60 (Coastal, Agricultural Production Zone, one unit per 60 acres maximum density) and required findings under Section 22.57.036I of Marin County Code because:

- A. The project would be compatible with and accessory to the existing agricultural uses on the property. Public water facilities like wells are conditionally permitted in the C-APZ zoning district. The proposed well would not significantly affect agricultural production on the Gallagher Ranch. The project would affect less than 0.01 percent of the 330-acre ranch and would not interfere with the operation of the existing livestock ranching operations.
- B. The proposed project will have no significant adverse impacts on environmental resources, including stream or riparian habitats and scenic resources.
- C. The proposed project will not impact or impair other agencies' ability to provide necessary services (fire protection, police protection, schools, etc.) to serve the project site.

16. **WHEREAS**, the proposed project is consistent with the mandatory findings to approve a Use Permit (Section 22.88.010I.2 of the Interim Marin County Code), as specified below.

- A. **The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the health, safety, morals, comfort, convenience, or welfare of persons residing or working in the neighborhood of such use and will not, under the circumstances of the particular case, be detrimental to the public welfare or injurious to property or improvements in the neighborhood.**

The proposed project would benefit the public health, safety, and welfare by providing safe water for domestic consumption. The project would reduce the need to pump at the Coast Guard Wells during high tides or other conditions where pumping is known to cause saltwater intrusion and contamination of the aquifer. The project would reduce the need for increased off-tide pumping (which is currently done to compensate for the times when high tides prohibit pumping). The proposed project would not only increase safety but would improve supply reliability. The project, therefore, will be beneficial for public health, safety, and welfare.

The project would further benefit the environment by providing water for plants, fish, and wildlife by permanently dedicating 212.7 acre-feet (0.699 cfs) of Lagunitas Creek water that the NMWD can currently divert to instream uses (i.e., for the benefit of plants, fish, and wildlife using the creek). Reduction in off-tide pumping at higher rates would also benefit the Lagunitas Creek fishery by keeping more water in the stream.

Finally, as proposed, the project would be consistent with all applicable policies of the Marin Countywide Plan. The proposed project would not result in visual impacts because the facility would be located over 400 feet from the nearest public roadway in an area that is partially screened from off-site locations by existing vegetation and topographical features. The project would not alter the drainage pattern of the area.

## SECTION II: ACTION

NOW THEREFORE, BE IT RESOLVED that the project described in condition of approval 1 is authorized by the Marin County Board of Supervisors and is subject to the conditions of project approval.

This decision certifies the proposed project's conformance with the requirements of the Marin County Development Code and in no way affects the requirements of any other County, State, Federal, or local agency that regulates development. In addition to a Building Permit, additional permits and/or approvals may be required from the Department of Public Works, the appropriate Fire Protection Agency, the Environmental Health Services Division, water and sewer providers, Federal and State agencies.

## SECTION III: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Board of Supervisors hereby approves the Gallagher Family Coastal Permit and Use Permit, subject to the conditions listed below.

### CDA-Planning Division

1. This Coastal Permit and Use Permit approval authorizes the construction of a municipal well to provide water for customers in the community of Point Reyes Station. Two wells are located on U.S. Coast Guard property in Point Reyes Station (Coast Guard Wells), while the third well (Gallagher Well No. 1), is located on the project site. The proposed project is to construct Gallagher Well No. 2 as part of the Gallagher Wells, located approximately 500 feet north of the existing Gallagher Well No. 1. The purpose of the proposed project is to increase the reliability of domestic water supply to offset the loss of water production at the NMWD's other wells located on the U.S. Coast Guard property. The proposed well would tie into the existing water transmission pipeline located south of the private Gallagher Ranch access road. The proposed well and distribution pipelines would occur within 100 feet of Lagunitas Creek, which traverses the project site.

As part of this project, the NMWD would abandon an existing well (the Downey Well), which lies within the Lagunitas Creek stream channel. The Downey Well was initially constructed on the bank of the Lagunitas Creek stream. However, the creek has migrated over time such that the well is now located at the center of the creek channel. As a result, Downey Well produces unsafe water quality for domestic consumption. Other improvements proposed include the construction of water distribution pipelines, pump stations, a well field, and other components both within and outside the project site.

2. Plans submitted for a Building Permit shall substantially conform to plans identified as Exhibit A, entitled "Gallagher Well No. 2," consisting of 2 sheets prepared by North Marin Water District, received in final form on February 6, 2021, and on file with the Marin County Community Development Agency, except as modified by the conditions listed herein.
3. The project shall conform to the Planning Division's "Uniformly Applied Standards 2021" with respect to all of the standard conditions of approval and the following special conditions: 10.

#### SECTION IV: VESTING

NOW THEREFORE, BE IT RESOLVED that unless conditions of approval establish a different time limit or an extension to vest has been granted, any permit or entitlement not vested within two years of the date of the approval, shall expire and become void. The permit shall not be deemed vested until the permit holder has actually obtained any required Building Permit or other construction permit and has substantially completed improvements in accordance with the approved permits, or has actually commenced the allowed use on the subject property, in compliance with the conditions of approval.

