S-6
1-11-11

Boyd, Arlene P. 759-6642

From: David [David8@1hope.org]
Sent: Tuesday, January 11, 2011 9:54 AM
To: 112-Clerk of the Board Everyone

Attachments: MoCo2DesalDEIR.pdf

MoCo2DesalDEIR.pdf (585 KB)

Hello Arlene,

Can you please also get these
to the Supervisors for today's meeting?

Thank you,
-David 624-6500

Bringing you HOPE -
Helping Our Peninsula's Environment
Box 1495, Carmel, CA 93921 Info7 at 1hope.org
831/ 624-6500 www.1hope.org

Monterey County Supervisors **April 15, 2009**

Cal-Am Moss Landing Desalination Proposal EIR/EIS Must Include "Right-Sized" In-District Solution/Alternative

Good Morning Supervisors,

I am sorry to report that this is a horrible pretense of an EIR. Among many other vital blunders **it astoundingly fails or refuses to examine the one project that could provide our Monterey Peninsula legal drinking water within 3 years.**

This is compounded by the DEIR whopper falsely claiming the 3 giant water projects evaluated would have *no growth* inducing impacts - then failing to analyze the single project which actually would have no growth inducing impacts.

Having reviewed many, many dozen EIRs and provided assistance for many successful efforts litigating faulty EIRs I have reached these sad conclusions, that beyond the other **systematic flagrant legal inadequacy** of the documents --

This DEIR is extremely biased *against* --

- **Allowing a lowest cost project; a project which would legalize our Monterey Peninsula water supply without costing a dollar more than necessary,**
- **Allowing the public to participate in this decision[1],**
- **Voting by voters of the Monterey Peninsula Water District on a project as they are allowed to by special legislation,**

- **A project within the boundaries of the Monterey Peninsula Water Management District,**
- **The Monterey Peninsula Water Management District's Desalination project at Sand City,**
- **A design which would combine projects - rather than a "silver bullet."**

[1] There is a long history of this **anti-democracy** work. Attached are two photographs of 1995 articles. One from the daily Herald and one from the Carmel Pine Cone where Cal-Am is arrogantly going to build a Dam even if the voters reject it.

This DEIR is highly biased *for* --

- **Advocating the largest water project possible - even though there is no project of the proposed sizes operating successfully in the United States,**
- **Hiding the growth inducing effect of the 3 projects presented,**
- **Hiding the dramatically higher cost of the preferred projects by misleadingly (incompletely) asserting the preferred project costs less per gallon,**

- **a project outside the Monterey Peninsula Water Management District boundaries - *specifically to prevent voters from rejecting it*,**
- **Preferring highly complex projects over simpler, proven technology (such as the proposed project which needs analysis of various pipeline methods all by itself; and the permanently moored ship based desal plant),**
- **Preferring a "Silver bullet" project - one that appears to generate water all by itself, rather than combining smaller alternatives to reach success.[2]**

I. Extreme Efforts to Avoid Public Participation

A. The DEIR process has taken pains (not negligent, but deliberate adroit efforts) to prevent and limit public participation.

1. The DEIR ***only analyzes*** projects ***outside*** the **Monterey Peninsula Water Management District. They do this to prevent the voters of the Monterey Peninsula Water District from voting down poor, costly giant-growth "solutions."**

2. The only public "meeting" was a fake meeting. Hundreds of people showed up only to find out they would not be allowed to make verbal comments - only CPUC staff and EIR preparers could comment in public. Dozens left angry at the deception.

3. The DEIR in printed form is prohibitively expensive >$200. Few can afford it.

4. The DEIR was not available in local Libraries as claimed.

5. The DEIR CD-ROM is encrypted[3] preventing commenters from cut-and pasting data or sentences from the documents.

---

[2] Attached is an article on How alternatives added together could provide sufficient water without a dam and without causing growth. It was published in the Carmel Valley Sun in 1995. As the most requested reprint in that paper's history it was updated and republished in 1997.

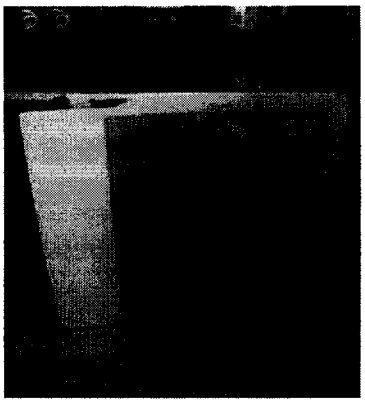
[3] 128 bit RC4 encryption. This prevents anyone outside NSA from cutting and pasting text that should be in the public domain.

6. The DEIR CD-ROM is only in PDF format preventing commenters from searching for large (alternatives) subjects or small items when the Table of Contents fails to adequately identify topics. There is no Index. This prevents commenters from saying with certainty that something is missing.

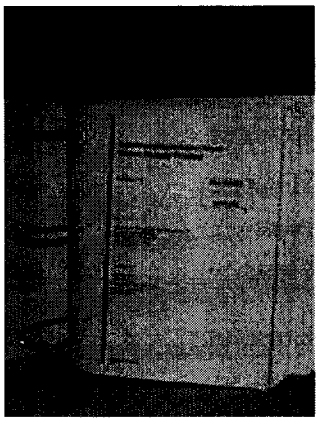
7. **Failed to provide a public EMAIL address for comments.** But allows comments by Fax (which are notoriously poorer quality than email), or by mail, which takes days longer.

B. This DEIR ignored virtually all of HOPE's Scoping comments.[4]

1. It refused/failed to analyze as an Alternative the Monterey Peninsula Water Management **District's Desalination project at Sand City**. The Administrative Draft EIR for this proposal was completed in 2003, staff reported in public that it was only $150,000 away from a complete EIR when it was shelved purely for political reasons.[5] As of 2010 it has been revived by the Monterey Peninsula Water Management **District as their top project and given a unanimous vote to get cots estimates.**



Water District DEIR Dec. 10, 2003



Water District DEIR page 1

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[4] Attached is HOPE's Thursday, October 26, 2006 letter.

[5] This proposal was revived by the new Monterey Peninsula Water Management District Board in January 2008. While the original 2003 proposal had only a 4-3 majority support, the revived version enjoys a 6-1 Board support. Only Sand City Mayor David Pendergrass opposes it, perhaps because it would be in his city (of no more than 90 voters) and he has proudly never voted against a growth project - no matter how gigantic or outrageous, nor against anything which would limit growth.

Carmel River's imperiled species would be enjoying a much safer habitat, and we would have a fully legal water supply - at a lower cost than any of the 3 giant projects in the DEIR.

In addition this project would cost dramatically less because of less energy needs (and greenhouse gas emissions). It would also cause dramatically lower traffic impacts, lower imperiled species impacts and lower desal brine impacts.

