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ADDENDUM

November 14, 2022

TO: Coastal Commissioners and Interested Parties

FROM: Dr. Kate Huckelbridge, Senior Deputy Director
Tom Luster, Senior Environmental Scientist

SUBJECT: Addendum to Staff Report for CDP Application 9-20-0603 and Appeal A-#-MRA-19-0034 (California-American Water Company)

This addendum includes recommended edits to the November 4, 2022 staff report, including changes to several Special Conditions and several changes to the proposed Findings. It also includes several modified or new Exhibits, as described below. The recommended edits are shown below in strikethrough and bold underline text. These changes do not modify staff's recommendation that the Commission **approve** the proposed project as conditioned.

Modified Exhibits
These are provided at the end of this Addendum:

- The attached Revised Exhibit 5 replaces the staff report's Exhibit 5.
- The attached Revised Exhibit 7 replaces the staff report's Exhibit 7.
- The attached Exhibit 9a replaces the referenced Figure 1 on page 113 of the staff report.

———————

Summary of Staff Recommendation

Page 4, middle of third paragraph:

> "As described in these recommended Findings, it is reasonable to project that water from Cal-Am's Project will be needed as part of the area's water portfolio within the next 20 years~~, While~~ **while** the Pure Water Expansion provides a feasible and less environmentally damaging alternative to Cal-Am's Project in the near term."

Motion and Resolution

Page 11, Resolution re Appeal A-3-MRA-19-0034:

> "**Resolution**
> The Commission hereby approves Coastal Development Permit Application No. A-3-MRA-19-0034 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the **Certified Local Coastal Plan and the public access and recreation** policies of Chapter 3 of the Coastal Act ~~and, as applicable, will not prejudice the ability of the local government having jurisdiction over the relevant area to prepare a Local Coastal Program conforming to the provisions of Chapter 3~~. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment."

Proposed Changes to Special Conditions

Page 13, Special Condition 1, modify first bullet:

"**Local –**

- **Monterey One Water ("M1W"): Coastal Commission permit** authorization for ~~connection to, and use of, the~~ **construction of modifications to the existing** M1W ocean outfall **to accommodate discharges from desalination operations**."
-

Page 13, Special Condition 1, seventh bullet:

> "**California Public Utilities Commission ("CPUC"):** ~~final CPUC approval for construction of the Project, including but not limited to a final and binding CPUC determination in the~~ **completion of the CPUC's** pending proceeding (A.21-**11-**024) of water supply and demand estimates for the Monterey Peninsula Water Supply Project (MPWSP) **with a determination** that there is projected demand for additional water supply beyond the Pure Water ~~Market~~ Project Expansion (i.e., the project that would increase the capacity of the previously CPUC-approved Pure Water ~~Market~~ project from 3,500 AFY to 5,750 AFY) by or before 2050 **and a showing that Cal-Am has authorization from the CPUC to proceed with the Project**."

Page 14, Special Condition 1, final bullet:

> "**Legal:** (1) a final judgment or other final disposition of the entirety of the pending action entitled *City of Marina v. RMC Lonestar, et al.*, Monterey County Superior Court No. 20CV001387 (in which the trial court has referred various issues to the Administrative Hearings Office of the State Water Resources Control Board **("SWRCB")** for determination), Cal-Am shall provide proof of such judgment or disposition to the Executive Director. This permit shall not be issued if that judgment or disposition demonstrates that (**a**) the Applicant does not have, and cannot feasibly obtain, water rights (to the extent applicable) for the Project or (**b**) Cal-Am's ~~project~~ **Project** would cause harm to any aquifer that is a source of drinking water to the City of Marina or the Marina Coast Water District.
>
> **(2) Alternatively, prior to such a final judgment or other final disposition, Cal-Am may submit the SWRCB's adopted order in the above-referenced SWRCB proceeding to the Commission in an application for an amended coastal development permit to remove the requirement in the preceding paragraph. The Executive Director shall reject such amendment application unless the SWRCB's adopted order demonstrates, based on reasonable evidentiary findings, that (a) Cal-Am has, or can feasibly obtain, water rights (to the extent applicable) for the Project and (b) Cal-Am's Project would not cause harm to any aquifer that is a source of drinking water to the City of Marina or the Marina Coast Water District.**"

Page 15, Special Condition 3.c:

> "**Equipment BMPs.** . ...Any fueling and maintenance of mobile equipment conducted on site shall take place at designated areas located at least ~~50~~ **100** feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills)….

Page 17, Special Condition 6, first sentence of second paragraph:

> "No later than two years prior to the end of this permit term, the Permittee shall apply for a new coastal development permit or amendment to this permit to remove, relocate, or rehabilitate these project elements **and to restore all areas of the site that will no longer be used for these project elements,** or to modify this term of authorization."

Page 19, Special Condition 7, last paragraph:

> "The biologist(s) shall possess the authority to halt work to prevent any breach in permit compliance **from** occu**rring**, or if any unforeseen sensitive habitat issues arise and until they are satisfied that the issue has been resolved."

Page 22, Special Condition 8.c.ii,

> "All habitat mitigation for permanent impacts, and the 0.5:1 fraction for ~~it~~ **long-term temporary impacts not addressed in place**, shall occur within areas that are or will be protected, as consistent with **Special Condition 9**."

Page 23, Special Condition 10, last partial paragraph continuing to top of Page 24:

> "**Protection and Improvement of Unprotected Lands.** Lands that presently support or would appropriately support dune **and dune-associated** habitat(s)**, including foredunes, dune scrub, and mixed chapparal,** following habitat improvement activities may be acquired or otherwise moved into protection from future development threats (e.g., conservation easement), for the purposes of habitat conservation. Such lands may be of singular or multiple nature, include sites of variable habitat condition, and involve acquisition, restoration or enhancement activities as part or all of the compensation due for habitat impacts and losses associated with the permitted project. Newly protected but unimproved lands will qualify as preservation whereas protected and improved lands may qualify for credit as ~~restoration or enhancement~~ **creation**, if approved by the Executive Director."

Page 24, Special Condition 10, first full bulleted paragraph:

> "**Improvement of Protected Lands.** Lands that presently support or would support dune **and dune-associated** habitat(s)**, including foredunes, dune scrub, and mixed chapparal,** following habitat improvement activities…"

Page 24, Special Condition 10, beginning of sub-bullet iii:

> "**In-Lieu Fees.** A fee of $250,000 per acre of required restoration shall be assessed and paid into an interest-bearing account to be established and managed by a government or non-governmental organization as approved by the Executive Director, for the sole purpose of financing dune **and dune-associated** habitat protection, restoration, and related activities. If a suitable account to accept and administer in-lieu fee funds for dune **and dune-associated** habitat in the region does not already exist, the Permittee shall be responsible for facilitating the development and initiation of such an account…"

Page 25, Special Condition 10, last paragraph of sub-bullet i:

> "Any and all lands that would be protected and/or improved shall occur within the coastal zone, in dune **and dune-associated** habitats situated between the southern boundary of the Salinas River and northern boundary of the City of Monterey, and west of Highway 1. Any in-lieu fees that would be paid as compensation shall be applied to the protection and improvement of dune **and**

dune-associated habitats in this same geography. Any and all lands that would support compensatory mitigation requirements, including those that would be protected or improved using in-lieu fees, shall be subject to the requirements of Special Condition 9 with the sole exception being for temporary impacts that would be restored on-site and in-kind within the TAMC corridor."

Page 26, Special Condition 10, sub-bullet v:

"**As-Built Report.** Provision that eight (8) weeks following completion of mitigation site construction and revegetation activities, an as-built report summarizing mitigation activities to-date, a description of consistency with approved plans, documentation of acreage treated, maps and descriptions any temporary infrastructure installed, photos taken from fixed points, and a description of consistency with all terms and conditions, to be submitted to the Executive Director **for review and approval**."

Page 30, Special Condition 11:

"**Groundwater Protection.** The Applicant shall install the Project's slant wells to extend at least 1,000 feet seaward of the proposed well head locations and shall screen the wells so they extract ~~from the 180-Foot Aquifer~~ **water** as far seaward as is feasible and without penetrating the 400-Foot Aquifer. Any proposed changes to this approved installation must be reported to the Executive Director for a determination as to whether those changes would require an amendment to this permit."

Pages 30 and 32, Special Condition 12 – modify the first and final paragraphs of this condition as follows:

First paragraph -
"Monitoring and Remedial Measures to Protect Groundwater. PRIOR TO ISSUANCE OF THIS PERMIT, the Applicant shall provide, for **Commission** ~~Executive Director~~ review and approval, a Groundwater Monitoring Plan intended to ensure the Project's source water pumping does not adversely affect the aquifers that are a source of drinking water to the City of Marina and the Marina Coast Water District. The Plan shall **be developed in consultation with the Marina Coast Water District and shall** include the following:…"

Paragraph 12.c.vii -
"Proposed remedial measures and operational controls that could be implemented should any of the above thresholds be reached. Remedial measures for thresholds indicating a lower level of concern may include further in-depth studies to investigate why a particular threshold has been reached. The proposed remedial measures shall include procedures for immediate notification to the Executive Director if Applicant discovers any exceedance of a threshold or criteria established pursuant to this Special Condition. Other remedial measures

may include, but are not limited to, reduced or no pumping from one or more wells, repair and maintenance of existing intake or groundwater supply wells, relocation or redrilling of intake wells, groundwater recharge or similar projects implemented in partnership with affected water supply providers, **providing water to affected users,** or other measures to address groundwater quality or supply concerns. All remedial measures shall include timelines for implementation and reporting requirements to the Executive Director."

