

County of Monterey

Monterey County Government Center
168 W. Alisal St., 1st Floor
Salinas, CA 93901



Meeting Agenda - Final-Revised

Final Revised as of 4:52 P.M.

Tuesday, October 8, 2024

10:30 AM

Joint Meeting of the Board of Supervisors and Board of Supervisors of the Monterey County Water Resources Agency

Chair, Glenn Church, District 2
Vice Chair, Chris Lopez, District 3
Supervisor Wendy Root Askew, District 4
Supervisor Mary L. Adams, District 5
Supervisor Luis A. Alejo, District 1

Participation in meetings

While the Board chambers remain open, members of the public may participate in Board meetings in 2 ways:

1. You may attend the meeting in person; or,
2. You may observe the live stream of the Board of Supervisors meetings at <https://monterey.legistar.com/Calendar.aspx>, <http://www.mgtvonline.com/>, www.youtube.com/c/MontereyCountyTV or <https://www.facebook.com/MontereyCoInfo/>

If you choose not to attend the Board of Supervisors meeting but desire to make general public comment, or comment on a specific item on the agenda, you may do so in 2 ways:

- a. submit your comment via email by 5:00 p.m. on the Monday prior to the Board meeting. Please submit your comment to the Clerk of the Board at cob@co.monterey.ca.us. In an effort to assist the Clerk in identifying the agenda item relating to your public comment please indicate in the Subject Line, the meeting body (i.e. Board of Supervisors Agenda) and item number (i.e. Item No. 10). Your comment will be placed into the record at the Board meeting.
- b. you may participate through ZOOM. For ZOOM participation please join by computer audio at: <https://montereycty.zoom.us/j/224397747>

OR to participate by phone call any of these numbers below:

- +1 669 900 6833 US (San Jose)
- +1 346 248 7799 US (Houston)
- +1 312 626 6799 US (Chicago)
- +1 929 205 6099 US (New York)
- +1 253 215 8782 US
- +1 301 715 8592 US

Enter this Meeting ID number: 224397747 when prompted. Please note there is no Participant Code, you will just hit # again after the recording prompts you.

You will be placed in the meeting as an attendee; when you are ready to make a public comment if joined by computer audio please Raise your Hand; and by phone please push *9 on your keypad.

PLEASE NOTE: IF ALL BOARD MEMBERS ARE PRESENT IN PERSON, PUBLIC PARTICIPATION BY ZOOM IS FOR CONVENIENCE ONLY AND IS NOT REQUIRED BY LAW. IF THE ZOOM FEED IS LOST FOR ANY REASON, THE MEETING MAY BE PAUSED WHILE A FIX IS ATTEMPTED BUT THE MEETING MAY CONTINUE AT THE DISCRETION

OF THE CHAIRPERSON.

Participación en reuniones

Mientras las cámaras de la Junta permanezcan abiertas, los miembros del público pueden participar en las reuniones de la Junta de 2 maneras:

1. Podrá asistir personalmente a la reunión; o,
2. Puede observar la transmisión en vivo de las reuniones de la Junta de Supervisores en <https://monterey.legistar.com/Calendar.aspx>, <http://www.mgtvonline.com/>, www.youtube.com/c/MontereyCountyTV o <https://www.facebook.com/MontereyCoInfo/>

Si elige no asistir a la reunión de la Junta de Supervisores pero desea hacer comentarios del público en general o comentar un tema específico de la agenda, puede hacerlo de 2 maneras:

a. envíe su comentario por correo electrónico antes de las 5:00 p.m. el lunes anterior a la reunión de la Junta. Envíe su comentario al Secretario de la Junta a cob@co.monterey.ca.us. En un esfuerzo por ayudar al secretario a identificar el tema de la agenda relacionado con su comentario público, indique en la línea de asunto el cuerpo de la reunión (es decir, la agenda de la Junta de Supervisores) y el número de artículo (es decir, el artículo n.º 10). Su comentario se colocará en el registro en la reunión de la Junta.

b. puedes participar a través de ZOOM. Para participar en ZOOM, únase por audio de computadora en: <https://montereycty.zoom.us/j/224397747>

O para participar por teléfono llame a cualquiera de estos números a continuación:

- +1 669 900 6833 EE. UU. (San José)
- +1 346 248 7799 EE. UU. (Houston)
- +1 312 626 6799 EE. UU. (Chicago)
- +1 929 205 6099 EE. UU. (Nueva York)
- +1 253 215 8782 EE. UU.
- +1 301 715 8592 EE. UU.

Ingrese este número de ID de reunión: 224397747 cuando se le solicite. Tenga en cuenta que no hay un código de participante, simplemente presione # nuevamente después de que la grabación lo solicite.

Se le colocará en la reunión como asistente; cuando esté listo para hacer un comentario público si se une al audio de la computadora, levante la mano; y por teléfono, presione *9 en su teclado.