2. It refused/failed to measure the **levels of the pesticide DDT in the proposed water supply source** for the Cal-Am desalination project, the intake water to the Moss Landing Power plant. This is critical because the silt under the intake waters has had the **highest measured concentrations of DDT found in California.**

To fulfill the will and the letter of **the law created by the California Legislature and the Governor when the enacted CEQA**, California's Environmental Quality Act --

- This DEIR needs to be rewritten to include analyzing as an Alternative the Monterey Peninsula Water Management District's Desalination project at Sand City and then recirculated.[6]

- This DEIR needs to be rewritten to include ***measuring*** the **levels of the pesticide DDT in the proposed water supply source** for the Cal-Am desalination project, the intake water to the Moss Landing Power plant. This is critical because the silt under the intake waters has had the **highest measured concentrations of DDT found in California.**

  We do not want "estimates" or "modeling" of the DDT amounts,

  we want to know how much DDT is actually in the source water for the proposed project.

  This measurement is easily legally done - with or without permission from the Moss Landing power company.

- **Since this document is intended by law to be an objective disclosure document, it needs a rewrite by a different EIR consulting firm; a firm which actually provides professional objectivity - rather than bends to political pressures.**

We also respectfully request you include the two Coast Weekly articles on Cal-Am --

[6] Attached is a nine page article providing the context of the water situation on our Monterey Peninsula. It illuminates the science, the law and some recent political history.

1. "Liquid Assets," Oct 28, 1999
2. "Would You Buy a Used Dam from This Man?" 1997

make them a part of this administrative record and any hearings and considered.

Thank you,

David Dilworth, Executive Director

The Herald

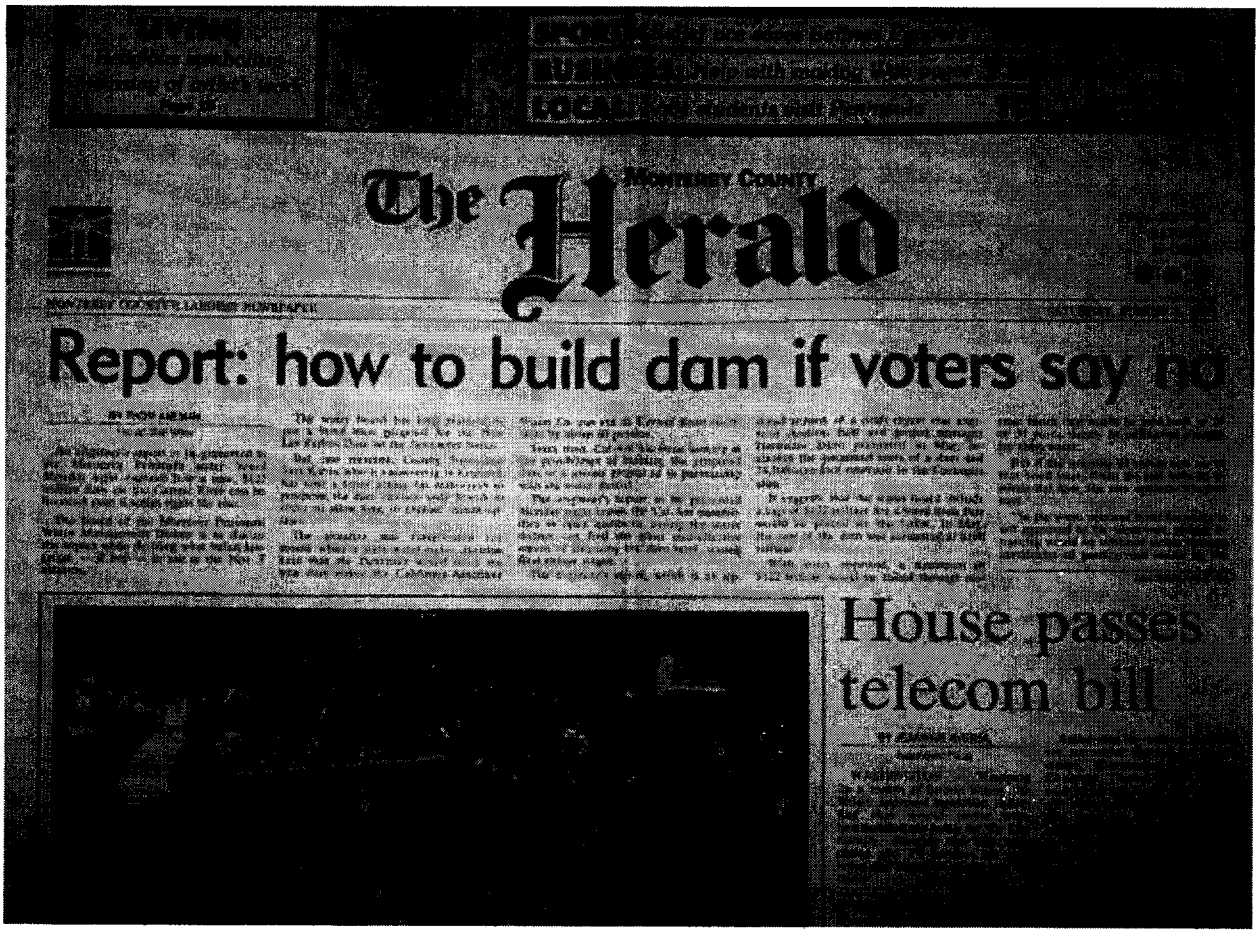
Voters soundly reject Carmel River dam

Elections '95

Voters go to polls for dam

Key Water and School

Santa Fe bond



The Monterey County Herald

Report: how to build dam if voters say no

House passes telecom bill

Founded in 1998, and known for helping with hundreds of environmental and democracy successes including stopping both "Dirty Harry" and "The Terminator," *H.O.P.E.* is a non-profit, tax deductible, public interest group protecting our Monterey Peninsula's natural land, air, and water ecosystems and public participation in government, using science, law, education, news alerts and advocacy.

The Carmel Pine Cone – November 2, 1995

COUNTDOWN TO TUESDAY'S ELECTION

Foy: 'No' vote won't kill dam

If Measure C fails, PUC could let Cal-Am build dam, GM says

By PAUL WOLF

IF MEASURE C fails Tuesday, the New Los Padres Dam remains the only project that can compensate for Cal-Am's overdrafting of the Carmel River, according to Cal-Am General Manager Larry Foy.

But it's not up to the water company whether it may pursue the $116 million project on its own and without a majority support from the Monterey Peninsula electorate.

Cal-Am plans to press the question with the Public Utilities Commission, Foy said.

The company has not counted out buying the project's permits from the Monterey Peninsula Water Management District.

"We can't do anything without their approval," Foy said of the PUC. "We have had tentative talks with them, but they won't comment on what they would do (if Measure C fails) before the election."