Last paragraph -
"The Applicant shall provide the funding necessary to allow the Executive Director to hire one or more independent third-party reviewers to evaluate the proposed Plan and to recommend **to the Commission** any changes to the Plan necessary to ensure it is adequately protective of the aquifers used by the City and Water District. **The Applicant shall apply for and obtain the Commission's approval of the Plan in the form of an amendment to this permit.** If, after any ~~Executive Director~~ approval of the Plan, new information becomes available to the Applicant demonstrating that less stringent criteria (e.g., Total Dissolved Solids, salinity concentrations, etc.) ~~are adequately protective of~~ **does not adversely affect** sources of drinking water in the relevant aquifers, the Applicant may seek ~~an~~ **a further** amendment to this permit unless the Executive Director determines that an amendment is not needed."

Pages 32-33, Special Condition 13 – replace the entirety of the Special Condition with the text below:

"Wetlands and Vernal Pond Adaptive Management Program. PRIOR TO PERMIT ISSUANCE, the Applicant shall submit a Wetlands and Vernal Pond Adaptive Management Program (Program), for review and approval by the Executive Director. The Applicant shall provide the funding necessary to allow the Executive Director to hire one or more independent third-party reviewers to evaluate the proposed Program and to recommend any changes to the Program necessary to ensure that it will protect against adverse impacts to area wetlands and vernal ponds. The Program shall provide for data collection and monitoring of the wetlands and vernal ponds within, at a minimum, the Project's drawdown zone plus a buffer area extending a distance of at least 50% beyond the edge of the drawdown zone. The Program shall provide data collection annually for no less than two (2) years immediately prior to operations and the first five (5) years following commencement of operations, and shall include, at a minimum, each of the following components:

a. Introduction. Description of the Program purpose including an overview of the anticipated drawdown zone (e.g., extent, nature, levels of certainty); an overview of the general types of wetlands and vernal ponds present; the subsurface features that may influence hydrologic connections to wetlands and vernal ponds in the drawdown zone; and the general monitoring approach.

b. **Description of Existing Wetlands and Vernal Ponds. For each wetland or vernal pond within the drawdown zone and buffer area, a detailed description of current conditions (e.g., extent, hydrology, associated biological resources, etc.) and a summary of any and all past findings available, including those from the City of Marina's *Coastal/Vernal Pond Comprehensive Management Plan* (prepared for the City of Marina by The Habitat Restoration Group, dated February 15, 1994) and the *Biological Resource and Groundwater Dependency Analysis of Marina Vernal Ponds* (prepared for the City of Marina by WRA, dated July 30, 2020). If there is evidence that wetland and/or vernal pond areas outside the above specified monitoring area could be affected by pumping, these wetland and/or vernal pond areas shall also be included in the Program.**
c. **Reference Sites. To the extent feasible, appropriate reference sites shall be identified, for vernal ponds and all other wetland types within the monitoring area.**
d. **Monitoring Plan. A detailed plan for qualitatively and quantitatively monitoring the condition of each wetland or vernal pond, including reference sites, to establish a baseline as well as document any potential adverse effects. Data collected pursuant to Special Condition 13 shall be used in conjunction with resource-specific metrics, including, at a minimum:**
    i. **Frequency. In order to evaluate variation in resource condition and the temporal patterns potentially affecting such, including seasonal and interannual patterns, hydrologic conditions shall be monitored continuously through the use of sensors, at a resolution sufficient detect any project-associated operational influences. Parameters that cannot be monitored continuously shall be alternatively evaluated at least four times per year (quarterly), as guided by anticipated drawdown patterns and seasonal dynamics.**
    ii. **Parameters. For each wetland or vernal pond, sampling shall include, at a minimum, the following parameters:**
        a. **Spatial extent, consistent with the definition of wetlands in the Coastal Act and Commission's regulations;**
        b. **Depth of surface water, depth of saturation, and depth to groundwater;**
        c. **Hydroperiods (including duration and timing as might be sufficient to support sensitive wildlife, such as fairy shrimp or amphibious species, as well as migrating avian species dependent on wetland availability);**
        d. **Characterization of potential hydrologic inputs other than groundwater, including estimates of volumes, timing, and frequency;**
        e. **Water temperature, salinity, and dissolved oxygen;**
        f. **Characterization of vegetation communities and their relative extents and conditions (e.g., stressed, healthy);**

g. Root zone depth;
h. Rare or otherwise sensitive plant and wildlife species.

iii. Remote-Sensing. Along with on-the-ground monitoring efforts and *in situ* instrumentation, remote-sensing tools such as aerial imagery shall be used to help inform conditions from a landscape perspective.

iv. Wetland Delineations. Wetland delineations shall be completed no less than annually, during the period(s) that resources are determined to be most likely susceptible to drawdown impacts, as supported by a clearly articulated rationale, including evidence from hydrogeologic and geophysical modeling results.

v. Impact Assessment. Methods for evaluating adverse effects on wetlands and vernal ponds from drawdown operations shall be clearly specified and include supporting rationale for their selection. These shall be specified in terms of the type(s) of comparison(s), including any statistical analyses and the details thereof; specification of the maximum allowable difference or effect size between the subject site value and the reference value for each parameter; and, sources and magnitudes of uncertainty.

vi. Sampling Design. The field sampling program shall be designed in conjunction with the selected methods of assessment. The sampling design and methods shall provide sufficient detail to enable an independent scientist to duplicate them, including siting and programming of any *in situ* instrumentation, identification of survey areas and wetland sampling points, interpretive use of remote-sensing products, etc.

vii. Reporting. Annual monitoring results shall be submitted to the Executive Director for review and approval by December 31 of each year. Each report shall include a summary of previous monitoring years' findings and discussion of any trends or patterns observed. All data and associated metadata shall be delivered with all reports (in digital format).

viii. Final Monitoring. Subject to the Executive Director's review and approval, if at the end of the data collection period, the monitoring results clearly demonstrate that there is no connection between the Project's pumping and any of the wetlands and/or vernal ponds within the Project's drawdown zone, buffer area, and any additional areas that have been monitored as part of the Program, the Permittee's requirements under the Wetland and Vernal Pond Adaptive Management Program will be satisfied.

e. Adaptive Management. If at any time during the five (5) years of supplemental data collection following commencement of the Project's pumping, whether or not Phase 2 of the Project has been implemented, data or results suggest that the Project may be having an adverse effect on any wetlands or vernal ponds, adaptive management actions shall be proposed. Prior to any adaptive management implementation, the

Permittee shall provide a detailed explanation of the observed effect(s) and proposal of adaptive management action, supported by a clear rationale and anticipated benefit of the action, for review and written approval by the Executive Director. The submission may be part of an annual report or a standalone product, if timing otherwise necessitates. If monitoring results are inconclusive, the Permittee shall submit a revised Monitoring Plan extending the monitoring period for review and approval by the Executive Director.

f. **Provision for Possible Further Action. If at any time during the five (5) years of supplemental data collection following commencement of the Project's pumping, whether or not Phase 2 of the Project has been implemented, data or results suggest that there is a connection between the Project's pumping and the wetlands and/or vernal ponds within the Project's drawdown and buffer zones that results in adverse effects on the wetlands and/or vernal ponds, or any additional areas that have been monitored, the Permittee shall cease or reduce the Project's pumping sufficiently to end these adverse effects and shall develop a Wetland Resiliency, Enhancement, Restoration, and Monitoring Plan (Plan) to address any, and all, prior and future impacts. The Permittee shall apply for and obtain the Commission's approval of the Plan in the form of an amendment to this permit and shall remain at the reduced or eliminated Project operations until receiving such approval.**

g. **Partnering Agencies and/or Subcontractors. The Permittee remains responsible for meeting all CDP terms and conditions, including funding of the full cost and implementing all measures to monitor wetlands and vernal ponds in the specified area(s), and adaptive management of Project operations or otherwise mitigating measures to address any adverse effects that may occur as a result of the Project. If the Permittee elects to enter into a binding agreement with a third-party agency or land management entity to carry out all or a portion of these wetland and vernal pond requirements, the Permittee shall submit draft agreement provisions to the Executive Director for review and approval prior to finalizing any such agreements.**

h. **Consistency. The Permittee or the approved third-party entity shall undertake development in accordance with the approved Program. The Executive Director may approve minor adjustments to these terms if the Executive Director determines that the adjustments (1) are de minimis in nature and scope, (2) are reasonable and necessary, (3) do not adversely impact coastal resources, and (4) do not legally require an amendment.**"

Page 33 – Special Condition 14, revise subsection (a) as follows:

> "By acceptance of this permit, the Applicant agrees, on behalf of itself and all other successors and assigns, that no shoreline protective device(s) shall be constructed to protect the wellheads and related development approved pursuant to Coastal Development Permit No. ~~9-20-0603~~ **A-3-MRA-19-0034** in the event that the development is threatened with damage or destruction from flooding, waves, erosion, storm conditions, sea level rise, or other natural hazards in the future."