#### SECTION V: VOTE

**PASSED AND ADOPTED** at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on this 13<sup>th</sup> day of July 2021, by the following vote:

AYES: SUPERVISORS Damon Connolly, Katie Rice, Stephanie Moulton-Peters,  
Dennis Rodoni

NOES: NONE

ABSENT: Judy Arnold



\_\_\_\_\_  
PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

  
\_\_\_\_\_  
CLERK

**CALIFORNIA COASTAL COMMISSION**

NORTH CENTRAL COAST DISTRICT OFFICE  
455 MARKET ST., SUITE 228  
SAN FRANCISCO, CA 94105-2420  
(415) 904-5280  
NORTHCENTRALCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: North Central Coast

Appeal Number: A-2-MAR-21-0053Date Filed: 7/23/2021Appellant Name(s): Save Our Seashores**APPELLANTS**

**IMPORTANT.** Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review [the appeal information sheet](#). The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>).

**Note regarding emailed appeals.** Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the North Coast district office, the email address is [NorthCentralCoast@coastal.ca.gov](mailto:NorthCentralCoast@coastal.ca.gov). An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>.

**Appeal of local CDP decision**

**Page 2**

**1. Appellant information<sup>1</sup>**

Name: Save Our Seashore  
Mailing address: 40 Sunnyside Dr  
Phone number: 415-663-1828  
Email address: gbatmuirb@aol.com

How did you participate in the local CDP application and decision-making process?

☐ Did not participate    ☒ Submitted comment    ☒ Testified at hearing    ☐ Other

Describe: Submitted Comments and testified at: Marin County Deputy Zoning Administrator Hearing,  
at Marin County Planning Commission hearing and  
at Marin County Board of Supervisors hearing

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: Save Our Seashore has exhausted the above list of LCP appeal processes  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>1</sup> If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

## Appeal of local CDP decision

Page 3

### 2. Local CDP decision being appealed<sup>2</sup>

Local government name: Marin County  
Local government approval body: Board of Supervisors  
Local government CDP application number: \_\_\_\_\_  
Local government CDP decision: ☒ CDP approval ☐ CDP denial<sup>3</sup>  
Date of local government CDP decision: 7/13/21 FLAN mailed 7/19/21

Please identify the location and description of the development that was approved or denied by the local government.

Describe: Gallager Family (North Marin Water District) Coastal Permit and Use Permit

14500 Pt Reyes-Petaluma Rd, Point Reyes Station CA

Assessor's Parcel 119-050-17

Well Installation

<sup>2</sup> Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

<sup>3</sup> Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

**Appeal of local CDP decision**  
**Page 4**

**3. Applicant information**

Applicant name(s): North Marin Water District  
999 Rush Creek Place, Novato CA 94945  
Applicant Address: \_\_\_\_\_

**4. Grounds for this appeal<sup>4</sup>**

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: See Attached Page  
\_\_\_\_\_  
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<sup>4</sup> Attach additional sheets as necessary to fully describe the grounds for appeal.

**Appeal of local CDP decision**  
**Page 5**

**5. Identification of interested persons**

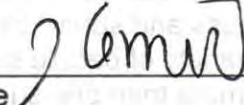
On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

☐ Interested persons identified and provided on a separate attached sheet

**6. Appellant certifications**

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Gordon Bennett, Save Our Seashore President

Signature 

Date of Signature 7/22/21

**7. Representative authorizations**

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☐ I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

<sup>5</sup> If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

<sup>6</sup> If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

Marin County erred in claiming that Save Our Seashore (SOS) raised no issues related to the LCP (see FLAN, Decision Finding #7 C). In contrast, pages 2-3 of the SOS 5/24/21 Letter (Attachment #2) specifically reference conflicts with LCP Sections BIO 2.1, BIO 2.2, BIO 2.3, BIO 2.4, BIO 3.1 and BIO 4.1.

BIO 2.1 The Decision Findings do not rebuttal the SOS claim of conflict with BIO 2.1 that protects wildlife nursery areas. Steelhead (*Oncorhynchus mykiss*), a threatened species, nest in Lagunitas Creek within the property. BIO 2.1 also requires ***“no net loss”*** of sensitive habitat acreage. NMWD admits such loss, but claims (without study or evidence) that the loss is ***“negligible.”*** ***“Negligible loss”*** is inconsistent with ***“no net loss.”***

BIO 2.2 Decision Finding #13 D (first sentence) claims that the subject is consistent with BIO 2.2 because the ***“property does not provide habitat for special status species,”*** but the County's own GIS maps show that Lagunitas Creek, home to threatened Steelhead and to endangered Coho salmon (*Oncorhynchus kisutch*) flows through the property. Also, Finding #13 D (second sentence) is inconsistent with the same Finding's first sentence because it claims that impacts to the Coho (that the first sentence claims don't exist on the property) ***“would be reduced to less than significant impacts because the Mitigation and Monitoring Program would be implemented.”*** But as SOS has pointed out, the NMWD Mitigation Program does not function in a proactive manner to protect special status species from harm because it is designed to be implemented only after evidence of harm has been found. Further, the NMWD Mitigation Program has a qualitative trigger (vs the quantitative trigger requested in RWQCB2's 2/8/21 letter), which means the trigger is subject to NMWD's own interpretation and thus has never been implemented despite conditions reasonably warranting implementation.