TENGA EN CUENTA: SI TODOS LOS MIEMBROS DE LA JUNTA ESTÁN PRESENTES EN PERSONA, LA PARTICIPACIÓN DEL PÚBLICO POR ZOOM ES ÚNICAMENTE POR

CONVENIENCIA Y NO ES REQUERIDA POR LA LEY. SI LA ALIMENTACIÓN DE ZOOM SE PIERDE POR CUALQUIER MOTIVO, LA REUNIÓN PUEDE PAUSARSE MIENTRAS SE INTENTA UNA SOLUCIÓN, PERO LA REUNIÓN PUEDE CONTINUAR A DISCRECIÓN DEL PRESIDENTE.

The Board of Supervisors welcomes you to its meetings, which are regularly scheduled each Tuesday. Your interest is encouraged and appreciated. Meetings are held in the Board Chambers located on the first floor of the Monterey County Government Center, 168 W. Alisal St., Salinas, CA 93901.

As a courtesy to others, please turn off all cell phones and pagers prior to entering the Board Chambers.

ALTERNATE AGENDA FORMATS: If requested, the agenda shall be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 USC Sec. 12132), and the federal rules and regulations adopted in implementation thereof. Individuals with a disability requiring a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may make these requests to the Clerk of the Board Office.

CEREMONIAL/APPOINTMENTS/OTHER BOARD MATTERS: These items may include significant financial and administrative actions, and items of special interest, usually approved by majority vote for each program. The regular calendar also includes "Scheduled Items," which are noticed hearings and public hearings.

CONSENT CALENDAR: These matters include routine financial and administrative actions, appear in the supplemental section by program areas, and are usually approved by majority vote.

TO ADDRESS THE BOARD ON A MATTER ON THE AGENDA: Walk to the podium and wait for recognition by the Chair. In order that all interested parties have an opportunity to speak, please be brief and limit your comments to the specific subject under discussion. Time limitations shall be at the discretion of the Chair, with equal time allocated to opposing sides of an issue insofar as possible. Allocated time may not be reserved or granted to others, except as permitted by the Chair. On matters for which a public hearing is required, please note that a court challenge to the Board's action may be limited to only those issues raised at the public hearing or in correspondence delivered to the Board at or before the public hearing.

TO ADDRESS THE BOARD DURING PUBLIC COMMENT: Members of the public may address comments to the Board concerning each agenda item and may comment when the Chair calls for general public comment for items that are not on the day's agenda. The timing of public comment shall be at the discretion of the Chair.

DOCUMENT DISTRIBUTION: Documents related to agenda items that are distributed to the Board less than 72 hours prior to the meeting shall be available for public inspection at the Clerk of the Board Office, 168 W. Alisal Street, 1st Floor, Salinas, CA. Documents distributed to the Board at the meeting by County staff will be available at the meeting; documents distributed to the Board by members of the public shall be made available after the meeting.

INTERPRETATION SERVICE POLICY: The Monterey County Board of Supervisors invites and encourages the participation of Monterey County residents at its meetings. If you require the assistance of an interpreter, please contact the Clerk of the Board located in the Monterey County Government Center, 168 W. Alisal St., Salinas - or by phone at (831) 755-5066. The Clerk will make every effort to accommodate requests for interpreter assistance. Requests should be made as soon as possible, and at a minimum 24 hours in advance of any meeting of the Board of Supervisors.

La Cámara de Supervisores del Condado de Monterey invita y apoya la participación de los residentes del Condado de Monterey en sus reuniones. Si usted requiere la asistencia de un interprete, por favor comuníquese con la oficina de la Asistente de la Cámara de Supervisores localizada en el Centro de Gobierno del Condado de Monterey, (Monterey County Government Center), 168 W. Alisal, Salinas – o por teléfono al (831) 755-5066. La Asistente hará el esfuerzo para acomodar los pedidos de asistencia de un interprete. Los pedidos se deberán hacer lo mas pronto posible, y a lo mínimo 24 horas de anticipo de cualquier reunión de la Cámara de Supervisores.

All documents submitted by the public must have no less than ten (10) copies.

The Clerk of the Board of Supervisors must receive all materials for the agenda packet by noon on the Tuesday one week prior to the Tuesday Board meeting.

Any agenda related writings or documents distributed to members of the County of Monterey Board of Supervisors regarding any open session item on this agenda will be made available for public inspection in the Clerk of the Board's Office located at 168 W. Alisal St., 1st Floor, Salinas, California. during normal business hours and in the Board Chambers on the day of the Board Meeting, pursuant to Government Code §54957.5

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<https://monterey.legistar.com/Default.aspx>

If assistance is needed please contact our office at the following email: cob@co.monterey.ca.us

Regístrese para recibir alertas sobre artículos que le pueden interesar para mantenerse informado y actualizado sobre la Junta de Supervisores del Condado de Monterey

Para crear una alerta, regístrese y siga la Guía del usuario para crear alertas para calendarios, detalles de reuniones, elementos de agenda y detalles de elementos en el siguiente enlace:

<https://monterey.legistar.com/Default.aspx>

Si necesita ayuda, comuníquese con nuestra oficina al siguiente correo electrónico: cob@co.monterey.ca.us

NOTE: All agenda titles related to numbered agenda items are live web links. Click on the title to be directed to the corresponding Board Report.