Page 34 – add new Special Condition 15.A as follows:

> "**15.A Liability for Costs and Attorneys' Fees. BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the Applicant agrees to reimburse the California Coastal Commission in full for all Coastal Commission costs and attorneys' fees including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay, which the Coastal Commission may incur in connection with the defense of any action brought by a party other than the Applicant against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval, issuance, and implementation of this CDP. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.**"

Page 36 - Special Condition 19.b, revise as follows:

> "For all remaining indirect GHG emissions resulting from facility operations, the Plan shall provide for the Applicant to submit an annual report for each year of facility operations that will identify all measures the Applicant will implement to ensure that the facility operates as "net carbon neutral" on an annual basis. These measures **shall minimize energy use and maximize** ~~may include~~ **procurement of renewable energy from on-site or off-site sources within California, and may also include** carbon offsets or Renewable Energy Credits purchased through CARB or CAR or approved by a California Air Pollution Control District, with reductions achieved using these measures documented by these entities as being "real, permanent, quantifiable, verifiable, and enforceable," pursuant to CARB regulations..."

Page 37, Special Condition 20:

> "**Visual Resources.** PRIOR TO CONSTRUCTION, the Applicant shall submit, for Executive Director review and approval, a Visual Elements Plan that illustrates all above-grade elements of Project components within the coastal zone. The Plan shall include drawings and illustrations of those components with proposed surface colors and treatments that ensure the Project features are

compatible with, and blend in to, the surrounding habitats and other nearby coastal resources. **All Project lighting shall be directed downward and inward to the extent feasible and as necessary for health and safety purposes.** The Applicant shall construct these Project components as approved by the Executive Director."

Proposed Changes to Findings

The Findings refer in several places to the "FEIR/FEIS/FEIS." These are all corrected to read "FEIR/FEIS."

Project Description

Page 38, add sentence to end of paragraph:

"**The effects on ESHA are first described as they are presented in the Project's FEIR/FEIS, and then additionally detailed where significant changes have occurred due to changes in the Project as currently proposed.**"

Page 39, second full paragraph, add phrase to following sentence regarding dune recession at well field:

"Cal-Am would need to protect those sites by erecting barriers around the well pad, conduct grading to keep the sands away from the well pads, or relocate the wells further inland to areas that also constitute ESHA**, any of which would require Commission consideration of a new or amended CDP**."

Page 42, third full paragraph:

"Cal-Am did not include the outfall modification work in its CDP application, as it **does not own the ocean outfall or hold the existing outfall CDP permit, and** was relying on an agreement it was developing with M1W to identify which entity would fund the work, apply for needed permits, and install the liner."

Page 43, from last paragraph, continuing to page 44:

"Cal-Am anticipates that its desalination facility would have a**n** ~~maximum~~ operating life of about 60 years (until about 2085), though its slant wells would have ~~maximum~~ **expected** operational lives of 20 to 25 years, at which point Cal-Am anticipates **evaluating both updated coastal hazard conditions and whether the wells need to be rehabilitated or relocated** ~~rehabilitating or relocating the wells~~ to continue supplying source water for its facility."

Page 45, Project Background, third bullet:

> "**Monterey One Water ("M1W"):** M1W is a regional, public agency primarily involved with collection, conveyance, and treatment of wastewater within its service area, which includes much of the region between Moss Landing to the north, Pacific Grove to the west, and Salinas to the east. For purposes of these Findings, one of M1W's important roles is its management of the Pure Water project, which provides the foundation for the Pure Water Expansion that the Commission has identified as a **near-term** feasible alternative to Cal-Am's proposed Project."

Page 47, Recent History of Water Issues in the Monterey Area, revise as follows:

> "The Pure Water project is now operating and is providing about 3,500 acre-feet per year to be used by Cal-Am or stored in the Seaside Basin aquifer for future use. **Despite ongoing drought conditions, it produced during its most recent reporting year (July 2021-June 2022) 3,673 acre-feet, or 173 acre-feet more than expected.**"

Page 53, first bullet:

> "**Monterey One Water:** Cal-Am will need to obtain authorization from M1W for connection to, and use of, the agency's ocean outfall, and**, if required, M1W will need to obtain authorization under the Coastal Act for modifications to the ocean outfall**.″

Page 54, third bullet:

> **Monterey Bay National Marine Sanctuary:** The Sanctuary **has not yet** issued a Record of Decision for its Final Environmental Impact Statement~~, though~~**.** Cal-Am will also be subject to authorization from the Sanctuary to allow discharges into Sanctuary waters and drilling and disturbance of submerged lands within the Sanctuary..."

Environmentally Sensitive Habitat Areas -- Terrestrial

Page 55, add the following footnote after the first full paragraph:

> "**Global (G) and State (S) Level 1 communities or species are identified as "critically imperiled = at very high risk of extinction due to extreme rarity (often <5 populations), very steep declines, or other factors". Global (G) and State (S) Level 2 communities and species are identified as "imperiled = at high risk of extinction or elimination due to restricted range, few populations or occurrences (often < 20), steep declines, severe threats, or other factors. Global (G) and State (S) Level 3 communities and species are identified as "vulnerable = at moderate risk of extinction due to a restricted**

> **range, relatively few populations (often <80), recent and widespread declines, or other factors". CDFW defines natural communities, animals, and plants with a global or state ranking of 1, 2, or 3 as rare and the CCC typically finds these to qualify as ESHA. CCC also typically considers plant and animal species listed by the federal and state endangered species acts (ESA and CESA, respectively) and/or identified under other special status categories (e.g., California Species of Special Concern) and/or identified by the California Native Plant Society (CNPS) as '1B' and '2' plant species as constituting ESHA. CNPS species identified as '3' or '4', and species recognized by other authorities as sensitive, may also qualify, depending on the specifics of the geography and situation. In addition to a basis on rarity, the CCC may also recognize habitat as ESHA on the basis of being 'especially valuable' for its 'special role' or 'special nature' rather than on the basis of rarity. In this case, examples of why the habitats in the Project area qualify as ESHA include overlap among all of the above.**"

Page 59, beginning of last paragraph:

> "This type of dune habitat is easily disturbed by human activity. Nonetheless, even though this area is disturbed, degraded dune habitat **located where key coastal processes are still at work** generally has the ability to restore itself or be restored given the dynamic natural environmental processes shaping the landscape and the persistence of well-adapted native seed banks."

Page 72, end of first paragraph:

> "**Outside of the TAMC right-of-way corridor,** a~~A~~ll mitigation for permanent impacts, and the added 0.5:1 fraction for long-term temporary impacts would be required to occur within areas that are or would be protected in perpetuity, and as consistent with Special Condition 9."

Page 73, remove footnote 48 (as it was incorporated into the text of the Findings).

Page 75, middle of first full paragraph:

> "As described in the FEIR/FEIS, the installation work would likely require heavy equipment on the beach and foredune area, excavation of some amount of beach and dune habitat, installation of temporary fencing to protect the work area, and other activities that would result in temporary noise, disturbance, and occupancy of this critical habitat area for a six- to eight-week period during a critical time period for the species. The activities could disturb approximately a half-acre between the dunes and the beach. **The FEIR/FEIS concluded that although activities associated with the clamp replacement could temporarily impact ESHA, impacts would be mitigated to a less than significant level through the implementation of mitigation measures identified in the FEIR/FEIS. However, s**~~S~~uch activities in dune habitat would be

considered permanent due to their ground disturbing nature and would not conform to Coastal Act Section 30240 (if the work is done in the Commission's retained jurisdiction) or LCP provisions that mirror that Section (for any work in the City's permitting jurisdiction) because it would be nonresource-dependent activity occurring in ESHA."

Page 76, first full paragraph regarding outfall liner installation:

"The preliminary analysis provided in the FEIR/FEIS anticipates that part of the liner installation would be done from the beach (and at or near the boundary between the City of Marina's LCP jurisdiction and the Commission's retained jurisdiction) **and within areas of ESHA further inland within the CEMEX site and the City's LCP jurisdiction**. Draft information provided by Cal-Am shows that work **inland of the beach** could require digging access pits at two sites along the outfall route within the City of Marina that consist of ESHA. As with the clamp replacement, work is proposed to occur during the treatment facility's low flow period in the summer, when most of its discharge is treated and used for agricultural irrigation. The excavation pit at each access point would be located directly above the outfall pipe and would not exceed a size of 12 feet by 25 feet. Soils would be stockpiled within the existing outfall right-of-way**, which also constitutes ESHA,** and topsoil would be stored in a separate pile for use in restoration following installation. **This work, including access routes for heavy equipment to reach these sites, could result in direct adverse effects to up to about five acres of dune-associated ESHA.** Because the work would again need to occur during low-flow times for the wastewater plant, this too would need to happen in late summer, during Western snowy plover breeding and nesting, and potentially within the plover's critical habitat area on the beach. The installation work would likely require heavy equipment on the beach and foredune area, excavation of some amount of beach and dune habitat, installation of temporary fencing to protect the work area, and other activities that would result in noise, disturbance, and occupancy of this critical habitat area during a critical time period for the species. Similar to ESHA impacts described above, **the FEIR/FEIS concluded that implementation of CEQA-required mitigation measures would avoid or reduce potential impacts associated with the installation of the outfall liner, though they would also be subject to the avoidance, minimization, and compensatory mitigation measures similar to those imposed through the Special Conditions of this CDP. Nonetheless**, these activities would not conform to Coastal Act Section 30240 or LCP provisions that mirror that Section for the dune portion because they would be non-resource-dependent activity that would occur in ESHA."