BIO 2.3 Decision Finding #13 E claims the project conforms to BIO 2.3 because it would ***“not substantially alter” margins along riparian corridors.”*** But there is no scientific study or evidence to support this claim and the Finding conflicts with NMWD's own 2009 IS/MND, which states that potential impacts to the riparian zone would ***be mitigated by NMWD's*** Mitigation Program (that is toothless and has never been implemented). Lastly, BIO 2.3 calls for such margins to be ***“preserved and enhanced,”*** in contrast to ***“not substantially alter(ed).”***

BIO 2.4 Decision Finding #13 E claims the project is consistent with BIO 2.4 that requires ***“consideration of cumulative impacts”*** but, as SOS has pointed out, the current project considers only its own incremental impacts rather than the cumulative impacts from both the current and the proposed NMWD wells operating together.

BIO 3.1 & 4.1 Decision Finding #13 F claims the project is consistent with BIO 3.1 because it would ***“minimize impacts to stream functions and fish and wildlife habitat”*** but there is no scientific study or evidence to support this claim. Even a small reduction in water level over the two mile stretch impacted by the proposed well could dry out acres of floodplain and isolate pools in which special species fish would be trapped.

In Sum: SOS has proposed (attachment #3) a compromise mitigation measure consistent with NMWD's own 2009 IS/MND that would allow the well to be permitted in a way that would be consistent with the Marin County LCP and protect sensitive species. We urge that the Coastal Commission to adopt this revised mitigation measure.

OVERVIEW: This NMWD Gallagher well appeal is less a land use issue than it is a water use issue involving State Water Board Order 95-17. WR 95-17 requires Marin Water to release water from Kent Lake (behind Peters Dam) into Lagunitas Creek to maintain specified minimum flows (6 cubic feet per second (cfs) in dry year summers) for public trust protection (hereinafter salmon water).

But WR 95-17 also states (pg 28) *“This permit does not authorize diversion of any water specifically released from storage by Marin Municipal Water District for fish and wildlife protection in Lagunitas Creek...Permittee [NMWD] shall not divert or impair the flow of such water.”*

Thus **key issue here is NMWD’s unpermitted use of salmon water. If this misuse had not occurred, the appeal of the NMWD Gallagher well would not have been necessary...nor would the test and evaluations requested by the Water Board.** But because NMWD stubbornly refuses to forego **pumping salmon water, these tests have become necessary to ensure that NMWD’s unpermitted pumping of salmon water does not harm protected species.**

WR 95-17 also states (page 28, emphasis ours): that *“analysis indicates that there would be limited natural flow in the lower portion of Lagunitas Creek during summer months of most years, and almost no natural flow during summer months of dry years.”* WR 95-17’s **“no natural flow”** statement is consistent with MMWD current statement (per MMWD 4/13/21 Flow meeting) that **Lagunitas tributaries are presently mere “trickles,”** with the result being that all the dry-year water in Lagunitas is salmon water (that NMWD pumps in violation of WR 95-17).

**NMWD’s defense is that it withdraws** only 0.30 cfs...a claimed insignificant portion of the 6 cfs salmon water. But that is like defending a bank robbery that got only \$0.30 and left \$6 in the till. In other words, the issue is not how much was taken, but rather the taking itself (but even how much will remain an issue until testing requested by SOS and the Water Board is done).

NMWD also claims that its withdrawals are necessary for the health of its customers. But NMWD has Rights and Agreements for more than enough water to satisfy its customers needs without taking salmon water. There is no legitimate reason for NMWD to panic its customers and then try to leverage that panic to justify an unnecessary taking of salmon water when NMWD has alternate water sources for its customers that would not result in taking salmon water.

**NMWD also claims that Marin Water’s releases alone are sufficient to protect salmon...a claim that** could be true, but only if NMWD ceases to take that very same water.

**NMWD’s use** of the proposed second Gallagher well in dry years (2020 and 2021) would not be an issue if NMWD would agree to follow its own protocols and conform to WR 95-17. **But it hasn’t.** The problem is that NMWD already agreed in the 2009 Initial Study / Mitigated Negative Declaration (IS/MND) to conform to WR 95-17, **yet failed to follow the Study’s Mitigation Measure BR-2** intended to protect the salmon. Thus the 2009 Initial Study has not been mitigated.

Now NMWD proposes (2021 CEQA Addendum) yet another well that it claims will also conform to WR 95-17 with yet another new Mitigation BR-2 that is just as inadequate and un-quantified as the 2009 Mitigation BR-2. Further, this CEQA Addendum is built on the foundation of the 2009 Initial Study that contains multiple errors and misstatements. In land use planning, a structure proposed to be built on a defective foundation would not be allowed.

NMWD has had ample opportunity to protect the health of its customers by insisting on its senior water rights (at no cost to its customers) and/or invoking its Intertie Agreement (at minimum cost to its customers). Instead, NMWD choses to take salmon water.

SOS remains committed to dropping our appeal if the Commission incorporates as conditions of the NMWD permit that NMWD is prohibited from taking salmon water and testing proposed in the 2/8/21 Water Board Letter is done. Specific details of this commitment can be found at the end of this letter.

## A RED HERRING COVERING A SALMON IMPACT

The following sections detail defects in the staff report to the Planning Commission for its 5/24/21 hearing, defects in the 2009 IS/MND, defects in the 2021 Addendum and thus provides the Commission with the authority to impose these additional conditions for the NMWD permit.