Larry Foy

If the vote is close, a case could be made before the PUC arguing that the opposition to the dam was as much a reflection on the MPWMD as on the project

Cal-Am

[illegible], a decision that was years in the making, [illegible] Water Resources Control Board determined that Cal-Am was drawing improperly from the river basin — to the tune of 10,730 acre-feet a year, or 69 percent of the water company's mid-1995 total production.

The state board also decided that the project, with its aquifer-recharging features, was the corrective to the river's woes. Consequently, Foy is on record as supporting the New Los Padres Dam.

See CAL-AM page 17

Meanwhile, the general manager, echoing the sentiment of many MPWMD officials, believes it would be impossible to develop enough alternative projects — desalination, recycling, new wells and so on — to make up for the overdrafting.

Also in June, the state board showed its seriousness about reducing river pumping by ordering a 15 percent reduction in Cal-Am's production — a directive the company put into effect Oct. 1. Cal-Am is scheduled to decrease production by an additional 5 percent starting Oct. 1, 1996.

The state board rejected Cal-Am's request for reconsideration of the June decision and the 10,730 acre-foot figure. "I see no chance for compromise," Foy said. "The state order stands."

According to Foy, the future without a dam is one of "serious rationing... with the cities taking care of (building) moratoria in their own ways."

Foy, however, does not believe that the state board would go so far as to virtually shut off the taps by stopping 69 percent of Cal-Am's production.

"That would constitute a health and safety risk to the general public that they could never allow," Foy said.

[illegible] says PUC could approve or reject project

From: David [David8@1hope.org]
Sent: Tuesday, January 11, 2011 9:58 AM
To: 112-Clerk of the Board Everyone
Subject: Today's Agenda: Opposition to Regional Desal Project and EIR (3rd doc)

Attachments: EnoughWater20101130.MemotoWaterSupplyPlanning Committee re Constraints Analysis report - Revised.pdf

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Hello Arlene,

Can you please also get this document to the Supervisors for today's meeting?

Thank you again,

-David 624-6500

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

MEMORANDUM

DATE: November 24, 2010 – ***Revised November 30, 2010***

TO: Water Supply Planning Committee Members:
Directors Brower, Markey, and Edwards

FROM: Andrew M. Bell, District Engineer AMB

CC: Board of Directors
Darby Fuerst, General Manager
David C. Laredo, General Counsel

SUBJECT: Water Supply Quantities in August 2008 MPWMD 95-10 Project Constraints Analysis Report

At the November 16, 2010 meeting of the Water Supply Planning Committee, Committee members asked that staff clarify a table from the August 2008 Constraints Analysis report that is included on page 60 in the packet for the November 15, 2010 Board meeting.

Table 1 of the Constraints Analysis report (copy attached, with hand-written potable water yields in acre-feet per year) lists 25 alternatives for development of feed water for a desalination project. The first 24 alternatives are listed in groups of three, each group representing a single location with lines in the table separating the groups. For each of the first eight locations, feed water capacity is listed for three different well technologies: horizontal directionally-drilled (HDD) wells, radial wells, and conventional (vertical) wells. **Only one of the three types of wells could be constructed at each site.** For example, in the first group of three alternatives, for the "Sand City Desal Site – Sand City" the stated feed water collection rate for an HDD well is 3,000 gallons per minute (gpm), for radial wells is 6,000 gpm, and for conventional wells is 7,500 gpm. In this case, the table shows conventional wells to have the greatest capacity. In the second group of three alternatives, for the "Sand City - Malibu Development LLC" site, the feedwater collection rate for an HDD well is 1,000 gpm, for a radial well is 3,000 gpm, and for conventional wells is 1,000 gpm. In this case, a radial well would have the greatest capacity.

It should also be noted that the feed water capacities at two or more sites could be combined for a larger project yield. Examples of combining sites are shown in the Constraints Analysis report on Table 5 (copy attached, with hand-written potable water yields in acre-feet per year). In Table 5, Example Project 2 combines two feed water sites with conventional wells, Alternatives 18 and 23. Example Project 3 combines three feed water sites with conventional wells, Alternatives 18, 24, and 25. Example Project 4 combines four feed water sites, three with conventional wells (Alternatives 18, 24, and 25) and one with a radial well (Alternative 22).

Development and use of any of the sites is subject to technical and regulatory constraints.

Please see next page for list of attachments.

Attachments: August 2008 report, *MPWMD 95-10 Project Constraint Analysis*, by ICF Jones & Stokes and Camp, Dresser & McKee, Inc.

- Cover
- Table 1 – Summary of Feed Water Collection Well Alternatives
- Table 2 – Potential Projects and Capacities

U:\Andy\Word\desal\2010\20101130.Memo to Water Supply Planning Committee re Constraints Analysis report - Revised.doc

Monterey Peninsula Water
Management District

95-10 Project
Constraints Analysis

Prepared for:

Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93942-0085
Contact: Andy Bell

Prepared by:

ICF Jones & Stokes
630 K Street, Suite 400
Sacramento, CA 95814
Contact: Mike Rushton
916/737-3000

ICF Jones & Stokes
an ICF International Company

and

Camp, Dresser & McKee, Inc.
100 Pringle Avenue, Suite 300
Walnut Creek, CA 94596-3580
Contact: Polly Boissevain