Protection of Groundwater Resources

Page 83, middle of last paragraph continuing to page 84:

> "This increased return water requirement could also affect Project feasibility and cost, as described in Section IV.I – Environmental Justice and Section IV.O – Assessment of Alternatives. Essentially, because any higher return water volumes could result in additional costs to Cal-Am that it might seek to cover through additional cost recovery requests to the CPUC, the increased need to return water could substantially increase the costs to members of disadvantaged communities and to all Cal-Am ratepayers. **However, Cal-Am is prohibited from passing such additional costs onto ratepayers unless the CPUC were to modify its decision approving the Project.**"

Page 84, end of second full paragraph:

> "To provide further protection for other groundwater users in the Basin **pursuant to Coastal Act Section 30231**, **Special Condition 12** requires Cal-Am to submit a monitoring and reporting plan, which is to be reviewed by an independent third-party to be funded by Cal-Am, that identifies monitoring measures that Cal-Am will implement to provide an "early warning" of any ~~potential impacts to other users~~ **depletion of groundwater supplies** resulting from Cal-Am's water extractions **and goes beyond the requirements of Applicant Proposed Measure 4.4-3 in the Final EIR/EIS**. This is intended to identify any **precursors to** potential effects Cal-Am's pumping may have on nearby freshwater sources~~,~~ **and** on any increasing seawater intrusion that may affect other uses, and to avoid other similar concerns **through the implementation of additional analysis and any necessary remedial action long before any potential harm could occu**r."

Page 88, beginning of first full paragraph:

> **"Effects of drawdowns**
> These recent analyses, **submitted by the City,** although not comprehensive, suggest that changes in groundwater levels associated with drawdown from the proposed pumping could adversely affect the functions and values at up to several dozen acres of these vernal ponds and wetlands, primarily at the Armstrong Ranch Ponds, and possibly at other nearby wetlands. **Because the City's analyses and those submitted by Cal-Am and its consultants diverge on key points,** ~~I~~**i**t is difficult to precisely determine the specific nature and magnitude of expected effects, **if any,** as they would vary by vegetation and wildlife species, by temporal changes in precipitation and natural variation in groundwater levels, by the location in the landscape of the wetland features, and various other factors **and could not be definitively identified until after Project operations begin**."

Page 90, beginning of first paragraph:

> "To ensure the Project ~~avoids causing impacts to these areas~~ r**emains consistent with Coastal Act Section 30231 and LCP Habitat Protection Policies**, **Special Condition 13** requires Cal-Am to develop a robust adaptive management program to detect any potential impacts the Project may have on the Project's expected drawdown area plus a buffer area extending a minimum of 50% of the distance from the pumping area to the edge of the drawdown zone to account for uncertainty in the zone of potential influence."

Page 95, end of first paragraph:

> "Without an adequate setback to allow for 50 years of protection, and without these analyses being completed, the Project's well field component could be inconsistent with LCP policies related to coastal erosion unless there is a requirement to remove the test well when it becomes threatened. **However, Mitigation Measure 4.2-10 in the FEIR/FEIS requires Cal-Am to monitor and remove the slant wells five years prior to any anticipated exposure. Thus, the Project is consistent with LCP policies related to coastal erosion because there is a requirement to remove the slant wells when they become threatened.**"

Page 97, middle of first paragraph:

> "However, as noted above, ~~Cal-Am has estimated that the wells would operate for about 25 years but would then need to be relocated further inland~~ **after 25 years, the wells may need to be rehabilitated or relocated, depending on certain factors, including updated analysis of potential coastal hazards, reduced yields, or others**. Importantly, and as noted above, Cal-Am does not have legal interest in property further inland, so it has no locations available yet to site the wells after this expected initial 25 years of operations. The above-referenced Special Condition 6 addresses concerns about the hazards beyond this period. ~~This expected operating life of 20-25 years~~ **The 25-year permit term** allows for conformity to the above-referenced LCP requirement that development include setbacks adequate to protect it during its expected operating life, but as noted above, this limited operating life raises concerns about whether Cal-Am would be able to operate its desalination facility for only 20-25 years instead of its proposed 60-year operating life (this is discussed further in Section IV.O – Assessment of Alternatives)."

Page 101, middle of last paragraph:

> "Additionally, the region has several housing-burdened communities, where low-income households are paying more than 50% of their household income towards housing and utilities (see ~~Figure 1~~ **Exhibit 9**)."

Page 113, beginning of first paragraph:

> "Outside of the coastal zone, existing industrial facilities near Marina include a regional wastewater treatment plant, the Marina Municipal Airport, and Monterey Regional Waste Management District facility, which includes a landfill, materials recovery facility, food and yard waste composting facilities, a landfill gas-to-energy conversion facility, and a hazardous waste collection site (see Figure 1 **Exhibit 9a**)."

Tribal Consultation

Page 116, fourth paragraph:

> "On October 3, 2022, staff met with cultural representative Kanyon Sayers-Roods from the Indian Canyon Band of Costanoan Ohlone People, whose ancestral lands are adjacent to the Project site. Indian Canyon is 15 miles south of Hollister, in the Gavilan mountain range. ~~The tribe~~**This area** is the only federally recognized ~~tribe~~ **land** between Sonoma and Santa Barbara, and the area has been sacred land for Ohlone/Costanoan people since time immemorial, according to the tribe's website."

Page 117, add the following new paragraph after the last full paragraph on the page:

> "**In response to the Chairwoman's statements, Cal-Am President Kevin Tilden sent a November 7, 2022 letter to Commissioners calling the 2020 incident "extremely concerning." He said the company conducted an internal investigation at the time and said the statements were not made by a Cal-Am employee but a contracted inspector, who was later removed from the Project. The day after the incident, he said the company held a mandatory half-day meeting where the Chairwoman conducted a sensitivity training. Mr. Tilden added that they have been trying to contact her since July 2022 to address any concerns she and the Nation may have about the proposed Project. In the Commission's subsequent consultation with the Chairwoman, she said that she stands by her statement that the supervisor was a Cal-Am employee. She indicated that she, not Cal-Am, called for the meeting after the 2020 incident and it was not a half day cultural sensitivity training, but a 20-minute talk with the workers about the Nation's history, the monitors, their role on site and the importance of being on the site. She said that she offered to give a cultural sensitivity training to all Cal Am employees but did not hear back from the company until recently.**"

Protection of Marine Life and Coastal Waters

Page 122, middle of second paragraph:

> "To ~~achieve consistency~~ **ensure the Project is consistent** with the Ocean Plan, **the CPUC imposed Mitigation Measures 4.3-4 and 4.3-5. Mitigation Measure 4.3-4 requires Cal-Am to implement a monitoring and reporting program that will ensure that operational discharges from the Project are in compliance with applicable Ocean Plan water quality objectives and salinity standards. As a further precaution, Mitigation Measure 4.3-5 prevents Cal-Am from discharging effluent into coastal waters until it can demonstrate that it has implemented** ~~Cal-Am may need to modify its Project to include~~ outfall modifications, operational changes, or other measures to ensure compliance **with Ocean Plan water quality objectives**."

Page 124, first full paragraph:

> "Any of these Project aspects – a potential diffuser retrofit, the expected buoy installation, or the clamp replacement – would involve placing fill in coastal waters in the form of new or modified structures. **As discussed above, the outfall modifications necessary for the Project are not part of this CDP application because the outfall is the subject of a prior CDP issued to M1W, which operates the outfall. That CDP would need to be amended in the future; nonetheless, the Commission is evaluating the impacts of the outfall modifications in this review to be comprehensive.**
>
> Pursuant to Coastal Act Section 30233, any ~~such~~ fill **of coastal waters** is allowed only if it meets a three-part test: 1) that there is no feasible less environmentally damaging alternative, 2) that feasible mitigation measures have been provided to minimize adverse environmental effects, and 3) that it be for certain specified purposes, including a new or expanded port, energy, or coastal-dependent industrial facility. The two tests related to alternatives and mitigation are similar to tests found in Coastal Act Section 30260, ~~which is applied in~~ **which are discussed in Section IV.P** of these Findings. ~~Those Findings include the analysis and conclusions needed to determine conformity to these Section 30233 tests. For the reasons described in those Findings, the Project conforms to relevant provisions of Section 30233.~~ **As also discussed in Section IV.P, the proposed project is a coastal-dependent industrial facility. As such, the fill is for a use allowed under Section 30233 if there is no feasible less environmentally damaging alternative and where mitigation measures have been provided to minimize adverse environmental effects.**
>
> **As discussed in Section IV.P, with respect to the Project overall, there is no current alternative that can provide a reliable supply of water in the longer term. Although the Pure Water Expansion is likely to meet demand in the near term, the addition of the Expansion project alone is not sufficient to**

meet demand over the next twenty years. Moreover, through conditions imposed in this permit, the Project's impacts have been mitigated to the maximum extent feasible.