### DEFECTS IN THE STAFF REPORT

- 1 The Staff Report cover page (pages 2-3) states that: ***“Recent salinity intrusions has impacted water quality...threatening public health...This change in conditions has necessitated the construction of this project. ...as an urgent matter to protect the quality of water supply.”***

But this public health claim is a red-herring that diverts attention from the fact that this project (if constructed) is anyway prohibited from pumping salmon water to protect public health. Instead to protect public health, NMWD needs to pump water using senior Water License 4324B and/or adhere to Mitigation Measure BR-2...**both of which** add water over and above the salmon water releases so that NMWD can pump that added water to protect human health.

As noted in the SOS 3/23/21 offer to withdraw our appeal (attachment #1), we have no objection to this Well **Project...provided that** the Gallagher wells only pump water above and beyond that which WR 95-17 requires to be left in the Creek for the salmon and that the testing and evaluations request by the 2/8/21 Water Board letter (attached) are done.

SOS notes that its 5/4/21 Board meeting, NMWD approved a contract for just such environmental review, which the Commission should incorporate as a condition of the NMWD permit. That NMWD action also appears to satisfy one of the two key conditions that SOS proposes to withdraw the appeal. The other key condition (pumping only Water License 4324B water and/or Intertie water, not salmon water) remains unaddressed by NMWD and which the Commission should incorporate as an additional condition for the NMWD permit.

- 2 Resolution Section 1 (1) The Finding states that ***“the Downey Well produces unsafe water quality for domestic consumption...the proposed municipal water well will serve the public’s critical need by creating a reliable water source.”*** This is not correct. The Downey well has not been used as a municipal water source since 1994 (IS/MND page 4) and was removed as part of the 2009 project. Thus, the implication that the water quality problems with the Downey well necessitate the proposed Gallagher well No. 2 Project are incorrect.
- 3 Resolution Section 1 (6) **The Finding states that *“The County’s review determined that the aspects of the project subject to County approval are adequately evaluated by the 2009 MND and the 2021 Addendum , and therefore, further environmental review cannot be required...”*** But as this letter documents, the County’s review was cursory...confused aspects of the prior 2009 project with the current 2021 project in dispute...and simply echoed NMWD’s unsupported claims without careful consideration of SOS’s comments and the County’s rights.
- 4 Resolution Section 10 (emphasis ours) omits reference to BIO 2.1 (***“Require environmental review pursuant to CEQA of development applications to assess the impact of proposed development on native species and habitat diversity, particularly special-status species, sensitive natural communities, wetlands, and important wildlife nursery areas... Require adequate mitigation measures for ensuring the protection of any sensitive resources and achieving “no net loss” of sensitive habitat acreage, values, and function”***).

But threatened-status steelhead do build redds (nests) and lay eggs which mature in the gravel of the wildlife nursery in Lagunitas Creek on the Gallagher property (Ettinger MMWD 3/4/21 email: ***“I’ve seen small numbers of redds [nests] on the Gallagher property, almost exclusively steelhead”***). NMWD admits that even the Addendum’s inadequate assessment found a loss of sensitive habitat deemed negligible. But “negligible” loss is not “no loss.” Further, the 0.3 cfs loss deemed to be “negligible” was the loss from only one of two Gallagher wells and was compared to 2020 summer flows as high as 7.1 cfs (2/8/21 Water Board letter).

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But actual 2020 summer flows were as low as 4.1 cfs. If each of the two Gallagher wells results in **loss of 0.3 cfs, then when compared to a true “worst case” of 4.1 cfs, NMWD is taking 15% of the salmon water, which is not negligible.**

- 5 Resolution Section 10 A states (emphasis ours): ***“the County needs to rely on the environmental review adopted by the Lead Agency, but that does not mean that the County has to approve the project.”*** But, as SOS and Water Board letters document, the environmental review adopted by the Lead Agency is defective in numerous ways, including its purported conformance with the Marin Countywide Plan and its claim that human health mandates a Project approval, when, use of Water License 4324B and/or the Intertie), would also satisfy human health needs without reducing salmon water. Thus the County has the authority to require as a condition of approving the NMWD permit the additional environmental review (as requested by the Water Board and SOS)...**and a prohibition on NMWD taking salmon water.**
- 6 Resolution Section 10 D (page 4) states that the project is consistent with BIO 2.2 (*“Restrict or modify proposed development in areas that contain essential habitat for special-status species”*) ***“because the subject property does not provide habitat for special status species.”*** But that statement is not correct. The subject property includes Lagunitas Creek and thus does provide habitat for special status species (Coho Salmon and Steelhead).
- 7 Resolution Section 10 E (page 4) states that the project is consistent with BIO 2.3 (*“Condition or modify development permits to ensure that ecotones, or natural transitions between habitat types, are preserved and enhanced because of their importance to wildlife. Ecotones of particular concern include those along the margins of riparian corridors”*) ***“because it would not substantially alter the margins along riparian corridors....”*** But there is no data to support this conclusion.  
  