CDM

August 2008

Assumptions: 50% recovery
Plant operation 90% of time
1 gpm = 1.6129 AF/yr

Table 1. Summary of Feed Water Collection Well Alternatives

Alt	Location Owner	Description	Well Type	Details	Flow Rate	Public property?	Potable Water (AF/yr)
1	Sand City Desal Site- Sand City	South of Tioga Avenue. Project facilities located in vicinity of Sand City collection and disposal wells.	HDD	1,500 ft	3,000 gpm	Y	2,200
2			Radial	2 wells	6,000 gpm	Y	4,400
3			Conv. (Shallow)	15 wells	7,500 gpm	Y	5,400
4	Sand City - Malibu Development LLC	North of Tioga Avenue. Property slated for re-development, though no identified active plans.	HDD	500 ft	1,000 gpm	N	700
5			Radial	1 well	3,000 gpm	N	2,200
6			Conv. (Shallow)	2 wells	1,000 gpm	N	700
7	Sand City - Sand City Re-Development Agency	Property owned by Sand City Re-development Agency. An EIR is underway for a resort planned at this site.	HDD	500 ft	1,000 gpm	N	700
8			Radial	2 wells	6,000 gpm	N	4,400
9			Conv. (Shallow)	7 wells	3,500 gpm	N	2,500
10	Sand City - Monterey Peninsula Regional Parks District	Property owned by Monterey Peninsula Regional Parks District.	HDD	1,000 ft	2,000 gpm	Y	1,500
11			Radial	1 well	3,000 gpm	Y	2,200
12			Conv. (Shallow)	5 wells	2,500 gpm	Y	1,800
13	Sand City – SNG Development Corporation	Property owned by SNG. Property slated for re-development.	HDD	600 ft	1,200 gpm	N	900
14			Radial	2 wells	6,000 gpm	N	4,400
15			Conv. (Shallow)	6 wells	3,000 gpm	N	2,200
16	Former Fort Ord: Bunker Site- DPR	Approximate northern extent of Seaside Basin. Former ammunition supply bunkers. Slated for development as a camping area.	HDD	1,000 ft	2,000 gpm	Y	1,500
17			Radial	2 wells	6,000 gpm	Y	4,400
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19	Former Fort Ord: MW-1- DPR	Location of Seaside Basin Sentinel Well # 1, and test boring location in 2004 CDM study.	Radial	1 well	3,000 gpm	Y	2,200
20			Conv. (Shallow)	2 wells	1,000 gpm	Y	700
21	Former Fort Ord: Stilwell- DPR	Former site of Stillwell Hall. Planned parking area and trail access point.	HDD	1,000 ft	2,000 gpm	Y	1,500
22			Radial	1 well	3,000 gpm	Y	2,200
23			Conv. (Shallow)	4 wells	2,000 gpm	Y	1,500
24			Conv. (180')	2 wells	4,000 gpm	Y	2,900
25	Former Fort Ord: WWTP DPR	Site of former Fort Ord Wastewater Treatment Plant.	Conv. (180')	2 wells	4,000 gpm	Y	2,900

Potable Water yield, based on "WTP Capacity"
1 MGD = 1,120.1 AF/yr

7.5 mgd, 15 mgd (10,400 gpm) of feed water collector capacity is required. Additional capacity must also be included, assuming that at least one well is out of service at any given time for maintenance. Table 5 summarizes four possible combinations of the alternatives that could be developed into a project.

Table 5. Potential Projects and Capacities

Project	Alternatives in Project	Total Capacity	Firm Capacity (1)	WTP Capacity	Notes	Potable Water (AF/yr)
Projects in the Dune Sands Aquifer						
Example Project 1						
	Alt 18: Conventional Wells at Bunker Site	4,000			Least implementation issues of all projects evaluated.	
	Totals (gpm)	**4,000**	**3500**			
	Totals (mgd)	**5.8**	**5.0**	**2.5**		2,800
Example Project 2						
	Alt 18: Conventional Wells at Bunker Site	4,000			Potential inter-basin transfer issues for wells at Stilwell.	
	Alt 23: Conventional Wells at Stilwell Site	2,000				
	Totals (gpm)	**6,000**	**5,500**			
	Totals (mgd)	**8.6**	**7.9**	**4.0**		4,500
Projects in the Dune Sands Aquifer and 180-foot Aquifer						
Example Project 3						
	Alt 18: Conventional Wells at Bunker/Dune Sands	4,000			Potential inter-basin transfer issues for wells at Stilwell and WWTP	
	Alt 24: Conventional Wells at Stilwell/180-foot Aquifer	4,000				
	Alt 25: Conventional Wells at WWTP/180-foot Aquifer	4,000				
	Totals (gpm)	**12,000**	**10,000**			
	Totals (mgd)	**17.3**	**14.4**	**7.2**		8,100
Example Project 4						
	Alt 18: Conventional Wells at Bunker/Dune Sands	4,000			Potential inter-basin transfer issues for wells at Stilwell and WWTP	
	Alt 22: Radial Well at Stilwell/Dune Sands	3,000				
	Alt 24: Conventional Wells at Stilwell/180-foot Aquifer	4,000				
	Alt 25: Conventional Wells at WWTP/180-foot Aquifer	4,000				
	Totals (gpm)	**15,000**	**12,000**			
	Totals (mgd)	**21.6**	**17.3**	**8.7**		9,700

(1) Computed assuming the largest well out of service as a standby

3-10

1-11-11

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Contact: Mike Rushton
916/737-3000

and

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	Totals (gpm)	**6,000**	**5,500**			
	Totals (mgd)	**8.6**	**7.9**	**4.0**		4,500
Projects in the Dune Sands Aquifer and 180-foot Aquifer						
Example Project 3						
	Alt 18: Conventional Wells at Bunker/Dune Sands	4,000			Potential inter-basin transfer issues for wells at Stilwell and WWTP	
	Alt 24: Conventional Wells at Stilwell/180-foot Aquifer	4,000				
	Alt 25: Conventional Wells at WWTP/180-foot Aquifer	4,000				
	Totals (gpm)	**12,000**	**10,000**			
	Totals (mgd)	**17.3**	**14.4**	**7.2**		8,100
Example Project 4						
	Alt 18: Conventional Wells at Bunker/Dune Sands	4,000			Potential inter-basin transfer issues for wells at Stilwell and WWTP	
	Alt 22: Radial Well at Stilwell/Dune Sands	3,000				
	Alt 24: Conventional Wells at Stilwell/180-foot Aquifer	4,000				
	Alt 25: Conventional Wells at WWTP/180-foot Aquifer	4,000				
	Totals (gpm)	**15,000**	**12,000**			
	Totals (mgd)	**21.6**	**17.3**	**8.7**		9,700

(1) Computed assuming the largest well out of service as a standby

5-6
1-11-11

Moss Landing Desal

MOSS LANDING DESAL, LLC

PROPOSED 10 MGD REGIONAL DESALINATION PLANT

PROJECT PLAN SUMMARY

January 10, 2011

A. OVERVIEW

The proposed Moss Landing Desalination SWRO project is taking a truly innovative approach toward providing an alternative water supply for the Monterey Bay region. The proposed project would deliver raw seawater to the desalination plant through the use of an existing deep-water outfall, currently permitted to discharge 60 MGD, regulated by the California Regional Water Quality Control Board (NPDES CA0007005). The existing 51-inch diameter outfall pipeline is sufficiently large in diameter to allow use as both an intake (via a new pipeline installed inside the existing structure) and outfall, by utilizing the interior void space remaining between the new intake pipeline and the existing outfall pipe walls.