As to fill components of the Project, the FEIR analyzed the seal clamp and diffuser components of the outfall modifications. The FEIR required the replacement of the seal clamps as mitigation to address increased corrosion of the outfall. (FEIR at 5.5-267.) Related to the diffuser, the FEIR noted MBNMS guidelines for desalination plants, which specify that project proponents should evaluate the use of measures to minimize impacts from desalination plant discharges, including diffuser modifications. (FEIR at 5.3-4.) The new diffuser that would be part of the outfall modifications would help to dilute brine.

The FEIR also found that, with mitigation measures, "secondary impacts from construction relating to retrofitting the existing outfall . . . would be less than significant" and would be "short in duration and low intensity and [that] benthic communities would likely recover to baseline conditions." (FEIR at 4.3-109.) The FEIR noted that construction plans would be required as mitigation to ensure that any disturbances to benthic communities are minimized or avoided. In addition, the Commission believes that the FEIR's conclusions regarding physical impacts from the outfall discharge apply similarly to any impacts from the buoy in that they would be less than significant. The buoys would be anchored with a single mooring attached to a small (two- to three-square-foot) concrete anchor on the largely sandy bottom seafloor in this area. As with shear impacts associated with the outfall discharge, the buoy would likely not have substantial adverse effect on any marine biological resources. Moreover, any impacts could likely be avoided or minimized through the implementation of appropriate construction plans or other measures. The expected impacts associated with installing or modifying these offshore outfall components would be similar to other offshore construction projects for which the Commission requires measures such as construction Best Management Practices, approval of an anchoring plan showing that sensitive benthic habitats are avoided, spill prevention and response plans, and other similar requirements.

The Commission also finds that there are no feasible alternatives to these fill components, which would be necessary either to address corrosion from the brine discharge or to monitor discharges for water quality purposes. Thus, the Project meets the tests set out in Section 30233."

Energy Consumption and Climate Change

Page 127, beginning of first paragraph:

> "Regarding Project operations, the full-scale **9.6 mgd** Project **originally considered by the CPUC** would be expected to use approximately 63,000 megawatt-hours of electricity per year, which would be an increase of almost 52,000 megawatt-hours per year over Cal-Am's existing baseline electrical use for its water portfolio (based on the 2015 baseline used in the FEIR/FEIS). **The 6.4 mgd Project approved by the CPUC would be expected to use about 38,000 megawatt-hours of electricity per year, which would be an increase of 27,000 megawatt-hours per year over Cal-Am's existing baseline electrical use for its water portfolio. According to Cal-Am,** ~~T~~**t**he Phase I Project would use ~~a smaller, but unquantified amount~~ **about 28,500 megawatt-hours per year**."

Public Access and Recreation

Page 131, end of third full paragraph:

> "Cal-Am has a 30-acre permanent easement within the CEMEX site and its well field would include fencing to protect about a quarter-acre of the several well heads and associated equipment. Cal-Am's ongoing maintenance of the well field would result in access and use of heavy equipment and vehicles over an area of up to about six acres over the Project's lifetime, though not all of that acreage would be used at once. **The proposed phased Project would reduce this area somewhat, due to a reduction in the number of initially planned well pads and a shorter access road. Specifically, the fenced area has been reduced to approximately 0.17 acre and the area for potential ongoing maintenance has been reduced to 1.9 acres.**"

Page 131, last sentence, continuing to Page 132:

> "However, the Project would, at a minimum, fence off a**bout a** quarter-acre around the wellheads and some other equipment, occupy another quarter-acre for a period of nine to 18 weeks ~~each~~ **about every five** year**s** for maintenance, and result in use of vehicles and other equipment over an approximately ~~six~~**two**-acre area over time. This would prevent at least some portion of the overall area used by Cal-Am from being restored and used for public access or recreation. This area is a relatively small portion of the overall CEMEX site, and there is significant beach and coastal area available nearby for coastal access and recreation. However, allowing an industrial use to occupy and use ~~up to six~~ **about two** acres of prime coastal land that could otherwise be used for coastal access and recreation does not maximize public access, as required by the Coastal Act."

Alternatives Analysis

Pages 141-42, Economic factors:

> "**Cal-Am estimates that adding water from the Project to its water portfolio would increase water rates by $47 to $50 per month, though Commission staff did not receive the analyses Cal-Am conducted to estimate this increase. Other entities, including the MPWMD, have estimated that rates could be three to four times higher.[1] It remains unclear how Cal-Am's proposed $10 per month cost cap for its low-income ratepayers would affect its other ratepayers.**"

Pages 147-48, "No Action" alternative:

> "~~to the~~ **The** Commission concludes that additional water supply will likely be needed (beyond the Pure Water Expansion) at some point before 2050."

Coastal-Dependent Industrial Facility Override

Page 152, following first paragraph of Test 1:

> "**As part of the proposed Project's CEQA review, the FEIR/FEIS evaluated alternative locations to the proposed Project. For instance, the FEIR/FEIS analyzed two alternative locations for the slant wells, which involved the construction of intake systems at a site on Potrero Road and a site at Moss Landing. The FEIR/FEIS concluded that siting intake systems at either Potrero Road or the Moss Landing site would not "offer an overall environmental advantage over the proposed project," and would increase impacts compared to the CEMEX site. As such, the FEIR/FEIS identified the proposed Project, with slant wells located at the CEMEX site, as the environmentally superior alternative. The FEIR/FEIS concluded that the Project's proposed location offers environmental advantages to alternative sites, such as use of an existing outfall, no construction on the seafloor, avoiding impingement and entrainment of an open water intake, and less than significant impacts to groundwater resources, surface water resources and marine biological resources. These findings and conclusions were incorporated into the CPUC's final decision regarding the proposed Project.**"

[1] See, for example, November 5, 2022, *The Cost of New Water on the Monterey Peninsula*, by Dave Stoldt, in Monterey Herald.

Page 154, within Test 3 paragraph:

> **"Test 3 – Adverse environmental effects are mitigated to the maximum extent feasible:** The third test of Section 30260 and of the LCLUP's Habitat Protection Policy 1 require that the Project's adverse environmental effects be ~~fully~~ mitigated **to the maximum extent feasible**. As noted in the Findings above, the Commission is imposing an array of Special Conditions requiring that Cal-Am implement substantial mitigation measures to address a range of expected or potential impacts to coastal resources to the extent feasible – from extensive requirements for habitat restoration to address the Project's impacts to sensitive resources to comprehensive design changes and monitoring to ensure groundwater sources are protected. **In addition, the CPUC has imposed a Mitigation Monitoring and Reporting Program ("MMRP") as part of its process in certifying the FEIR/FEIS, which includes a number of mitigation measures designed to avoid or reduce potential environmental impacts. The CPUC's MMRP, combined with the Special Conditions and Cal-Am's proposed ratepayer programs, will ensure that any adverse environmental effects to coastal resources are mitigated to the maximum extent feasible.** With the above-referenced Special Conditions, the Commission therefore finds that Cal-Am's Project meets the third test of Section 30260.**"**

Response to Comments

The Commission received over 500 comment letters in response to the staff report published on November 4, 2022. In response to certain comments from Cal-Am, MCWD, and others, the Commission is proposing various changes to special conditions and findings that are described above. Staff notes that MCWD provided several revisions to Special Condition 12 proposing a bond for relocation of MCWD supply wells, additional specificity on elements of the proposed groundwater monitoring program including impact thresholds, and provisions for partnering with MCWD to implement the monitoring program. While most of these suggested revisions are premature at this stage (and are not currently supported by evidence in the record), they could be considered for inclusion in the required Groundwater Monitoring Plan that Cal-Am must develop in consultation with MCWD.

This Addendum also addresses certain arguments concerning the Commission's reference to pending CPUC and SWRCB proceedings as well as arguments regarding the sufficiency of the Commission's analysis of environmental impacts.

First, certain commenters disagree with the Commission's analysis of supply and demand and argue that the Project is not needed at any point before 2050 in light of different assumptions. As discussed in the staff report, the Commission has evaluated supply and demand estimates and determined that the California Public Advocates'

estimates demonstrate a reasonable basis for finding that the Project is needed sometime in the next twenty years. In particular, Cal Advocates' estimates are similar to the estimates that the Commission presented in its September 2020 report, but with a ten percent supply buffer incorporated to address contingencies in supply, which the Commission finds to be reasonable in the specific context of this Project. If drought conditions persist, they will likely exacerbate water supply constraints in the region, which uses no imported water. Moreover, the Pure Water Expansion is not yet in operation, so there is no trend data to evaluate with respect to that project (both in wet and dry years). Thus, it remains uncertain if the Pure Water Expansion can reliably produce 2,250 afy. The Commission also recognizes that the CPUC, which has expertise in evaluating the necessity of utility projects, will be determining the need for the Project after extensive testimony and evidence. It is therefore possible that the CPUC will find that the Project is needed earlier than 2040, or later, or not at all by 2050. Thus, although the Commission has analyzed the supply and demand estimates and determined that it is reasonable to assume that the Project is needed at some time in the next twenty years, it is appropriate to condition approval of the Project on CPUC authorization. In recognizing the expertise of the CPUC on this issue and the fact that it is currently being litigated before the CPUC, it is reasonable for the Commission to refer to the outcome of that proceeding. Finally, because the form of any CPUC approval of the Project may take different forms, the Commission has modified Special Condition 1 to specify that the CPUC must authorize the Project. This ensures that Cal-Am must have full authorization from the CPUC to proceed with the Project as a condition of the permit.