PUBLIC COMMENT: Members of the public may address comments to the Board concerning each agenda item. The timing of public comment shall be at the discretion of the Chair.

10:30 A.M. - Call to Order

Roll Call

Additions and Corrections by Clerk

The Clerk of the Board will announce agenda corrections and proposed additions, which may be acted on by the Board as provided in Sections 54954.2 of the California Government Code.

General Public Comments

10:30 A.M. - Scheduled Matters

1. Consider sending letters to the State Water Resources Control Board Division of Water Rights and the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency (“Shandon”) opposing the applications filed by Shandon to appropriate water from the Nacimiento and Salinas Rivers.

Attachments:

[Board Report](#)

[Signed WRABOS_BOS letter 052521](#)

REMOVED VIA SUPPLEMENTAL - Letter to SWRCB re.

Shandon-San Juan Water District Applications_10.8.24 (final)

REMOVED VIA SUPPLEMENTAL - Letter to SWRCB re.

Shandon-San Juan Water District Applications_10.8.24

[ADDED VIA SUPPLEMENTAL - Letter to SWRCB re.](#)

[Shandon-San Juan Water District Applications_10.8.24 \(final\)](#)

[ADDED VIA ADDENDA Letter to Shandon-San Juan Water District_10.8.24 \(final\)](#)

Addenda/Supplemental

- 2.

Removed Two Incorrect Attachments and Attached Letter to Shandon San Juan Water District Due to Clerical Inadvertance, the attachment titled "Letter to SWRCB" was removed. That attachment has been re-added.

Adjournment



County of Monterey

Item No.1

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRAG 24-155

October 08, 2024

Introduced: 10/3/2024

Current Status: Agenda Ready

Version: 1

Matter Type: WR General Agenda

Consider sending letters to the State Water Resources Control Board Division of Water Rights and the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency (“Shandon”) opposing the applications filed by Shandon to appropriate water from the Nacimiento and Salinas Rivers.

RECOMMENDATION:

It is recommended that the County of Monterey Board of Supervisors and the Monterey County Water Resources Agency Board of Supervisors:

Consider sending letters to the State Water Resources Control Board Division of Water Rights and the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency (“Shandon”) opposing the applications filed by Shandon to appropriate water from the Nacimiento and Salinas Rivers.

SUMMARY/DISCUSSION:

Under California law, the State Water Resources Control Board (“SWRCB”) regulates all post-1914 appropriative water rights. This process includes the issuance of new water rights, and the licensing and monitoring of water put to beneficial use.

The predecessor to the Monterey County Water Resources Agency (“MCWRA”) elected to construct Nacimiento Reservoir and San Antonio Reservoir to meet the existing and future demands of the Salinas Valley, and filed water right applications for each (in 1954 and 1955, respectively). Shortly after the two reservoirs were constructed, the two water rights permits were fully licensed by the State of California. An additional water rights application was filed in 1996 for additional storage at Nacimiento Reservoir. A summary of the licenses and permits related to the Nacimiento Reservoir, held by the MCWRA is as follows:

- License 7543 for Nacimiento Reservoir was filed in 1954 and issued on November 4, 1965. It includes a collection to storage of 350,000 acre-feet per year with a maximum withdrawal of 180,000 acre-feet per year.
- Permit 21089 for Nacimiento Reservoir was filed in 1996 and issued on March 23, 2001. This was based on a new area capacity survey of the existing reservoir and did not include any new construction. It includes a collection to storage of 27,900 acre-feet per year and does not have a withdrawal limit, which is consistent with other Permits.
- The maximum capacity of the Nacimiento Reservoir is 377,900 acre-feet which is equal to the amount of water authorized to be collected to storage through License 7543 and Permit

21089.

Around 2021, Shandon, located in San Luis Obispo County, filed two water right applications with the SWRCB for appropriation of water at Santa Margarita Lake/Salinas Dam on the Salinas River and at the Nacimiento Reservoir. Both applications propose to appropriate 14,000 acre-feet of water through both direct diversion and storage in the existing reservoirs. MCWRA owns and operates the Nacimiento Reservoir and San Luis Obispo County owns and operates the Nacimiento Water Project Pipeline. The United States Army Corps of Engineers owns the Salinas Dam and it is operated by the County of San Luis Obispo. The water right is held by the United States Army Corps of Engineers and the City of San Luis Obispo.

On May 25, 2021, the Board of Supervisors of the County of Monterey and MCWRA sent the SWRCB a letter opposing Shandon's applications, and explicitly stating MCWRA does not consent to Shandon's proposed use of Nacimiento Reservoir. (Attachment 1)

On July 2, 2024, Shandon submitted materials to the SWRCB to update its applications. The amended applications (A033089 and A033090) seek water rights to divert and use up to 14,000 acre-feet of water per year from the Nacimiento and Salinas Rivers. The amended applications propose to use the water to be appropriated for an underground storage project in the Paso Robles Subbasin in San Luis Obispo County.