To the contrary, 2009 IS/MND states (emphasis ours): ***“it is possible that pumping could reduce the groundwater aquifer to a level where riparian vegetation would be affected....[But]... surface flows will be maintained at the levels required by Water Right Order 95-17 and if necessary by NMWD requesting MMWD to release water... These surface flows recharge the stream underflow so that underflow should continue to be available to... riparian vegetation in the area near the well site. Mitigation Measure BR-2 would apply to this impact. Given this mitigation, it is not expected that periodic pumping from the Gallagher wells would adversely affect riparian vegetation....”*** But as noted above, Mitigation Measure BR-2 was never implemented. Further, as also noted above, the operation of the Gallagher wells is now continuous, not periodic. Thus impacts to riparian vegetation are not known, which is why the 2/8/21 Water Board letter recommended additional evaluation.
- 8 Resolution Section 10 E (page 4) states (emphasis ours) that the project is consistent with BIO 2.4 (*“Ensure that important corridors for wildlife movement and dispersal are protected as a condition of discretionary permits, including consideration of cumulative impacts”*)...***because “no riparian vegetation would be removed to abandon the [Downey] well. The relocated gauging station ...would not require removal of riparian...vegetation.”*** But the Staff Report is confused because the well removal and gauge relocation were part of the 2009 Project...**have already been done...and thus are not part of the current Project.** What is relevant in BIO 2.4 is its consideration of cumulative impacts. As noted, neither the IS/MND nor the Addendum evaluates impacts from both Gallagher wells operating together (cumulatively). Instead, NMWD measures, for example, the cumulative weight of two boxes by putting the 1st box on the scale, reading the 1<sup>st</sup> weight, then putting the 2<sup>nd</sup> box on the scale, and claiming then cumulative weight of the two boxes is the only difference between the 1<sup>st</sup> reading and the 2<sup>nd</sup> reading. It is not.
- 9 Resolution Section 10 F (page 4) states (emphasis ours) that the Project is consistent with BIO 3.1 and 4.1 because the project ***“would minimize impacts to stream function and fish and wildlife habitat.”*** But that statement merely echoes the inadequate analysis of the IS/MND and Addendum that the Water Board and SOS questioned and asked to be re-done. The staff report also claims **that the Project will not result in any “direct” diversions, but because of the highly permeable soil, the pumping rate of Well #2 is virtually identical to the flow decrease in the creek. Therefore claiming “no direct” diversion is like saying that you are not drinking water because you are sipping it through a straw. The well has a direct impact.**

- 10 Resolution Section 10 F (page 5) is also confused in claiming that the project ***“proposes to dedicate certain water rights for instream flows.”*** But that dedication was negotiated as a mitigation for the 2009 IS/MND... has already been recorded... and thus is not applicable the current Project. Resolution F also **notes (emphasis ours):** *“strict adherence to the adopted Mitigation Monitoring and Reporting Program would ensure no impacts”* **But as noted,** required Mitigations have not been carried out and monitoring of flows at the Gallagher site to ensure compliance with WR 95-17 **has been anything but “strict.”**

DEFECTS IN THE 2009 INITIAL STUDY / (NOT) MITIGATED NEG DEC

- 11 Existing Water Rights (IS/MND page 1) states: ***“Water License 4324B allows NMWD to divert water between May 1 and November 1 of each year [dry and normal rainfall years] at a rate of 0.67 cubic feet per second....[NMWD’s other water rights] are not available during the summer months (July through October) of dry years....To meet water demand in dry years when water cannot be diverted from Lagunitas Creek due to the restrictions described above, NMWD has an Intertie Agreement with the Marin Municipal Waste District (MMWD) to release up to 250 acre feet of water from Kent Lake.”*** But 2020 was a “dry year” per WR 95-17’s definition, so did NMWD trigger the Intertie Agreement as stated in the IS? No, it did not...instead NMWD used salmon water and continues to use salmon water.

- 12 Project Objectives and Benefits (IS/MND pages 2-3) states: ***“the Coast Guard Wells will continue to be the primary supply....this new water source (the Gallagher wells) would be used during periods of high tides, avoiding saltwater intrusion...By establishing a reliable emergency backup source...”***

But during the 2020 dry year, did NMWD use the Gallagher wells as an emergency backup during high tides? **No it did not...instead** the Gallagher well pumped continuously.

As the attached 2/8/21 Water Board letter (page 2) notes: ***“It is our understanding that the frequency and consistency of use of the upstream Gallagher Well No. 1 may have changed to be more consistent pumping during summer low flow periods...additionally these operations may no longer be associated with the tides...as indicated in the 2009 IS/MND.”*** Thus the “emergency backup high-tide” claim used by the 2009 IS to justify its conclusions of biological impacts “less than significant with mitigation” is not supported.