Certain commenters have also argued that the CPUC previously rejected a phased 4.8 mgd facility in the prior CPUC proceeding and that, by implication, the Commission cannot approve a phased construction now. This is not correct. First, Cal-Am did not propose a 4.8 mgd facility in the prior CPUC proceeding in which the CPUC granted a certificate of public convenience and necessity for the 6.4 mgd facility and the Pure Water project (the base project for the subsequent Pure Water Expansion). Instead, this was an alternative suggested by Surfrider in that proceeding.[2] In rejecting the alternative of a 4.8 mgd facility, the CPUC found that a 4.8 mgd facility would not meet demand.[3] The CPUC also questioned whether the 4.8 mgd facility would decrease impacts and suggested that if the facility needed to be expanded in the future, it may increase impacts from drilling additional wells. In rejecting the 4.8 mgd facility, the CPUC did not engage in an environmental review of the 4.8 mgd facility, however. In particular, a 4.8 mgd facility was not among the alternatives reviewed in the FEIR/FEIS.

[2] Surfrider has submitted comments to the Commission opposing Cal-Am's desalination project (including a smaller 4.8 mgd facility) in this present Commission proceeding.

[3] In that prior proceeding, the Pure Water Expansion was not under consideration by the CPUC. Since that time, the CPUC has initiated a proceeding to review the Pure Water Expansion project and has issued a proposed decision to approve it.

The Commission has evaluated the 4.8 mgd facility under the Coastal Act and determined that it provides a reduced environmental impact. As discussed in the staff report, the 4.8 mgd facility would require the construction of only two well pads, would allow for a shorter access road, and would reduce the initially required pumping volumes by about a third. Moreover, since the time of the CPUC's decision to approve the 6.4 mgd facility in 2018, Cal-Am also modified the design of the first two well pads to accommodate a third well at each of the well pads (i.e., without constructing an additional well pad) if monitoring during the first phase indicated that one or both well pads could accommodate the additional wells. If, however, Cal-Am needs to construct additional well pads such that there are construction-related impacts that occur a second time (instead of once), the Commission believes those impacts can be mitigated appropriately using construction BMPs (see Special Condition 3).[4] Finally, operation of the smaller 4.8 mgd facility will allow for groundwater and wetland monitoring to occur, as required by Special Conditions 12 and 13, respectively, for a minimum of two years, thus ensuring that Cal-Am's 4.8 mgd facility does not have adverse effects on local groundwater supply or nearby wetlands before expanding to the larger 6.4 mgd facility. Thus, it is preferable to phase the project to 4.8 mgd to achieve significantly reduced environmental impacts and additional certainty related to avoidance of impacts. Reductions in environmental impacts would be permanent if the Project does not proceed to a second phase.

Similarly, it is appropriate for the Commission to refer to the outcome of the SWRCB's adjudication of the water rights issues before issuing any permit. Although the FEIR/FEIS determined that Cal-Am has a path forward to obtain the necessary water rights and the CPUC rejected arguments to the contrary in certifying the FEIR/FEIS, the Commission recognizes that the question has been raised again in recently filed litigation.[5] In that litigation, the trial court referred several technical issues to the SWRCB for determination. The Commission recognizes that the SWRCB is the agency with expertise and primary responsibility to adjudicate water rights. In recognition of the SWRCB's expertise, the Commission is modifying Special Condition 1 to allow, as an alternative to a final judicial adjudication or disposition of *City of Marina v. RMC Lonestar, et al.*, for Cal-Am to seek an amended coastal development permit based on the SWRCB's adopted order in the current SWRCB proceeding. This applies only if the SWRCB's adopted order makes evidentiary findings (on factual disputes) so that the Commission may evaluate them in the context of its review of an amended coastal development permit. Under this procedure, the Commission would hold a proceeding, with both the benefit of the SWRCB's expert opinion and with the opportunity for public

[4] Although the Commission has reviewed the impacts of the full scale project at 6.4 mgd, it notes that if Cal-Am seeks to construct a second phase, it must submit an amended coastal development permit for the Commission's review and approval. See Special Condition 2.

[5] *City of Marina v. RMC Lonestar, et al.*, Monterey County Superior Court No. 20CV001387 (Complaint filed May 11, 2020).

comment, to determine if the evidence demonstrates that Cal-Am has rights to extract water needed for the Project and that the Project will not cause harm to sources of drinking water.

MCWD raises arguments regarding the sufficiency of the Commission's environmental review with respect to groundwater resources, wetlands and vernal ponds, ESHA impacts, potential removal or relocation of the wells after the permit expires, and outfall modifications.

As an initial matter, although there is uncertainty about other agencies' approvals of this Project, this does not preclude the Commission from conducting its review – just as other agencies are not precluded from taking action without Commission approval. The Commission determined that it has sufficient information about the Project to evaluate it under the Coastal Act and the LCP, to evaluate feasible mitigation and alternatives, and to impose conditions to address and mitigate impacts. Thus, for purposes of the Commission's review, the Project description is sufficiently stable, accurate and finite.

Groundwater. As discussed in the staff report, neither the FEIR/FEIS nor the Commission's independent hydrogeologist found evidence that impacts to groundwater are reasonably foreseeable. Likewise, in the prior CPUC proceeding to certify the FEIR/FEIS, the CPUC rejected arguments that the Project would cause adverse impacts to groundwater. As discussed in the staff report, the FEIR/FEIS relied on hydrological modeling and data, although the CPUC also considered the "AEM" model in the CEQA review and CPUC proceeding to certify the FEIR/FEIS. The City of Marina continues to maintain that studies using the AEM model demonstrate potential impacts to its groundwater basin. The Commission recognizes that there is pending litigation and a SWRCB proceeding to adjudicate issues of water rights and claims of impacts to groundwater regarding the Project. The Commission also recognizes, as it did in its 2020 staff report, that further review is appropriate given the complexity of the groundwater system and the inherent uncertainty in modeling future unknown conditions. As such, the Commission is requiring the development and implementation of a Groundwater Monitoring Plan to provide an "early warning" of any potential depletion of groundwater supplies from Cal-Am's extractions and to identify precursors to any potential effects on sources of drinking water. As part of this plan, Cal-Am must include available and relevant AEM survey data and modeling into the proposed model validation.

Despite the lack of demonstrated impact, the Commission is responding to comments by MCWD to require the Groundwater Monitoring Plan to be approved by the Commission rather than the Executive Director. As such, the Commission has modified Special Condition 12 to require approval of the plan through an amended coastal development permit.

Future review and approval of this plan in a CDP amendment is not improper "deferred mitigation." First, the plan is not a CEQA mitigation measure; instead, it is a measure to ensure protection of groundwater resources under the Coastal Act. As such, the CEQA deferred mitigation cases cited by MCWD are inapplicable. The CPUC already determined the Project will have no significant impacts to groundwater. Second, the plan would be developed prior to permit issuance, which avoids any impact before the plan is developed. Third, review of the plan will return to Commission in the form of a proposed CDP amendment, with an opportunity for public scrutiny and comments. None of the cases cited by MCWD involve a mitigation plan that went back to the decision-making body for environmental review prior to issuance of the permit; therefore, those cases are distinguishable. Finally, the special condition sets out parameters to guide development of the plan.

Wetlands and Vernal Ponds. The FEIR/FEIS identified several vernal ponds and wetlands at and near the CEMEX site and near the various Project pipeline routes. The FEIR found that while several of the vernal ponds and wetlands were in areas that would experience a drawdown of groundwater levels resulting from Cal-Am's operations, these vernal ponds and wetlands were "hydrologically disconnected" from the underlying groundwater and, therefore, would not be affected by the pumping. Nonetheless, because of concerns raised that drawdowns could potentially harm certain wetland and vernal ponds, the Commission is requiring Special Condition 13 to address potential impacts under the Coastal Act and the City's LCP.

First, prior to issuance of the permit, Cal-Am must develop a Wetlands and Vernal Pond Adaptive Management Program for Executive Director approval which is designed to identify if and when an impact occurs that causes harm to wetlands or vernal ponds. This is done through extensive monitoring (including at least two years prior to operations) of specific parameters and comparison to baseline conditions and reference sites. If, however, data demonstrates that there is a connection between the Project's pumping and drawdown that results in adverse impacts to wetlands or vernal ponds, Special Condition 13 requires Cal-Am to cease or reduce the Project's pumping sufficiently to end these adverse effects, develop a Wetland Resiliency, Enhancement, Restoration, and Monitoring Plan to address impacts, and this plan requires Commission approval in the form of a permit amendment.[6]

There is no improper deferred mitigation because Special Condition 13 requires the monitoring plan to be developed prior to permit issuance *before* any impact could occur. Moreover, if an impact is identified pursuant to the monitoring plan, Special Condition 13

[6] *See Cal. Native Plant Soc. v. City of Rancho Cordova*, 172 Cal.App.4th 603, 622 (2009) (stating that "the details of exactly how mitigation will be achieved under the identified measures can be deferred pending completion of a future study"); *Riverwatch v. County of San Diego*, 76 Cal.App.4th 1428, 1432 (1999) (stating that "[t]he fact that the entire extent of the mitigation that might be required was not known did not undermine the EIR's conclusion that the impact could be mitigated.")

requires Cal-Am to cease or reduce pumping while it seeks a permit amendment where the Commission would engage in an environmental review with the opportunity for public comment.