Since the two water right applications were first filed several years ago, staff of the SWRCB's Division of Water Rights has taken the position that they are deficient because they do not demonstrate that Shandon has access to the land and physical facilities needed to implement the projects contemplated in the applications, as required by SWRCB regulations. Shandon's materials submitted to the SWRCB with the amended applications attempt to address this issue. Specifically, the materials submitted to the SWRCB include a letter dated July 2, 2024, to the Shandon's Board of Directors from its legal counsel under the subject line "Authority to Access Nacimiento Reservoir and Pipeline." The letter acknowledges that MCWRA has indicated that it is not willing to grant Shandon access rights to Nacimiento Reservoir. The letter asserts, however, that Shandon has authority under its enabling act and Code of Civil Procedure section 1240.510 "to condemn property even if it is already dedicated to a public use."

Nacimiento Reservoir and its associated water diversion and conveyance facilities, and related public works, are critically important to the citizens of Monterey County. The subject land and facilities provide essential flood control benefits and beneficial uses of water for irrigation, environmental and domestic use. Under the present facts and circumstances, Shandon simply cannot satisfy the legal requirements for condemnation of facilities already dedicated to a public use.

The unlikelihood of legal success and the fact that the entirety of storage space available in Nacimiento Reservoir and use of its associated public works is dedicated to the quarter-million people living in communities downstream of the confluence of the Salinas River who have paid for its construction, maintenance, and operation for over 65 years, makes the applications by Shandon more than a mere distraction, but a potentially significant waste of public resources. While we appreciate the challenges the Sustainable Groundwater Management Act has presented to many regions throughout the state,

including in Monterey County, it is inappropriate for Shandon to place new burdens on others that have in no way contributed to the problems it now faces.

Staff recommends that the Board of Supervisors of the County of Monterey and MCWRA send a letter to the SWRCB in opposition to Shandon's updated applications and respectively request that the applications be rejected. (Attachment 2). Staff also recommends the Boards send a letter to Shandon reiterating MCWRA's opposition. (Attachment 3).

OTHER AGENCY INVOLVEMENT:

San Luis Obispo County Flood Control and Water Conservation District, State of California Division of Water Rights, County Counsel's Office

FINANCING:

None identified at this time.

Prepared and approved by: _____
Ara Azhderian, General Manager (831)755-4860

Attachments:

1. Board of Supervisor letter to SWRCB, dated May 25, 2021
2. Draft letter to SWRCB
3. Draft letter to Shandon



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRAG 24-155

October 08, 2024

Introduced: 10/3/2024

Current Status: Agenda Ready

Version: 1

Matter Type: WR General Agenda

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Nacimiento Reservoir and its associated water diversion and conveyance facilities, and related public works, are critically important to the citizens of Monterey County. The subject land and facilities provide essential flood control benefits and beneficial uses of water for irrigation, environmental and domestic use. Under the present facts and circumstances, Shandon simply cannot satisfy the legal requirements for condemnation of facilities already dedicated to a public use.

The unlikelihood of legal success and the fact that the entirety of storage space available in Nacimiento Reservoir and use of its associated public works is dedicated to the quarter-million people living in communities downstream of the confluence of the Salinas River who have paid for its construction, maintenance, and operation for over 65 years, makes the applications by Shandon more than a mere distraction, but a potentially significant waste of public resources. While we appreciate the challenges the Sustainable Groundwater Management Act has presented to many regions throughout the state,

Legistar File Number: WRAG 24-155

including in Monterey County, it is inappropriate for Shandon to place new burdens on others that have in no way contributed to the problems it now faces.

Staff recommends that the Board of Supervisors of the County of Monterey and MCWRA send a letter to the SWRCB in opposition to Shandon's updated applications and respectively request that the applications be rejected. (Attachment 2). Staff also recommends the Boards send a letter to Shandon reiterating MCWRA's opposition. (Attachment 3).

OTHER AGENCY INVOLVEMENT:

San Luis Obispo County Flood Control and Water Conservation District, State of California Division of Water Rights, County Counsel's Office

FINANCING:

None identified at this time.

DocuSigned by:

Ara Azhderian

Prepared and approved by:

1E182FFB49A2435

Ara Azhderian, General Manager (831)755-4860

Attachments:

1. Board of Supervisor letter to SWRCB, dated May 25, 2021
2. Draft letter to SWRCB
3. Draft letter to Shandon

MONTEREY COUNTY



BOARD OF SUPERVISORS

LUIS A. ALEJO, District 1
JOHN M. PHILLIPS, District 2
CHRIS M. LOPEZ, District 3
WENDY ROOT ASKEW, Chair, District 4
MARY ADAMS, Vice Chair, District 5

May 25, 2021

State Water Resources Control Board
Division of Water Rights
Attention: Mr. Erik Ekdahl, Deputy Director
P.O. Box 2000
Sacramento, CA 95812-2000

Re: Opposition to Shandon-San Juan Water District's Applications to Appropriate Water A033189 and A033190