- 13 Biological Resources (IS/MND pages 20) states: ***“Under Water Right Order 95-17, MMWD is required to releases water from Kent Lake to meet minimum flows at the USGS Park Gauge. Some additional streamflow enters Lagunitas Creek downstream of the USGS Park Gauge...so streamflows past the Gallagher Wells site are higher than the flows required at the USGS Park Gauge...On April 21, 2008, the flows at the Park Gauge were about 16 cfs while they were 18 cfs at the Gallagher Gauge [i.e. 2 cfs higher]”***

But were streamflows past the Gallagher site 2 cfs higher than the flows required at the USGS Park gauge during the 2020 dry year summer? No, they were not. During the summer of 2020 the Gallagher flows were as low as 4.1 cfs (almost 2 cfs lower than the Park gauge flows. As the 2/8/21 Water Board letter (paged 5) states: ***“Figure 4 [2021 Addendum Exhibit B] demonstrates that while flows at the SPT gage range from 5.7 to 7 cfs.....flows the Project site range from 4.1 - 7.2 and are below 6 cfs approximately 50% of the period reported.”***

**Thus the “wet-year-2-cfs higher-flow” assumption used by the 2009 IS/MND to justify its conclusions of biological impacts “less than significant with mitigation” is not supported.**

- 14 Biological Resources IS/MND (page 20) states: ***“Under Water Right Order 95-17, MMWD is required to releases water from Kent Lake to meet minimum flows at the USGS Park Gauge. These same minimum flow would be required in the section between the Gallagher wells and the Coast Guard wells to insure that pumping from the Gallagher wells does not reduce the minimum required flows to a level that adversely affects fish...”***

But were the minimum flows required at the Park Gauge [6 cfs in dry year summers) maintained at the Gallagher site? **No they were not...**as Exhibit 4 shows above, flows were *below 6 cfs approximately 50% of the period reported*. Thus the 2009 IS/MND claim that Marin Water’s releases are sufficient to protect salmon is not supported.

- 15 Biological Resources IS/MND (page 20) states: “Under Water Right Order 95-17, MMWD is required to releases water from Kent Lake to meet minimum flows at the USGS Park Gauge...If the minimum flows are not maintained, then NMWD will request (as part of its Intertie Agreement) that MMWD release sufficient water to Lagunitas Creek to reestablish at least the minimum flows...

But did NMWD request (as part of its Intertie Agreement) that MMWD release sufficient water **to reestablish at least the minimum flows at the Gallagher site?** No, it did not...instead NMWD used salmon water.

As the 2/8/21 Water Board letter (pages 4-5) notes: *Mitigation Measure BR-2 was developed in which a legal agreement with MMWD was reached (Intertie Agreement) for the release of **additional water to meet the minimum 6 cfs at the Project site...our review...indicates that , as currently implemented, Mitigation Measure BR-2 is not consistently ensuring that instream flows are maintained at the required 6 cubic feet per second (cfs) during “dry years” at the Project site and therefore may not be protective of the aquatic environment.***”

Thus the 2009 IS/MND claim that the Intertie releases protect salmon is only correct when the Intertie Agreement is triggered. It was not.

- 16 Biological Resources (IS/MND pages 20) states: “If the minimum flows are not maintained, then NMWD will request (as part of its Intertie Agreement) that MMWD release sufficient **water to Lagunitas Creek to reestablish at least the minimum flows...Alternately, after reviewing the streamflow monitoring, the Department of Fish and Game may conclude that the reduction in streamflow below the Gallagher gauge is so small that it does not significantly reduce habitat to fish and that additional releases from Kent Lake are not warranted.**”

But did the Department of Fish and Game conclude that the reduction in streamflow below the Gallagher gauge is “so small” that it does not significantly reduce habitat to fish and that additional releases from Kent Lake are not warranted.? No it did not. As noted in the 2/26/21 email from the Water Board, Mitigation Measure BR-2 **was amended at the Board’s request to read: “No comments were provided by the Department.”**

Further, **the 0.3 cfs loss deemed to be “so small” was the loss from only one of two Gallagher wells** and was compared to a high 2020 summer flow when actual 2020 summer flows were as **low as 4.1 cfs. If each well results in loss of 0.3 cfs, then when compared to a true “worst case” of 4.1 cfs, NMWD is taking 15% of the salmon water, which is not “so small,”** particularly when coming (improperly) out of salmon water. Instead, NMWD needs to take this same negligible amount out of Water License 4324B and/or the Intertie water.

- 17 Biological Resources IS/MND (page 20) states: “Water License 4324B requires NMWD to file a Dry Year Water Shortage Report following each dry year That report must describe flow conditions in the creek as compared at the Park Gauge and the Gallagher Gage and all NMWD diversions. A public workshop to receive public comment is required prior to adoption of the **final report.**” But the 2020 dry year ended September 30, 2020. Did NMWD file a Dry Year Water Shortage Report and conduct a public hearing? Not to our knowledge.

- 18 Biological Resources (IS/MND page 23) states: *MMWD shall not divert water from the Gallagher wells to adversely affect fish and wildlife residing between the Gallagher Wells and the Coast Guard Wells. To meet this standard, prior to constructing any proposed project improvements, NMWD prepared a final hydrological design plan describing...how NMWD will maintain flow requirements downstream of the Gallagher Well site. The plan **addressed ...Final Arrangements with MMWRD regarding water releases...Details of how water releases will be initiated and terminated; and Prediction process for initiating and terminating water releases...***

But did NMWD create such a specific plan? No, it did not. As the 2/26/21 Water Board email notes (emphasis ours): “**Currently, the 2009 IS/MND and Addendum only incorporate qualitative descriptions...will revisions include adding quantitative pumping limits / quantitative operating conditions for future operations of both wells?**”

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But the NMWD revisions failed to include any quantitative limits. Thus the 2009 IS/MND claim that **Marin Water's releases alone are sufficient to protect salmon is not correct.**