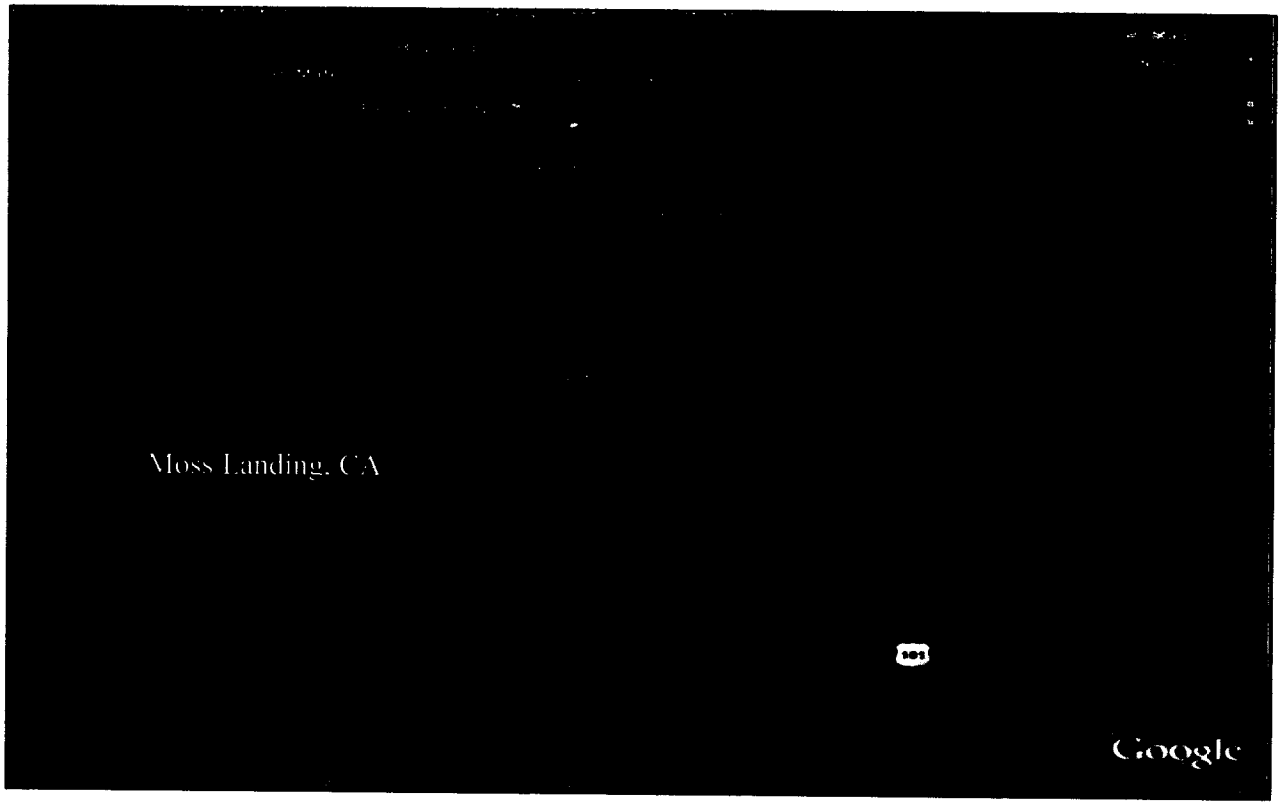
The project is presently designed to deliver 10 MGD of high quality drinking water to a distribution pipeline (by others) at a projected cost of between $1,850 - $2,000 per acre-foot. The project could be design, built and commissioned within 24-months following issuance of final permits.

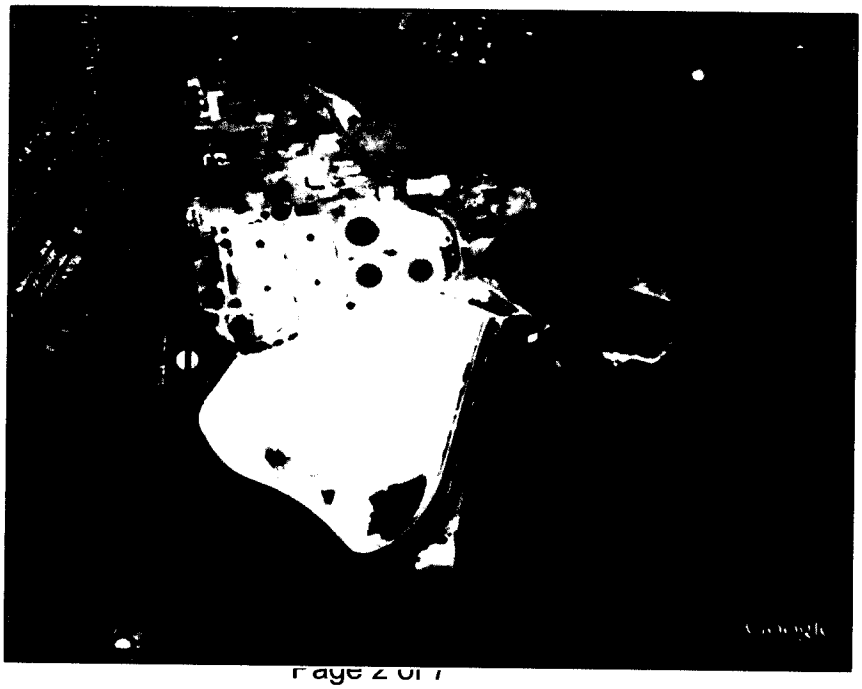
B. PLANT LOCATION

The proposed project would be located at the Moss Landing Commercial Park, adjacent to the Moss Landing Power Plant, on the former National Refractories and Minerals Corporation site. The approximately 200-acre site is presently zoned for light and heavy industrial use and contains approximately 300,000 ft2 of building space. Importantly for the proposed desalination project, the site is presently permitted for seawater intake and discharge of up to 60 MGD, conveyed from existing pipelines and pumps station, originally installed and permitted to support the magnesium extraction and refining operations previously conducted at the site.

Figure 2 – Moss Landing Commercial Park, California

Figure 1 – Moss Landing, California





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When compared to surface or near-surface seawater open-intakes, which have been proposed for other reverse osmosis desalination plants presently under development along the California coast (and elsewhere in the United States), a deep-water intake offers significant benefits including: (i) greatly reduced biomass and substantially better water quality; thereby mitigating adverse environmental impacts; and (ii) significantly reducing capital costs associated with pre-treatment.

Through associated support from the Moss Landing Marine Laboratories – which currently uses the outfall structure as a water supply to their laboratory – data suggests that the deep-water intake will provide significantly improved water quality to the proposed desalination facility when compared to a surface or near-surface water open intake. The proposed deep-water intake also promises to alleviate the need for expensive engineered intake systems, which are typically required to address the adverse environmental impacts associated with impingement and entrainment issues, and will provide a reliable source of seawater free of red tide biomass, organics, and rainwater/agricultural runoff.

The desalination plant will incorporate existing building structures and service facilities located at the Moss Landing Commercial Park site, including the outfall (as previously indicated) and available electrical power supply.

D. PROJECT DESCRIPTION

The desalination project will consist of the following major components:

1. Screened, passive intake
2. Intake pump station
3. Pretreatment media filtration system
4. 10 MGD seawater desalination system
5. Energy recovery system to reduce power consumption
6. Post-treatment facilities
7. Product water pump station
8. Solids handling system
9. Electrical power supply

E. TREATMENT COMPONENTS

Seawater to the pretreatment system will be provided by an intake pump station, which will be located near-shore, within the Moss Landing Marine Laboratories facilities immediately adjacent to the existing outfall. A new pipeline will be installed *inside* the existing outfall to convey up to 21 MGD of intake seawater to the desalination plant.

