

Responses to Comments on the Draft IS-ND

This section includes comments received during the circulation of the Draft Initial Study – Negative Declaration (IS-ND) prepared for the Desalinization Ordinance Update Project (project).

The IS-ND was circulated for a 30-day public review period that began on March 7, 2022 and ended on April 6, 2022. The County of Monterey received two comment letters on the Draft IS-ND. The commenters and the page number on which each commenter’s letter appear are listed below.

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The comment letters and responses follow. The comment letters have been numbered sequentially and each separate issue raised by the commenter has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response 1.1, for example, indicates that the response is for the first issue raised in comment Letter 1).

No revisions to the Draft IS-ND were found to be necessary as a result of the comments. Additionally, recirculation is found to be unnecessary.

Letter 1

COMMENTER: The Ag Land Trust

DATE: April 6, 2022

Response 1.1

The commenter states their support for the existing desalinization ordinance and for a publicly owned, regional desalinization plant that would provide inexpensive water to farmers, residents, and landowners around the Monterey Bay. The commenter requests that the County of Monterey complete an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA) to fully evaluate the potentially significant adverse environmental effects that would result from the proposed project. The commenter claims that the project would have the potential to significantly degrade the environment, including aquifers and public trust resources; would be inconsistent with long term environmental goals established by the North County Local Coastal Plan; would have a significant cumulative impact on the environment; would adversely affect low-income communities by denying those communities access to publicly provided, less expensive water resources; would induce population growth in the County; and would result in impacts to farmland, transportation, and biological resources in the County.

As stated in Section II of the Draft IS-ND, the project consists of a textual revision to Monterey County Code (MCC) Section 10.72.030 and would allow public and private ownership and operation of water desalinization treatment facilities within the County. As such, the project would only expand who could apply for and receive permits under the existing Section 10.72.030. The project would not influence the design or location of future desalinization facilities in the County or allow any desalinization project to advance; therefore, the project would have no impact to the environment. Further, the project would allow for private ownership of desalinization plants, but the project would not alter existing water ownership or modify existing water rights. Because the project would not result in physical impacts to the environment, the project would not induce population growth or impact farmland, transportation, biological resources, or result in cumulative impacts. In addition, contrary to the commenter's assertions, the project would not increase overdrafting of groundwater aquifers or hinder compliance with North County Local Coastal Plan goals related to seawater intrusion. For potential impacts to low-income communities, please refer to Response 1.7.

Preparation of an EIR is required when a lead agency (for this project, Monterey County) determines that a proposed project would have one or more significant impacts on the environment based on completion of an Initial Study (*CEQA Guidelines* Section 15060). As described throughout Section VI of the Draft IS-ND, the project would not result in any impacts to the environmental resource areas listed in Appendix G of the *CEQA Guidelines*. Therefore, preparation of an EIR is not warranted for the proposed ordinance revision.

The number or locations of future desalinization treatment facilities, whether publicly or privately sponsored, that may be proposed within the County pursuant to the revised ordinance is not possible to determine, because the County has received no applications for new desalinization plants. The commenter is correct that the "proposed ordinance amendment would allow a currently unknown number of desalination project applications". Consistent with this assertion, details of any future desalinization treatment plant that may be proposed under the revised ordinance are

speculative, and project-specific environmental impacts cannot feasibly be determined at this time. However, future desalinization projects, whether publicly or privately sponsored, would continue to be subject to project-specific environmental review under CEQA. In project-specific review, a proposed desalinization treatment facility would be evaluated under CEQA to determine if that specific project would have significant adverse impacts to the environment.

The commenter incorrectly states that “private desalination plants [would] be allowed unfettered and without appropriate environmental review” as a result of the proposed project. The proposed ordinance modification would allow both public and private ownership of desalinization plants; however, the project would not modify the existing permits and approvals required for the construction and operation of desalinization plants in the County. The County’s current process includes a review of the project application for compliance with the Monterey County Code and applicable regulations, and project-specific CEQA review for each proposed application. This process would not be modified by the proposed project.

Lastly, the commenter incorrectly asserts that the proposed ordinance modification would allow private developers to “take advantage of ‘brackish water’ that may exist in isolated areas of the County” and “directly encourages wrongful takings of potable groundwater resources from senior, overlying water rights holders.” There is no evidence supporting the commenter’s claim, as the project would not modify any existing surface water or groundwater rights in the County. The project is limited to the proposed ordinance modification, which would allow private ownership in addition to public ownership of desalinization plants. As described previously, details of any future desalinization treatment plant that may be proposed under the revised ordinance are speculative, and project-specific environmental impacts cannot feasibly be determined at this time.