Dear Mr. Ekdahl,

On behalf of the County of Monterey and the Monterey County Water Resources Agency ("MCWRA"), I am submitting this letter of opposition to the two applications to appropriate water submitted to your agency by Shandon-San Juan Water District ("Shandon"). Monterey County and MCWRA have serious concerns with the two applications, do not believe Shandon will be able to adequately address the applications' deficiencies, and respectively request that these applications be rejected. Importantly, MCWRA owns and operates Nacimiento Reservoir and does not consent to Shandon's proposed use of Nacimiento Reservoir. Also, MCWRA fully utilizes its water rights (License 7543 and Permit 21089) for Nacimiento Reservoir and intends to continue this use. Lastly, portions of the Salinas Valley Groundwater Basin are in critical overdraft and increased diversions on the Nacimiento and Salinas Rivers impact senior water right holders and riparian users.

Sincerely,

Chair Wendy Root Askew
Board of Supervisors of the County of Monterey
Board of Supervisors of the Monterey County Water Resources Agency

Cc: Erica Rhyne-Christensen, SWRCB
Shelby Witherby, SWRCB



County of Monterey

Board of Supervisors

Glenn Church, Chair, District 2
Chris M. Lopez, Vice Chair, District 3
Wendy Root Askew, District 4
Mary L. Adams, District 5
Luis A. Alejo, District 1

Clerk of the Board
168 West Alisal St. 1st Floor
Salinas, CA 93901
831 755 5066
cob@countyofmonterey.gov

October 8, 2024

VIA E-MAIL AND U.S. MAIL

State Water Resources Control Board
Division of Water Rights
Attn: Erik Ekdahl, Deputy Director
P.O. Box 2000
Sacramento, CA 95812-2000
Erik.Ekdahl@waterboards.ca.gov

Re: Opposition to Shandon-San Juan Water District Amended Applications to
Appropriate Water A033189 and A033190

Dear Mr. Ekdahl,

It has come to the attention of the County of Monterey ("County") and the Monterey County Water Resources Agency ("MCWRA") that the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency ("Shandon") recently filed with the State Water Resources Control Board ("SWRCB") amended water rights applications A033189 and A033190 to appropriate water from the Nacimiento and Salinas Rivers. Materials submitted with the two applications indicate that Shandon may be contemplating the commencement of an action against MCWRA to condemn rights of access to Nacimiento Reservoir.

On behalf of the County and MCWRA, I am submitting this letter to reiterate the County and MCWRA's opposition to Shandon's applications, as expressed in our letter of May 25, 2021. The County and MCWRA have serious concerns with the two applications, and do not believe Shandon adequately addresses the applications' deficiencies. Importantly, MCWRA owns and operates Nacimiento Reservoir and does not consent to Shandon's proposed use of Nacimiento Reservoir. Also, MCWRA fully utilizes its water rights (License 7543 and Permit 21089) for Nacimiento Reservoir and intends to continue this use for the benefit of more than a quarter-million people living in communities downstream of the confluence of the Salinas River. Lastly, portions of the Salinas Valley Groundwater Basin are in critical overdraft and increased diversions on the Nacimiento and the Salinas River will impact senior water right holders and riparian users.

Additionally, it is the County and MCWRA's firm position that Shandon has no ability to condemn rights to use the land and facilities described above. Nacimiento Reservoir and its associated water diversion and conveyance facilities, and related public works, are critically important to the citizens of Monterey County. The subject land and facilities provide essential flood control benefits and beneficial uses of water for irrigation, environmental and domestic use. Under the present facts and circumstances Shandon simply cannot satisfy the legal requirements for condemnation of facilities already dedicated to a public use. (See Code Civ. Proc. §§ 1240.510, 1240.610; *San Bernardino County Flood Control Dist. v. Superior Court* (1969) 269 Cal.App.2d 514, 520, 523-525 [court finds water district could not condemn beds and banks of watercourses for spreading and storing waters of the watercourses because the use was incompatible with and not "more necessary" than a flood control district's flood control project to line the watercourses with concrete].) Therefore, Shandon cannot satisfy the requirements of Cal. Code Regs., tit. 23, § 775 regarding the establishment of access rights in relation to a water right application.

The unlikelihood of legal success and the fact that the entirety of storage space available in Nacimiento Reservoir and use of its associated public works is utilized by a quarter-million people living in communities downstream of the confluence of the Salinas River who have paid for its construction, maintenance, and operation for over 65 years, makes the applications by Shandon more than a mere distraction, but a potentially significant waste of public resources. While we appreciate the challenges the Sustainable Groundwater Management Act has presented to many regions throughout California, including in Monterey County, it is inappropriate for Shandon to place new burdens on others that have in no way contributed to the problems it now faces.

In light of the foregoing, the County and MCWRA respectfully request that the Division of Water Rights decline to process amended applications A033189 and A033190. Please contact the undersigned if you wish to discuss this matter or if I can provide any additional information.