Pretreatment will utilize a granular media filtration system, a proven technology, to protect the integrity, useful life, and reliability of the seawater reverse osmosis (SWRO) membrane system. The system will consist of a single-stage, deep-bed, dual media granular media system with sufficient redundancy to ensure a reliable, sustainable supply for downstream desalination. Coagulant and filter aid polymer

systems will be provided to improve the efficiency of the pretreatment system, if needed during system operation. The filters will be fully automated and monitored to assure trouble-free operation.

Filtered, pretreated water, will be temporarily collected in a clearwell, insuring continuous operation of the downstream SWRO system, prior to being pumped through cartridge filters, and the downstream SWRO desalination system. The media filters are designed to utilize filtered seawater as a source of backwash water or alternatively concentrate.

The feed flow rate to the SWRO system will be 20 MGD (at 50-percent feedwater recovery); producing 10 MGD of desalted, high quality drinking water. The system will be design with redundant capacity to ensure a reliable, sustainable source of water for post-treatment conditioning. High pressure feed pumps will produce approximately 900 – 1000 psi (pounds per square inch) of pressure to drive the seawater through the reverse osmosis membrane elements. The energy recovery system will recapture approximately 25 to 35-percent of the energy needed for the high-pressure feed pumps. The entire membrane system will be automated and monitored continuously.

Permeate produced by the SWRO will require post-treatment conditioning with lime and/or carbon dioxide; followed by disinfection and corrosion control to protect the distribution pipeline.

The plant will supply product water quality in compliance with the regulatory requirements of the California Department of Public Health, Safe Drinking Water Act, and the California Title 22 Code for Drinking Water Standards. The finished product water from the desalination plant will have compatible quality to the water quality of the other sources of potable water delivered to the same distribution system.

Product water will be stored onsite for distribution. Sufficient storage will be provided to meet all regulatory requirements for disinfection. The product water pump station will provide high quality drinking water to the distribution pipeline (by others) at the flow and pressure required for distribution.

The desalination plant will generate waste streams, consisting of concentrate from the SWRO process, sludge from the media filter backwash), sanitary wastewater, spent membrane solution, solid waste, and surface runoff. The plant will be designed and constructed to handle all waste streams generated in an environmentally sound manner and in compliance with all codes and regulatory requirements as may be applicable.

Power will be provided to the project by the local electrical supply existing within the footprint of the existing facility. Circuits feeding the desalination plant would be 4.1kV and 460 V.

F. Service and Support Facilities

The desalination plant will incorporate existing structures and service facilities located at the Moss Landing Industrial Park, including buildings, roads, parking lots, and the railroad spur. Some paving will be necessary, as well as infrastructure improvements consistent with a desalination facility. Handicapped access and landscaping will comply with all applicable regulatory requirements.

G. FACILITY OPERATION AND MAINTENANCE

The seawater desalination facility will be designed and constructed for continuous operation (24 hours per day and seven days per week) and will be adequately staffed to support continuous operations. The plant will be fully automated and will have operations and maintenance staff of approximately 8 full-time employees. Additionally, outside services will be required from electrical, equipment and instrumentation contractors, and the service industry.

H. SITE FEATURES AND BENEFITS

As above mentioned, the following table summarizes the features and benefits of the Moss Landing Commercial Park site, which will significantly reduce both the cost of the desalination facility and accelerate the construction schedule when compared to other undeveloped site locations.

Site Features and Benefits

Available 200 Acre Site	Eliminates need for land acquisition	✓	✓
Presently zoned for light and heavy industry	Eliminates need for re-zoning	✓	✓
Close Proximity to deep water for SW Intake and Concentrate Disposal	Eliminates project risk associated with technical feasibility and cost viability of other seawater intake methods, e.g. vertical beach wells, slant wells, radial collector wells, etc. Mitigates adverse environmental impacts associated with entrainment and entrapment of marine organisms	✓	✓
300,000 ft^2 of Existing building Space	Reduces project infrastructure cost	✓	✓
12 KVA Electrical Service available on site	Reduces project infrastructure cost Reduces permitting time and cost	✓	✓

Existing 60 MGD permit for seawater intake and discharge	Eliminates or reduces project cost and accelerates construction schedule.	✓	✓
Existing easements and infrastructure for SW Intake and Concentrate Disposal	May reduce or eliminate costs and time associated with some permits. Eliminates costs and inconvenience associated with construction across Highway 1.	✓	✓
Railroad Spur Access	Enables less expensive bulk chemical delivery and pretreatment solids removal. Reduces heavy truck traffic on Hwy 1.	✓	
40 million gallons of storage capacity	Reduces project infrastructure cost	✓	✓
Existing Sedimentation and Sludge Handling Infrastructure	Reduces project infrastructure cost	✓	✓
On Site Fresh Water Wells	Available water source to support construction activities and plant operations.	✓	✓

I. COST OF TREATED WATER PRODUCED

The Moss Landing Desal team has completed development of concept designs for the proposed 10 MGD SWRO desalination facility based on the existing deep water intake and the inherent benefits associated with the existing infrastructure afforded by the Moss Landing Commercial Park site, as described above, and projects a cost of $1,850 to $2,000 per acre foot of high quality drinking produced (excluding the distribution pipeline).

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Moss Landing Desal projects a 24-month schedule from issuance of all required permits to construct and commission the proposed 10 MGD SWRO facility.

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Submitted by
Brent Constance

S-6
1-11-11

From: jricci@mosslandingdesal.com

Sent: Monday, January 10, 2011 4:43 PM

To: 100-District 1 (831) 647-7991; 100-District 2 (831) 755-5022; 100-District 3 (831) 385-8333; 100-District 4 (831) 883-7570; 100-District 5 (831) 647-7755

Cc: Weeks, Curtis Ext.4896; Bauman, Lew; 112-Clerk of the Board Everyone

Subject: MOSS LANDING DESAL, LLC PROPOSED 10 MGD REGIONAL DESALINATION PLANT PROJECT PLAN SUMMARY Moss Landing Desalination/Deep Water Project - Economic Considerations

Attachments: _Moss Landing Desal Concept Summary 1-10-10.pdf; MLD Economic Summary for Board of Supervisors meeting 1.10.1

Dear Board of Supervisors,

For you information and review please find attached the Moss Landing Proposed 10 MGD Regional Desalination Plant Project Summary and Desalination/Deep Water Project - Economic Considerations documents