- 19 Biological Resources (IS/MND page 24) states: ***"During periods when water was pumped from the Gallagher Wells it is possible that the pumping could reduce the groundwater aquifer to a level where riparian vegetation would be affected...[But] surface water flows will be maintained at the levels required by Water Right Order 95-17 and, if necessary, by NMWD requesting MMWD to release water to maintain the minimum flows. These surface flows recharge the stream underflow...to provide necessary water to riparian vegetation in the area near the well site. Mitigation Measure BR-2 would apply to this impact. Given this mitigation, it is not expected that periodic pumping from the Gallagher Wells would adversely affect riparian vegetation..."***

But were surface water flows at the Gallagher site maintained at the levels required by Water Right Order 95-17 during the 2020 summer? No, they were not. Was Mitigation Measure BR-2 enacted? No, it was not. Was the pumping from the Gallagher Wells periodic? No, it was not...instead it was continuous. Thus the rationales used by the 2009 IS/MND to justify its **conclusion of biological impacts "less than significant with mitigation" are not supported and contradicted by NMWD's own data.**

#### MATERIAL DEFECTS IN THE 2021 ADDENDUM BUILT ON THE FOUNDATION OF THE MATERIALLY DEFECTIVE 2009 (NOT)MITIGATED INITIAL STUDY

- 20 Operation (Addendum page 3-17) states: ***"Operation of the project would include pumping of water from a well adjacent to Lagunitas Creek, which could result in adverse impacts to fish...if not appropriately mitigated...As described in the 2009 IS/MND, impacts to Lagunitas Creek as a result of reduced streamflows during dry years would be mitigated by a release of water from Kent Lake...to ensure minimum required stream flows..."*** But did any releases of water from Kent Lake to mitigate impacts occur in the 2020 dry year summer? No, none occurred.
- 21 Operation (Addendum page 3-17) states (emphasis ours): ***"In order to understand the cumulative impacts caused by operating both supply wells...a technical memorandum and analysis was done by Sutro Science...[that concluded] under low stream flow conditions, such as those present during the constant rate test in September 2020 groundwater pumping from the proposed Gallagher well No 2 location could result in a reduction of creek discharge. However, the magnitude of the reduction would be negligible."***

But did Sutro study the cumulative impact caused by both supply wells? No, it did not. The Addendum's assertion is contradicted by its own statement that the study was conducted during the ***"pumping from [only] the proposed Gallagher well No. 2 location."*** Was the Sutro test conducted under low stream flows conditions? No, it was not. To the contrary, USGS data from the SP Taylor gage shows that the Sutro test did indeed take place when MMWD released flows above that required by WR 95-17. Further, test water pumped by Gallagher well No.2 was released on site to percolate back into the water table, thus biasing the test results.

As the 2/8/21 Water Board letter (page 3) notes; ***"the Report did not consider or report the withdrawals from Gallagher Well No. 1 in combination with Well No. 2 during the 7-day pump test or the entire study period to evaluation cumulative impacts... The Report states that testing occurred during the worst case summer drought conditions" but Figure 4 ...indicates that the highest streamflow during the summer occurred during the pump test period...The 7-day test seemed to have overlapped with the timing of an MMWD flow release [which] could mask the ability to detect changes..."***

- 22 Operation (Addendum page 3-18) states ***"Based on the Sutro Science hydrological analysis...any predicted changes in flows would result in negligible impacts in habitat conditions in Lagunitas Creek...Implementation of Mitigation Measure BR-2 would ensure that streamflows of Lagunitas Creek would be maintained..."***

But has Mitigation Measure BR-2 ensured that streamflows of Lagunitas Creek would be maintained? No, it has not. And is a reduction in streamflow a fair predictor of all downstream habitat changes? No, it is not.

As the 2/8/21 Water Board letter (page 6) states (emphasis ours): *Based on [the small reduction in streamflow], it was determined that the impacts from groundwater pumping would not adversely impact aquatic life....However, this parameter is not the only critical parameter. Reduction in stream flow also affects...habitat quantity and quality...If the minimum 6 cfs flow cannot be maintained at the Project site, then it is essential to determine if there is a scientifically defensible alternative baseflow minimum that will be protective of the aquatic ecosystem while allowing groundwater withdrawals at the Project site under defined and quantified groundwater well operating conditions. We suggest that other critical parameters are incorporated into the evaluation such as : (1)...critical instream habitats quality and quantify (e.g. pools, riffles and edge habitat); and (2) water quality parameters such as temperature, DO [dissolved oxygen]...*

This more expansive habitat evaluation requested by the Water Board of NMWD below the Gallagher site is the same habitat evaluation now being done by MMWD above the Gallagher site (MMWD Board meeting 4/6/21 Item 3) in hopes of providing its own *scientifically defensible alternative baseflow minimum* to support MMWD's planned request to the Water Board for reduced minimum flows. It is also the same habitat evaluation proposed by SOS as a condition to withdraw the SOS appeal of NMWD's Well permit.

#### SUMMARY: A RED HERRING COVERING A SALMON IMPACT

NMWD's claim of a human health emergency is a fabrication built on NMWD's own refusal to trigger its water rights (Water License 4324B water and Intertie water) that would solve the "emergency" of its own making. The only real issue here is NMWD's unpermitted use of salmon water.