Response 1.2

The commenter asserts that the project would impact the 180/400 Foot Aquifer, which extends offshore and is partially located underneath the Monterey Bay. The commenter summarizes relevant California case law regarding the ownership and use of potable groundwater rights and claims that the project would result in saltwater contamination of the 180/400 Foot Aquifer. The commenter asserts that this issue must be addressed in an EIR.

As described above in Response 1.1 and stated in Section II of the Draft IS-ND, the project would revise the County’s desalinization ordinance to allow public or private ownership and operation of water desalinization treatment facilities within the County; no modification to existing water ownership or water rights would occur as a result of the project. Therefore, the project would not result in impacts to or groundwater extraction from the 180/400 Foot Aquifer, and an EIR is not required. As described in Response 1.1, future desalinization projects, regardless of the owner, would require project-specific CEQA review, once an application is submitted to the County. The commenter notes that it would be illegal to intentionally contaminate a potable aquifer; through the County’s application review process and project-specific CEQA review, such issues would be identified and disclosed, with corrective actions required pursuant to state law. Additionally, it is speculative to assume that future projects would violate water quality laws and regulations.

Response 1.3

The commenter summarizes state and regional policies and regulations that apply to the Salinas Valley Groundwater Basin and asserts that the County is obligated to evaluate potential project impacts to the Salinas Valley Groundwater Basin and existing water rights of landowners in the

County. The commenter states that the County has a fiduciary responsibility to protect the water rights of landowners whose property may be used for groundwater conservation projects.

As described above in Response 1.1 and stated in Section II of the Draft IS-ND, the project would revise the County's desalinization ordinance to allow public or private ownership and operation of water desalinization treatment facilities within the county; no modification to existing water ownership or water rights would occur as a result of the project. Water rights and financial responsibilities of various parties are outside the scope of required CEQA review (please refer to Section 15131 of the *CEQA Guidelines*). Therefore, the project would not result in impacts to or groundwater extraction from the Salinas Valley Groundwater Basin, and an EIR is not required.

Additionally, the commenter refers to a "purple valve" water conservation project," which is not the proposed project. It is unclear what project the commenter is referring to. As such, no further response is required.

Response 1.4

The commenter asserts that the project would result in impacts to coastal waters and groundwater resources, which conflicts with the County's obligation to maintain these resources for the protection of human health pursuant to the California Coastal Act and the County's Local Coastal Plans. The commenter asserts that the IS-ND fails to address this issue and that it must be evaluated in an EIR.

As described above in Response 1.1 and stated in Section II of the Draft IS-ND, the project would revise the County's desalinization ordinance to allow public or private ownership and operation of water desalinization treatment facilities within the county; no modification to existing water ownership or water rights would occur as a result of the project. Therefore, the project would not impact coastal waters or groundwater resources. Future desalinization projects, whether publicly or privately sponsored, would continue to be subject to project-specific environmental review under CEQA. In project-specific review, a proposed desalinization treatment facility would be evaluated to determine if that specific project would have significant adverse impacts to the environment, including impacts to groundwater and consistency with the County's existing Local Coastal Plans.

Because expanding the allowable types of operators to include private entities does not in and of itself result in an impact to the environment, an EIR is not required.

Response 1.5

The commenter cites a California Supreme Court case related to the State's supervisory control over waters of California, and reiterates their assertion that the project would result in significant and adverse impacts to the environment, which would prevent any party from acquiring the rights to appropriate navigable waters due to existing public trust case law. The commenter asserts that the Draft IS-ND fails to recognize significant and adverse impacts that would occur as a result of the project, and that the Draft IS-ND violates the *CEQA Guidelines* by delaying the review of significant impacts until a later time.

As described above in Response 1.1 and stated in Section II of the Draft IS-ND, the project would revise the County's desalinization ordinance to allow public or private ownership and operation of water desalinization treatment facilities within the county; no modification to existing water ownership or water rights would occur as a result of the project. Therefore, the project would not result in impacts to the environment or conflict with existing public trust case law. The commenter

does not clarify how the cited California Supreme Court case is relevant to the proposed project, as the project would not modify any existing water rights or result in direct impacts to waters of the State. The Draft IS-ND evaluates the proposed revision to the County's ordinance and concludes that no physical change to the environment would occur. Acknowledging that future project-specific review would be required does not defer the review of environmental impacts to a later time, but rather avoids speculation. The project would not result in significant and adverse impacts to the environment, and the IS-ND does not delay the review of significant impacts to a later time.