ESHA. The FEIR/FEIS included mitigation measures intended to avoid or reduce impacts to ESHA. Moreover, in certifying the FEIR/FEIS, the CPUC required Cal-Am to implement a Mitigation Monitoring and Reporting Program ("MMRP"). Beyond these CEQA measures, as part of its review under the Coastal Act and the LCP, the Commission is requiring a qualified restoration ecologist to develop a comprehensive Habitat Mitigation and Monitoring Plan (Special Condition 10) that sets out specific criteria for compensatory mitigation. This plan must be approved by the Executive Director as a prior-to-issuance condition of the permit. This condition ensures that the Project's impacts to ESHA are mitigated to the maximum extent feasible. There is no improper deferred mitigation because the compensatory mitigation criteria (acreage, mitigation ratios, and locations for candidate sites) are detailed and specific.[7]

Potential removal or relocation of wells after permit expiration. MCWD also claims that the Commission must review the future impacts of potential removal or relocation of wells after the 25-year term of the permit. It is speculative, however, to evaluate whether Cal-Am must remove the wells or how it would replace or relocate them after this permit expires in 25 years. It is possible that Cal-Am could identify the locations of wells in the future that are not feasible today, for example. Moreover, because Cal-Am is required to obtain a permit amendment after the 25-year permit term to remove, relocate, or rehabilitate wells, the Commission can conduct its environmental review at that appropriate time when the issue is no longer speculative. If the wells need to be removed and there are no feasible alternative locations that are consistent with the Coastal Act and LCP, then the Commission has the discretion to deny the permit amendment, and Cal-Am may be required to cease operation of the project.

Outfall modifications. As discussed in the staff report, Cal-Am does not own the outfall; instead, M1W owns the outfall. M1W and Cal-Am were in negotiations for an agreement on Cal-Am's use of the outfall; however, M1W has put those discussions on hold until the amended Water Purchase Agreement for the Pure Water Expansion is approved by the CPUC and then signed by the parties. Because Cal-Am is not the owner of the outfall and the outfall is subject to a prior CDP, the permit for the outfall requires a future CDP amendment for approval of the outfall modifications necessary for Project operations. (See Special Condition 1).

[7] *See Cal. Native Plant Soc. v. City of Rancho Cordova*, 172 Cal.App.4th 603, 622 (2009) (denying deferral claim where city determined that the project would have an impact on habitat loss and imposed mitigation requiring preservation or creation of replacement habitat, off site, in a specific ratio to habitat lost as a result of the project).

Nonetheless, the Commission can review the outfall modifications under the Coastal Act and LCP because it has sufficient information about the modifications necessitated by the Project. The FEIR/FEIS also addressed impacts of the outfall work and included mitigation measures to reduce the impact to a less than significant level, including minimizing the amount and duration of habitat disturbance among a variety of other measures. Nonetheless, the outfall liner work would not conform to Coastal Act Section 30240 (in the Commission's retained jurisdiction) or LCP provisions that mirror that Section (in the City's permitting jurisdiction) because it would constitute a non-resource dependent activity in ESHA. As such, the work could only be approved under the override provision of Section 30260.

The impacts to ESHA from the outfall modification could total up to about five acres, at current estimates, primarily from excavating pits and from impacts related to construction machinery and equipment accessing those areas. These impacts can be mitigated using the same compensatory mitigation criteria and methodology set out in Special Condition 10. Because the outfall modifications are not before the Commission for authorization as part of this proceeding, those mitigation measures would be addressed at a future time when authorization is sought.

The FEIR/FEIS also evaluated alternatives to the proposed outfall modifications.[8] In addition, after the FEIR/FEIS was certified, Cal-Am proposed an alternative to the outfall work which involved a spray-on liner instead of a slip liner; however, M1W and the Commission raised feasibility concerns. In response to these concerns, Cal-Am returned to the proposal evaluated in the FEIR/FEIS, which involved placement of a slip liner.

Because the Commission has evaluated the impacts to ESHA of the outfall modifications and reviewed feasible mitigation and alternatives, the Commission has not "piecemealed" its review of the Project, contrary to MCWD's argument.

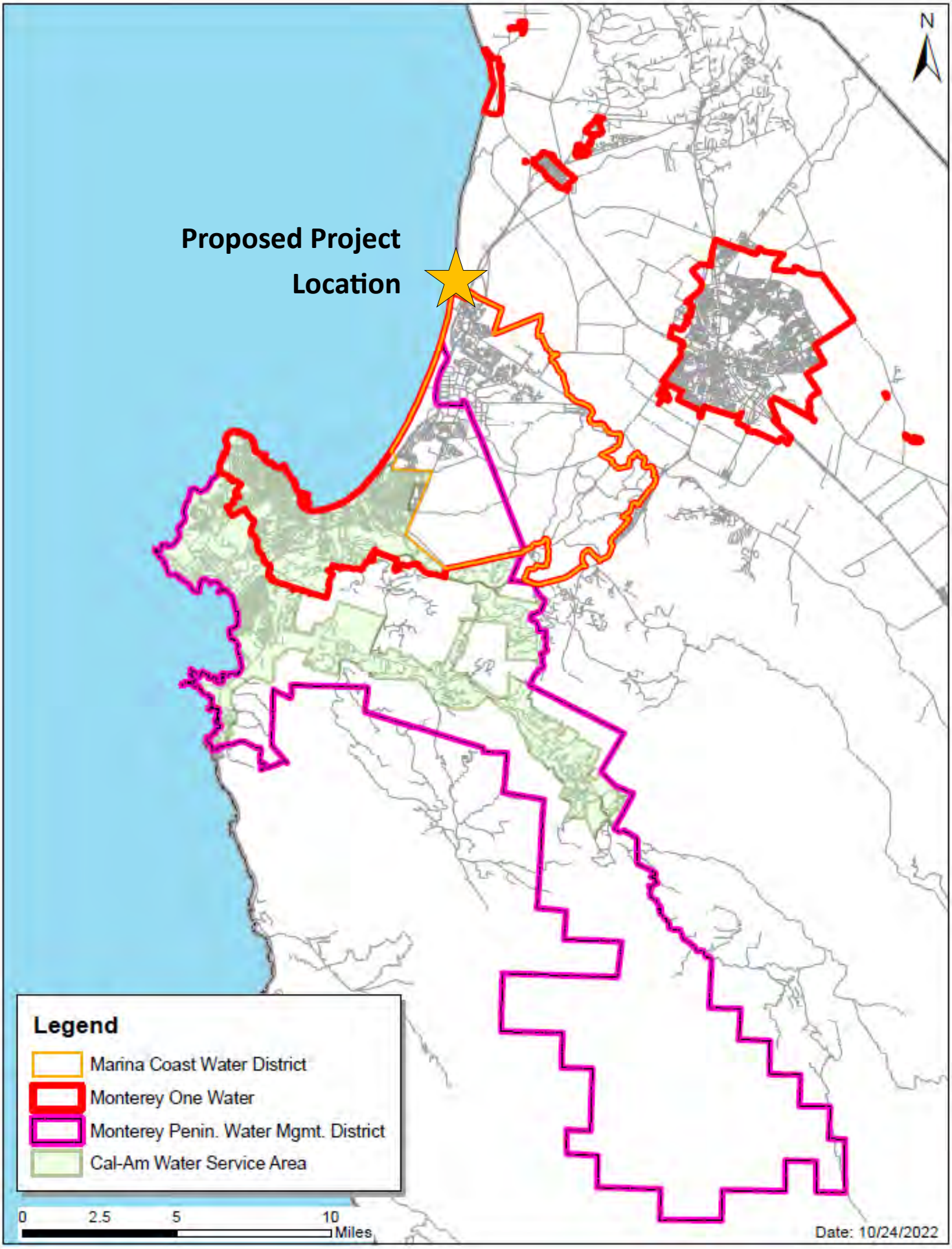
Rates. Some commenters have expressed concerns about the uncertainty of the rate increases resulting from the Project. Cal-Am has estimated that the rate increases would be approximately $47-$50, but other commenters suggest that the increases may be higher. The CPUC has exclusive jurisdiction over the establishment of rates for water services provided by private utilities.[9] Ultimately, it is for the CPUC to determine the

[8] FEIR/FEIS, Section 5.3.4.