Kind regards,

Jane Ricci
Moss Landing Desal

Moss Landing Desal

MOSS LANDING DESAL, LLC

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January 10, 2011

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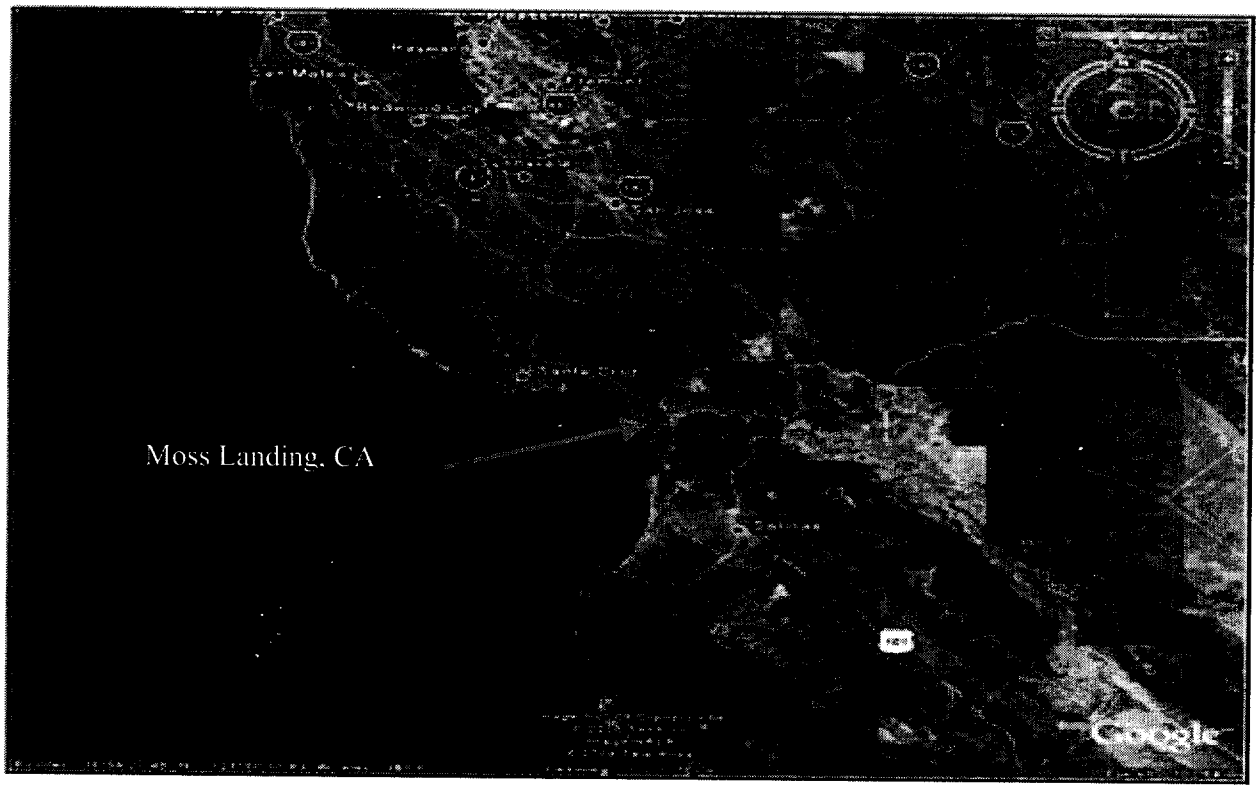

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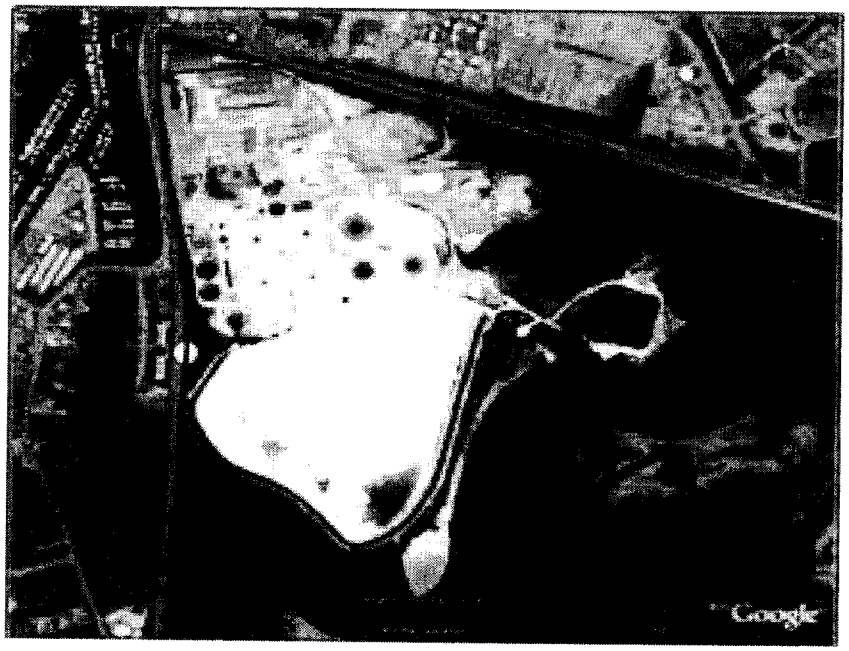

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1-11-11 S-6

From: Bonnie Adams [badams@adcomm4.com]
Sent: Friday, January 07, 2011 4:08 PM
To: 112-Clerk of the Board Everyone
Subject: mcha PUC letter
Attachments: img-101129193033.pdf

For distribution at Tuesday's meeting. Thank you,
Bonnie Adams

Received by Clerk to the Board
Additional Material for
Board Agenda Date of: Item No:

Dist 1 CAO
Dist 2 County Counsel
Dist 3
Dist 4
Dist 5

November 19, 2010

The Honorable Ambassador John Bohn, Commissioner
The Honorable Angela Minkin, Administrative Law Judge
California Public Utilities Commission
560 Van Ness Avenue
San Francisco, California 94102

Dear Commissioner Bohn and Judge Minkin:

The Monterey County Hospitality Association takes this opportunity to renew its support for the Regional Water Project but also to express its concerns that while we work to solve the Peninsula's water problems we create a solution that we can live with.

The Monterey County Hospitality Industry is the trade association for the travel and tourism industry in Monterey County. Our industry generates $2 billion per year in direct spending in Monterey County, employs 23,000 workers, and earns over $55 million per year in local taxes. Over 90% of this activity takes place within the Cal Am service area on the Monterey Peninsula.

Our need for an adequate water supply is indisputable. The fact that we have waited three decades for development of an adequate water supply is also indisputable.

Given that your approval of the Regional Water Plan is soon to be a reality, we point out that the potential outcomes are alarming given the range of estimates of project costs and revenue requirements. Under the best outcomes, the project will be a painful economic reality for all of us and devastating under the highest estimates.