Sincerely,

Chair Glenn Church
Board of Supervisors of the County of Monterey
Board of Supervisors of the Monterey County
Water Resources Agency

cc: Ara Azhderian, Monterey County Water Resources Agency
Kelly Donlon, Monterey County Water Resources Agency
Kevin O'Brien, Downey Brand LLP
Willy Cunha, Shandon-San Juan Water District Board President
Greg Brown, State Water Resources Control Board
Mike Conway, State Water Resources Control Board



County of Monterey

Board of Supervisors

Glenn Church, Chair, District 2
Chris M. Lopez, Vice Chair, District 3
Wendy Root Askew, District 4
Mary L. Adams, District 5
Luis A. Alejo, District 1

Clerk of the Board
168 West Alisal St. 1st Floor
Salinas, CA 93901
831 755 5066
cob@countyofmonterey.gov

October 8, 2024

VIA E-MAIL AND U.S. MAIL

State Water Resources Control Board
Division of Water Rights
Attn: Erik Ekdahl, Deputy Director
P.O. Box 2000
Sacramento, CA 95812-2000
Erik.Ekdahl@waterboards.ca.gov

Re: Opposition to Shandon-San Juan Water District Amended Applications to
Appropriate Water A033189 and A033190

Dear Mr. Ekdahl,

It has come to the attention of the County of Monterey ("County") and the Monterey County Water Resources Agency ("MCWRA") that the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency ("Shandon") recently filed with the State Water Resources Control Board ("SWRCB") amended water rights applications A033189 and A033190 to appropriate water from the Nacimiento and Salinas Rivers. Materials submitted with the two applications indicate that Shandon may be contemplating the commencement of an action against MCWRA to condemn rights of access to Nacimiento Reservoir.

On behalf of the County and MCWRA, I am submitting this letter to reiterate the County and MCWRA's opposition to Shandon's applications, as expressed in our letter of May 25, 2021. The County and MCWRA have serious concerns with the two applications, and do not believe Shandon adequately addresses the applications' deficiencies. Importantly, MCWRA owns and operates Nacimiento Reservoir and does not consent to Shandon's proposed use of Nacimiento Reservoir. Also, MCWRA fully utilizes its water rights (License 7543 and Permit 21089) for Nacimiento Reservoir and intends to continue this use for the benefit of more than a quarter-million people living in communities downstream of the confluence of the Salinas River. Lastly, portions of the Salinas Valley Groundwater Basin are in critical overdraft and increased diversions on the Nacimiento and the Salinas River will impact senior water right holders and riparian users.

Additionally, it is the County and MCWRA's firm position that Shandon has no ability to condemn rights to use the land and facilities described above. Nacimiento Reservoir and its associated water diversion and conveyance facilities, and related public works, are critically important to the citizens of Monterey County. The subject land and facilities provide essential flood control benefits and beneficial uses of water for irrigation, environmental and domestic use. Under the present facts and circumstances Shandon simply cannot satisfy the legal requirements for condemnation of facilities already dedicated to a public use. (See Code Civ. Proc. §§ 1240.510, 1240.610; *San Bernardino County Flood Control Dist. v. Superior Court* (1969) 269 Cal.App.2d 514, 520, 523-525 [court finds water district could not condemn beds and banks of watercourses for spreading and storing waters of the watercourses because the use was incompatible with and not "more necessary" than a flood control district's flood control project to line the watercourses with concrete].) Therefore, Shandon cannot satisfy the requirements of Cal. Code Regs., tit. 23, § 775 regarding the establishment of access rights in relation to a water right application.

The unlikelihood of legal success and the fact that the entirety of storage space available in Nacimiento Reservoir and use of its associated public works is utilized by a quarter-million people living in communities downstream of the confluence of the Salinas River who have paid for its construction, maintenance, and operation for over 65 years, makes the applications by Shandon more than a mere distraction, but a potentially significant waste of public resources. While we appreciate the challenges the Sustainable Groundwater Management Act has presented to many regions throughout California, including in Monterey County, it is inappropriate for Shandon to place new burdens on others that have in no way contributed to the problems it now faces.

In light of the foregoing, the County and MCWRA respectfully request that the Division of Water Rights decline to process amended applications A033189 and A033190. Please contact the undersigned if you wish to discuss this matter or if I can provide any additional information.

Sincerely,

Chair Glenn Church
Board of Supervisors of the County of Monterey
Board of Supervisors of the Monterey County
Water Resources Agency

cc: Ara Azhderian, Monterey County Water Resources Agency
Kelly Donlon, Monterey County Water Resources Agency
Kevin O'Brien, Downey Brand LLP
Willy Cunha, Shandon-San Juan Water District Board President
Greg Brown, State Water Resources Control Board
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State Water Resources Control Board
Division of Water Rights
Attn: Erik Ekdahl, Deputy Director
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In light of the foregoing, the County and MCWRA respectfully request that the Division of Water Rights decline to process amended applications A033189 and A033190. Please contact the undersigned if you wish to discuss this matter or if I can provide any additional information.