If this misuse of salmon water had not occurred, the appeal of the NMWD Gallagher well would not have been necessary...nor would (arguably) the test and evaluations requested by the Water Board.

But because NMWD irrationally refuses to forego pumping salmon water (and wants us to believe that .3 cfs + .3 cfs = .3 cfs), these tests have become necessary to ensure that NMWD's unpermitted pumping of salmon water does not harm protected species. It would have been much easier if NMWD had adhered to WR 95-17's mandate not to pump salmon water in the first place.

Again, SOS remains committed to dropping our appeal if the Commission incorporates as conditions of the NMWD permit that:

a) **NMWD is prohibited from taking salmon water...if there is no water available**

above and beyond the salmon water, then NMWD must use Water License 4324B water and/or Intertie water, not salmon water (defined as the WR 95-17 required flow at the SP Taylor gage less the flow, if any, from San Geronimo Creek).

Further Water License 4324B water and Intertie water must account for loss in transmission. For example, if the SP Taylor gage reads 6 cfs and the Pt Reyes gage reads 4 cfs (a 1/3 loss), then a NMWD additional withdrawal, say of 0.6 cfs (above and beyond salmon water) must be 0.9 cfs at the SP Taylor gage to account for the 1/3 loss in transmission).

b) If, in any case, flows at the Pt Reyes gage are below those required for salmon at the SP Taylor gage, then NMWD must do the evaluations and testing proposed in the 2/8/21 Water Board Letter.

In sum, SOS is simply asking NMWD to

- Stop taking salmon water that it is prohibited from taking, but continues to take;
- **Carry out the mitigation that it said it would do, but didn't do;**
- **Do the former testing it said it did, but didn't do; and**
- Do the proposed testing it said it would do, but has yet to do.

Is that too much to ask? Apparently so for NMWD. Now the question is: is that too much to ask Marin County to hold NMWD to?

Thank you for reading the above comments on this confusing (and confused) water use issue.

Gordon Bennett SOS President 5/19/21

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**Exhibit 5**

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To: Marin County Board of Supervisors From: Save Our Seashore

Date: July 12, 2021

Re: Gallagher Well Permit 7/13/21 Agenda #18

NMWD claims that their CEQA analysis of the Gallagher Well project must be accepted due to **NMWD's role as lead agency**...notwithstanding that Save Our Seashore has detailed the many defects in that CEQA analysis.

**Save Our Seashore's position is that Marin County has a public trust obligation and that if NMWD's CEQA analysis is defective, it must be rejected.**

**But, if the County is unwilling to reject NMWD's CEQA analysis, then we request that the County enforce the terms of NMWD's own CEQA analysis by incorporating them into the Gallagher Permit.**

NMWD claims that the installation of the 2<sup>nd</sup> Gallagher well is an urgent matter (a position with **which we disagree**)...so **urgent that it overrides the need to study potential impacts to the creek and its Coho, an endangered species** (a position with which we also disagree).

But if the matter is so urgent, then the quickest way forward is again that the County enforce the **terms of NMWD's own CEQA analysis by incorporating them into the Gallagher Permit.**

Save Our Seashore does not want to go always to the Coastal Commission, the State Water Board, or the Department of Fish and Wildlife to remind NMWD of its public trust obligations that rise to a critical level during dry year summers. Flows during dry year summers is a local issue that calls for a local solution by requiring NMWD to adhere to the summer dry year commitments in its own 2009 Initial Study pages 19-21 (emphasis ours) :

*The existing and new Gallagher Wells will pump water from surrounding gravels and indirectly from Lagunitas Creek...A reduction in the flow of Lagunitas Creek could have a significant impact on aquatic wildlife and fish in the stream between the Gallagher Wells site and the Coast Guard Wells site....The State has established minimum instream flows needed to support fish and wildlife in Lagunitas Creek [6 cubic feet per second as measured at the USGS Park Gauge from June 16 through November 1 of any dry year]. **These same minimum flows would be required in the section between the Gallagher Wells and the Coast Guard Wells to ensure that pumping from the Gallagher Wells does not reduce the minimum required flows to a level that adversely affects fish and aquatic wildlife. Unless flows are maintained at these required levels, there could be an increase in water temperature and a loss of habitat, and this would be a potentially significant impact on biological resources...If the minimum flows are not maintained, then NMWD will request (as part of its Intertie Agreement) that MMWD release sufficient water to Lagunitas Creek to reestablish at least the minimum flows.***

So **NMWD's own CEQA commitment (above) is what we are requesting that Marin County incorporate into the Gallagher Permit:**

If flows drop below 6 cubic feet per second at the Gallagher Gauge, then NMWD shall require Marin Water (per the terms of its Intertie Agreement) to release additional water above and beyond the state-required 6 cubic feet per second measured at the Park Gauge so that NMWD can pump this additional water for its customers without impacting fish and wildlife in Lagunitas Creek. Should the State Water Board and the Department of Fish and Wildlife determine that a flow other than 6 cubic feet per second at the Gallagher Gauge is required to protect fish and wildlife, then that alternate flow shall trigger the Intertie Agreement.

**If NMWD's CEQA analysis is defective, it must be rejected...but if it is fine, it must be followed.**

Gordon Bennett, Save Our Seashore President



Red arrows indicate the distance between top of the creek bank and riparian vegetation to proposed development

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Exhibit 6

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