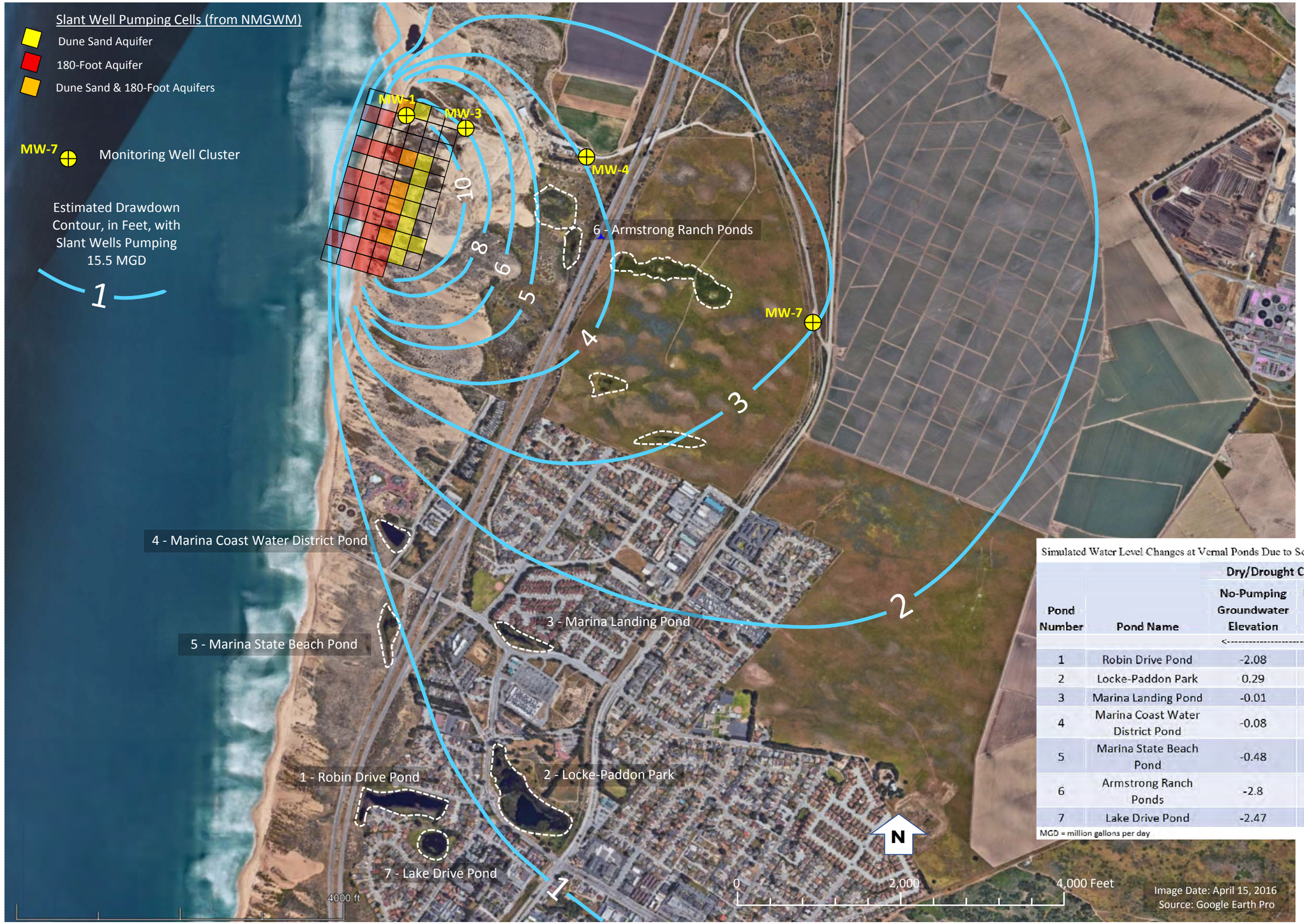
[9] *See* CPUC Dec. No. 01-050058 (May 14, 2001) ("It is well established the Commission has exclusive ratemaking authority over public utility matters delegated to the Commission by the Legislature."); *see also* Cal. Const., art. XII, § 3 ("Private corporations and persons that own, operate, control or manage a ... system for ... furnishing water ... to or for the public ... are public utilities subject to the control by the Legislature.").

reasonable rates for the Project.[10] As noted in the Staff Report, Cal-Am proposes to seek approvals from the CPUC to expand ratepayer assistance program eligibility for low-income ratepayers and, separately from the CPUC approval process, proposes to cap rate increases for low-income ratepayers to no more than $10 per month for a period of five years.

[10] In its 2018 proceeding, the CPUC set a cost cap of $279 million for capital costs for the MPWSP, which included Cal-Am's 6.4 mgd desalination facility and the baseline Pure Water project. If Cal-Am seeks to recover additional capital costs, it would need to seek CPUC approval.



Th7a & 8a - Revised Exhibit 5



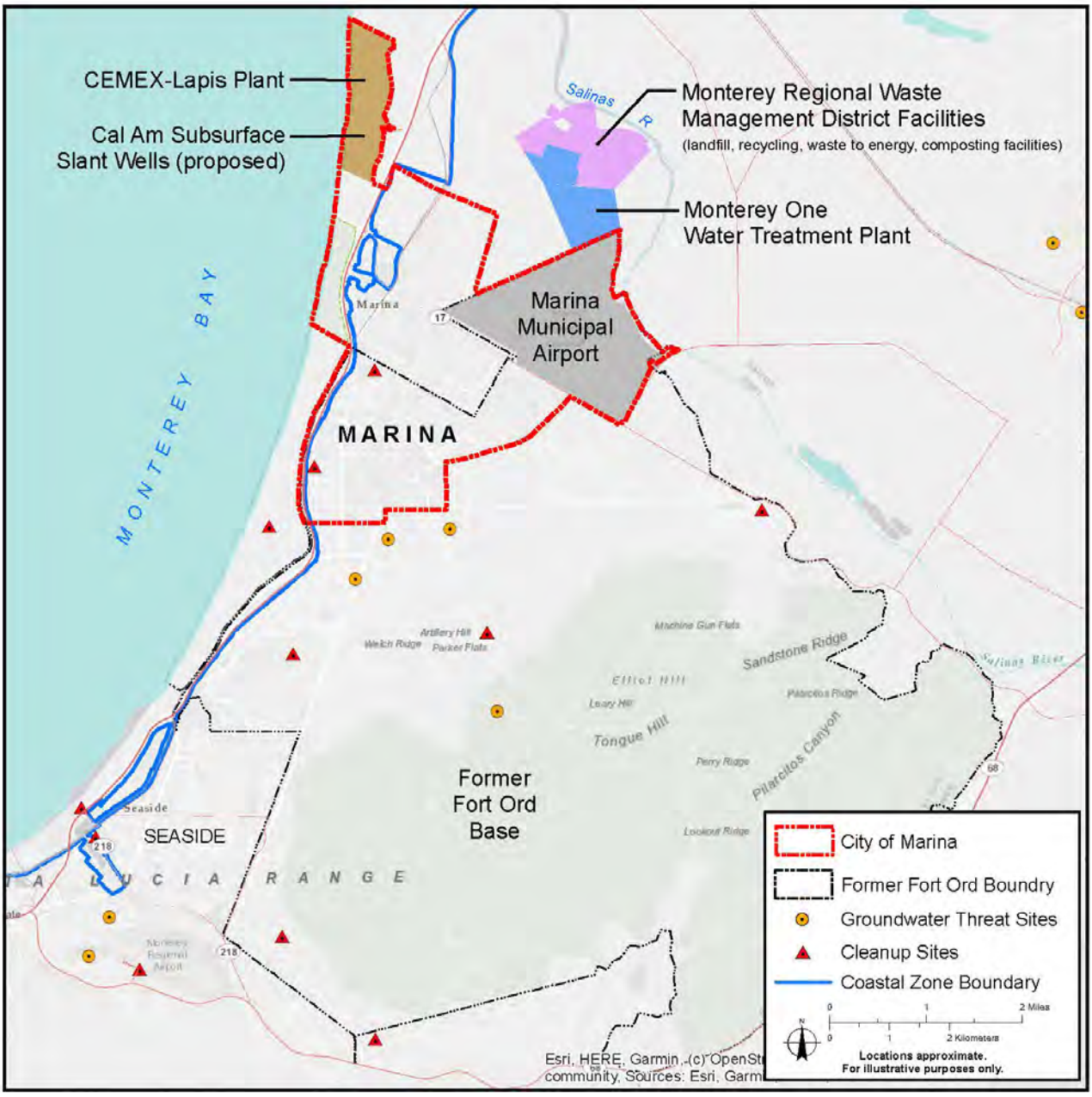
Simulated Water Level Changes at Vernal Ponds Due to Seasonal Effects and Proposed Slant Well Pumping

Pond Number	Pond Name	Dry/Drought Conditions		Wet Conditions	
		No-Pumping Groundwater Elevation	Drawdown, Pumping 15.5 MGD	No-Pumping Groundwater Elevation	Drawdown, Pumping 15.5 MGD
		<---------- Feet ---------->			
1	Robin Drive Pond	-2.08	0.80	2.70	0.80
2	Locke-Paddon Park	0.29	1.09	6.88	1.09
3	Marina Landing Pond	-0.01	1.50	5.93	1.49
4	Marina Coast Water District Pond	-0.08	1.15	2.89	1.15
5	Marina State Beach Pond	-0.48	0.84	2.84	0.84
6	Armstrong Ranch Ponds	-2.8	4.05	3.42	4.05
7	Lake Drive Pond	-2.47	0.79	2.72	0.79

MGD = million gallons per day

Figure 1. Location of Vernal Ponds Relative to Slant Wells, and Estimated Drawdown, Slant Wells Pumping 15.5 Million Gallons Per Day (MGD)

Th7a & 8a - Revised Exhibit 7



Th 7a & 8a – Revised Exhibit 9a