Response 1.6

The commenter asserts that the project would result the discharge of brine waste from desalinization treatment facilities, which would result in significant environmental impacts. The commenter summarizes policies and agreements regarding the Monterey Bay National Marine Sanctuary, and claims that the project would be inconsistent with the policies and agreements by not limiting waste discharges into the Monterey Bay. The commenter asserts that the discharge of wastes and the change in policy that would occur as a result of the project must be evaluated in an EIR.

As described above in Response 1.1 and stated in Section II of the Draft IS-ND, the project would revise the County's desalinization ordinance to allow public or private ownership and operation of water desalinization treatment facilities within the county; it would not facilitate any specific desalination project(s) nor "encourage a proliferation" of desalination plants. Because the number or locations of future desalinization treatment facilities is unknown, details of any future desalinization treatment plant that may be proposed by private entities, as would be allowable under the revised ordinance, are speculative. Project-specific environmental impacts to the Monterey Bay or the Monterey Bay National Marine Sanctuary cannot be determined at this time. Future desalinization projects, whether publicly or privately sponsored, would continue to be subject to project-specific environmental review under CEQA, including consideration of whether the specific project would have significant adverse impacts to the environment, including impacts related to waste discharge and consistency with regulations related to the Monterey Bay National Marine Sanctuary, if applicable. Because the project would not result in the discharge of brine waste, consideration of the impacts of such an action in an EIR are not required.

Response 1.7

The commenter asserts that the project would unfairly impact economically disadvantaged communities in Monterey County. The commenter alleges that privately owned water systems result in adverse economic impacts, and that because the project would allow privately owned desalinization treatment facilities, the project would result in higher water bills which would disproportionately impact these disadvantaged communities. The commenter asserts that this must be evaluated and mitigated in an EIR.

The commenter does not provide evidence to support the assertion that private desalination facilities would increase water prices nor disproportionately impact any particular community. As stated in Section II of the Draft IS-ND: the proposed project would not allow or advance any desalinization projects in the county; there are no active applications for a desalinization treatment facility operation permit from the County of Monterey; and the location, design, and other details of future desalinization projects are unknown. As such, the extent to which potential future privately held desalination facilities may impact water rates is entirely speculative. Further, pursuant to

Section 15131 of the *CEQA Guidelines*, economic and social effects are not considered to be significant effects on the environment, unless they are tied to physical changes. As described above in Response 1.1 and stated in Section II of the Draft IS-ND, the project would not result in a physical change to the environment. As such, any adverse economic impacts of the proposed ordinance would not be considered a significant environmental effect.

Response 1.8

The commenter provides a map showing their holdings and summarizes the intent of these holdings, which include preserving and protecting water supplies and rights of those lands.

The comment regarding the Ag Land Trust holdings is noted. Because the comment does not pertain to the adequacy of the IS-ND or CEQA review process, no further response is required.

Response 1.9

The commenter requests that the County prepare an EIR for the proposed project, as the commenter alleges the Draft IS-ND is legally inadequate.

Refer to Responses 1.1 through 1.8, above. As evidenced therein, an EIR is not required for the proposed project.

Letter 2

COMMENTER: Margaret-Anne Coppernoll, PhD

DATE: April 6, 2022

Response 2.1

The commenter expresses their opposition to the proposed project and requests the preparation of an EIR. The commenter states their support for the position of The Ag Land Trust and asserts that by allowing private desalinization treatment facility operators in the county, the project would impact groundwater resources and be inconsistent the county's Local Coastal Plans.

This comment is acknowledged and will be presented for review by the County's decision-making body. In terms of potential impacts to groundwater resources and consistency with the County's Local Coastal Plans, please refer to Response 1.1. As discussed therein, the project would not result in impacts to groundwater and would not conflict with the Local Coastal Plans.

Response 2.2

The commenter refers to the comment letter submitted by The Ag Land Trust (Letter 1) and asserts that the proposed project must be evaluated in an EIR.

Please refer to Response 1.1 through 1.9 for responses to specific issues raised by the Ag Land Trust letter. As discussed therein, the project would not result in any significant impacts to the environmental resource areas listed in Appendix G of the *CEQA Guidelines*. Therefore, preparation of an EIR is not warranted for the proposed ordinance revision.