Sincerely,

Chair Glenn Church
Board of Supervisors of the County of Monterey
Board of Supervisors of the Monterey County
Water Resources Agency

cc: Ara Azhderian, Monterey County Water Resources Agency
Kelly Donlon, Monterey County Water Resources Agency
Kevin O'Brien, Downey Brand LLP
Willy Cunha, Shandon-San Juan Water District Board President
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cob@countyofmonterey.gov

October 8, 2024

VIA E-MAIL AND U.S. MAIL

Board of Directors
Shandon-San Juan Water District
P.O. Box 150
Shandon, CA 93461
admin@ssjwd.org

Re: Shandon-San Juan Water District Amended Applications A033189 and A033190

Dear Board Members:

It has come to the attention of the Board of Supervisors of the County of Monterey ("County") and the Monterey County Water Resources Agency ("MCWRA") that the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency ("Shandon") recently filed with the State Water Resources Control Board ("SWRCB") amended water right applications A033189 and A033190 to appropriate water from the Nacimiento and Salinas Rivers. Materials submitted with the two applications indicate that Shandon may be contemplating the commencement of an action against MCWRA to condemn rights of access to Nacimiento Reservoir. As you know, MCWRA owns and operates Nacimiento Reservoir and associated public works for the benefit of more than a quarter-million people living in communities downstream of the confluence of the Salinas River.

More specifically, materials submitted to the SWRCB included a letter dated July 2, 2024, from Shandon's legal counsel under the subject line "Authority to Access Nacimiento Reservoir and Pipeline." This letter asserts that Shandon possesses legal authority under its enabling act and Code of Civil Procedure section 1240.510 "to condemn property even if it is already dedicated to a public use." (Letter from Alan F. Doud to Steve Sinton dated July 2, 2024, p. 2.) In a letter to the SWRCB dated July 24, 2024, the District stated that it will rely on Mr. Doud's letter "[i]f cooperation does not eventually result in permissive access." (See Chairman Willy Cunha, letter to State Water Resources Control Board, Division of Water Rights, July 24, 2024, at p. 3.). Finally, Resolution No. 24-002, adopted by Shandon Board of Directors on July 24, 2024, states:

The District will take all steps necessary to secure access to facilities needed to support and complete its recharge projects in the Paso Robles Groundwater subbasin and support and engage in other recharge projects that will help meet the goals and objectives of the Groundwater Sustainability Plan. (Resolution, p. 1)

The entirety of storage space available in Nacimiento Reservoir and use of its associated public works is utilized by a quarter-million people living in communities downstream of the confluence of the Salinas River who have paid for its construction, maintenance, and operation for over 65 years. While we appreciate the challenges the Sustainable Groundwater Management Act has presented to many regions throughout California, including in Monterey County, it is inappropriate for Shandon to place new burdens on others that have in no way contributed to the problems you now face.

For these reasons, the Board of Supervisors of the County and MCWRA will vigorously oppose any attempt by Shandon to condemn or otherwise acquire rights of access to Nacimiento Reservoir and associated public works. The water supply, environmental and flood control benefits provided by these public facilities are of critical importance to the citizens of Monterey County. The County and MCWRA are prepared, if necessary, to vigorously protect its interests in all appropriate administrative and judicial forums.

Please direct any reply correspondence to the undersigned with copies to Assistant County Counsel Kelly L. Donlon at DonlonKL@countyofmonterey.gov and MCWRA Special Counsel Kevin M. O'Brien at kobrien@downeybrand.com.

Sincerely,

Chair Glenn Church
Board of Supervisors of the County of Monterey
Board of Supervisors of the Monterey County
Water Resources Agency

cc: Ara Azhderian, Monterey County Water Resources Agency



County of Monterey

Item No.2

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: 24-663

October 08, 2024

Introduced: 10/4/2024

Current Status: Agenda Ready

Version: 1

Matter Type: General Agenda Item

Removed Two Incorrect Attachments and Attached Letter to Shandon San Juan Water District
Due to Clerical Inadvertance, the attachment titled "Letter to SWRCB" was removed. That attachment
has been re-added.



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: WRAG 24-155

October 08, 2024

Introduced: 10/3/2024

Current Status: Agenda Ready

Version: 1

Matter Type: WR General Agenda

Consider sending letters to the State Water Resources Control Board Division of Water Rights and the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency (“Shandon”) opposing the applications filed by Shandon to appropriate water from the Nacimiento and Salinas Rivers.

RECOMMENDATION:

It is recommended that the County of Monterey Board of Supervisors and the Monterey County Water Resources Agency Board of Supervisors:

Consider sending letters to the State Water Resources Control Board Division of Water Rights and the Shandon-San Juan Water District/Shandon-San Juan Groundwater Sustainability Agency (“Shandon”) opposing the applications filed by Shandon to appropriate water from the Nacimiento and Salinas Rivers.

SUMMARY/DISCUSSION:

Under California law, the State Water Resources Control Board (“SWRCB”) regulates all post-1914 appropriative water rights. This process includes the issuance of new water rights, and the licensing and monitoring of water put to beneficial use.

The predecessor to the Monterey County Water Resources Agency (“MCWRA”) elected to construct Nacimiento Reservoir and San Antonio Reservoir to meet the existing and future demands of the Salinas Valley, and filed water right applications for each (in 1954 and 1955, respectively). Shortly after the two reservoirs were constructed, the two water rights permits were fully licensed by the State of California. An additional water rights application was filed in 1996 for additional storage at Nacimiento Reservoir. A summary of the licenses and permits related to the Nacimiento Reservoir, held by the MCWRA is as follows:

- License 7543 for Nacimiento Reservoir was filed in 1954 and issued on November 4, 1965. It includes a collection to storage of 350,000 acre-feet per year with a maximum withdrawal of 180,000 acre-feet per year.
- Permit 21089 for Nacimiento Reservoir was filed in 1996 and issued on March 23, 2001. This was based on a new area capacity survey of the existing reservoir and did not include any new construction. It includes a collection to storage of 27,900 acre-feet per year and does not have a withdrawal limit, which is consistent with other Permits.
- The maximum capacity of the Nacimiento Reservoir is 377,900 acre-feet which is equal to the amount of water authorized to be collected to storage though License 7543 and Permit

21089.

Around 2021, Shandon, located in San Luis Obispo County, filed two water right applications with the SWRCB for appropriation of water at Santa Margarita Lake/Salinas Dam on the Salinas River and at the Nacimiento Reservoir. Both applications propose to appropriate 14,000 acre-feet of water through both direct diversion and storage in the existing reservoirs. MCWRA owns and operates the Nacimiento Reservoir and San Luis Obispo County owns and operates the Nacimiento Water Project Pipeline. The United States Army Corps of Engineers owns the Salinas Dam and it is operated by the County of San Luis Obispo. The water right is held by the United States Army Corps of Engineers and the City of San Luis Obispo.

On May 25, 2021, the Board of Supervisors of the County of Monterey and MCWRA sent the SWRCB a letter opposing Shandon's applications, and explicitly stating MCWRA does not consent to Shandon's proposed use of Nacimiento Reservoir. (Attachment 1)

On July 2, 2024, Shandon submitted materials to the SWRCB to update its applications. The amended applications (A033089 and A033090) seek water rights to divert and use up to 14,000 acre-feet of water per year from the Nacimiento and Salinas Rivers. The amended applications propose to use the water to be appropriated for an underground storage project in the Paso Robles Subbasin in San Luis Obispo County.

Since the two water right applications were first filed several years ago, staff of the SWRCB's Division of Water Rights has taken the position that they are deficient because they do not demonstrate that Shandon has access to the land and physical facilities needed to implement the projects contemplated in the applications, as required by SWRCB regulations. Shandon's materials submitted to the SWRCB with the amended applications attempt to address this issue. Specifically, the materials submitted to the SWRCB include a letter dated July 2, 2024, to the Shandon's Board of Directors from its legal counsel under the subject line "Authority to Access Nacimiento Reservoir and Pipeline." The letter acknowledges that MCWRA has indicated that it is not willing to grant Shandon access rights to Nacimiento Reservoir. The letter asserts, however, that Shandon has authority under its enabling act and Code of Civil Procedure section 1240.510 "to condemn property even if it is already dedicated to a public use."

Nacimiento Reservoir and its associated water diversion and conveyance facilities, and related public works, are critically important to the citizens of Monterey County. The subject land and facilities provide essential flood control benefits and beneficial uses of water for irrigation, environmental and domestic use. Under the present facts and circumstances, Shandon simply cannot satisfy the legal requirements for condemnation of facilities already dedicated to a public use.

The unlikelihood of legal success and the fact that the entirety of storage space available in Nacimiento Reservoir and use of its associated public works is dedicated to the quarter-million people living in communities downstream of the confluence of the Salinas River who have paid for its construction, maintenance, and operation for over 65 years, makes the applications by Shandon more than a mere distraction, but a potentially significant waste of public resources. While we appreciate the challenges the Sustainable Groundwater Management Act has presented to many regions throughout the state,

Legistar File Number: WRAG 24-155

including in Monterey County, it is inappropriate for Shandon to place new burdens on others that have in no way contributed to the problems it now faces.

Staff recommends that the Board of Supervisors of the County of Monterey and MCWRA send a letter to the SWRCB in opposition to Shandon's updated applications and respectively request that the applications be rejected. (Attachment 2). Staff also recommends the Boards send a letter to Shandon reiterating MCWRA's opposition. (Attachment 3).

OTHER AGENCY INVOLVEMENT:

San Luis Obispo County Flood Control and Water Conservation District, State of California Division of Water Rights, County Counsel's Office

FINANCING:

None identified at this time.

DocuSigned by:

Ara Azhderian

Prepared and approved by:

1E182FFB49A2435

Ara Azhderian, General Manager (831)755-4860

Attachments:

1. Board of Supervisor letter to SWRCB, dated May 25, 2021
2. Draft letter to SWRCB
3. Draft letter to Shandon