As an industry we support the Regional Water Project. Most of the community recognizes the urgent need for a new water source and the devastating effects on our industry and the residents of our region of the State Water Resources Control Board's Cease and Desist Order. After years of bickering, this project will finally accomplish that critical goal.

As the primary industry on the Peninsula, we do remain deeply concerned over the potential cost of this system if not controlled. The current expected cost of the new water along with the current rate case and the San Clemente dam removal will likely result in the tripling of water costs, which is already a significant cost for businesses and residents alike. Many of the larger hospitality properties have annual water bills in the $100,000 range and a potential tripling will have a dramatic effect on incomes, reducing net incomes by as much as 5 percent. For smaller properties with lower room rates the effect will be even more dramatic.

A financial analyst for a major hospitality company with many varied holdings provides the following analyses of the effects of rates on industry facilties;

ADMINISTRATIVE OFFICE
OCEAN & MISSION• SUITE 201• P.O. BOX 223542 • CARMEL, CA • 93922
PHONE: 831-626-8636 • FAX: 831-626-4269 • EMAIL: badams@adcomm4.com

An impact of the higher rates will be a significant reduction in the long-term values of properties. The value of property is based on the income it produces so any significant change in cost will reduce values. Increases of this magnitude may impact financing, appraisals and debt coverages as well as the elimination of a great deal of hard earned equity. For larger properties facing a $200,000 increase in water bills this reduction in value could be in excess of $3 million for each property based on current capitalization rates. The impact will be proportionally greater for smaller properties. If the potential new revenue requirements for the project, the dam removal and the current rate case amount to $70 million per year the potential reduction in values would be $1billion dollars based on a 7 percent capitalization rate.

The impacts to our employees and the other residents of the Peninsula will be equally hard felt, resulting in a great deal less discretionary income.

We support the concept of the caps contained in the proposed decision and the alternative proposed decision. The PD and APD both appropriately establish project cost caps in a manner that allow all parties to commit to the project on an informed basis. The proposed caps can still result in desalinated delivered water costs that are among the highest, if not the highest in the United States. This should result in caps that are more than reasonable.

Absent some level of caps, the concern is that the cost of the project can escalate significantly, exposing the ratepayers to even higher multiples of existing rates. If the Settling Parties do not believe that the caps are appropriate, it seems that now would be the time to discuss the real expected cost of the system. Further, if the costs were to escalate, the caps will force the parties to address the costs and modify the project or increase the caps, if necessary, without undue delay.

In evaluating the impacts of this project to the long-term economic health of the community and industry, it is important that all of the costs of this project be identified. If there are to be additional capital costs in excess of the direct financing costs to be requested by any of the parties, those should be disclosed and an estimate of the magnitude factored into the estimated cost of our new water.

In addition to the initial capital costs, the other driver of costs is the ongoing operating costs. We believe that it important to have a comprehensive agreement that clearly defines the basis for allocating costs so there are no disagreements in the future. While there is an obligation to treat all customers fairly, the MCWD Board appropriately is responsible to its constituency. An agreement well considered now ultimately avoids later disputes.

We also believe that if the rate schedule retains the present tiers with pricing increased proportionately it is not reasonable to assume that those currently absorbing the rate at the highest brackets will continue to do so. The magnitude of these increases will force many customers to alter their usage. If a significant portion of reduced demand were at the highest rate the result would be a minimal reduction in usage with a significant revenue drop that would be spread to all ratepayers.

We fully appreciate the consequences of not going forward and do not look to delay the project. At the same time, we feel that it is only prudent to fully understand and accept the costs and

risks associated with the project. In short, we expect the public agencies and Cal Am to comply with the various mandates of state law with respect to costs but we think adequate benchmarks should be established to verify that every effort is made to assure all ratepayers will get the lowest possible costs.

We thank you, the Commission, and all who have put in countless hours in capturing the elusive solution to the Peninsula's water problems.

Sincerely,

Chris Chidlaw
President
MCHA

Sincerely,

Mike Zimmerman
Chair, MCHA Water Task Force
Chief Operating Officer
Cannery Row Company

Sincerely,

John Narigi
Board Member, MCHA
Vice President, General Manager
Monterey Plaza Hotel & Spa

Cc: City of Monterey, Mayor Chuck Della Sala, Fred Meuer, City Manager
City of Pacific Grove, Mayor Carmelita Garcia, Tom Frutchey, City Manager
City of Carmel, Mayor Sue McCloud, Rich Guillen, City Manager
City of Sand City, Mayor David Pendergrass, Steve Matarazzo, City Manager
City of Seaside, Mayor Ralph Rubio, Ray Corpuz, City Manager
City of Del Rey Oaks, Mayor Jerry Edelen, Daniel Dawson, City Manager
Board of Supervisors, Simon Salinas, Chair
Monterey County, Lew Bauman, County Administrative Officer

S-6
1-11-11

Boyd, Arlene P. 759-6642

From: David [David8@1hope.org]
Sent: Tuesday, January 11, 2011 9:53 AM
To: 112-Clerk of the Board Everyone
Subject: Today's Agenda: Opposition to Regional Desal Project and EIR

Attachments: WaterMoCo.pdf

WaterMoCo.pdf (26 KB)

Hello Arlene,

Can you please get these to the Supervisors for today's meeting?

Thank you,
-David 624-6500

Bringing you HOPE -
Helping Our Peninsula's Environment
Box 1495, Carmel, CA 93921 **Info7 at 1hope.org**
831/ 624-6500 **www.1hope.org**

Monterey County Supervisors January 11, 2011

Desal FEIR Legally Inadequate . . . and Project is Awful --
It would make the *World's Most Expensive Desal Water*

District Project Would Solve Problem
Would Cost far Less,
Could be Working in 3 Years
But the FEIR refused to Evaluate it

The FEIR on the Cal-Am water project for our Monterey Peninsula seems **twisted** in so many ways to explicitly avoid allowing Monterey Peninsula ratepayers and voters to decide on their futures – which we are guaranteed by state law passed by both houses in California and signed by the Governor.

The way you can see this most clearly is the response to our request to "Please evaluate the Alternative where the favored proposed project is **administered by the Monterey Peninsula Water Management District** instead of the Marina Coast Water District."

The reason it is clear is – there was **absolutely no response** to our request in the FEIR .

- **Supervisors might be more than a little amused to ask project proponents if they would agree with this Alternative and to hear their responses.**

  The reason is solving our water problem is NOT the developer's goal.

  Their goal is twofold --

  - **Get unlimited water for growth, and**
  - **Getting rid of the Monterey Peninsula Water Management District control over Peninsula water.**

1. The evasive nature of the comment responses seriously undermines our confidence in the FEIR.

The FEIR response format makes it ***practically impossible for us to understand responses to our own questions*** – and we have a lot of experience with the proposed project and in reviewing EIRs.

Someone unfamiliar with questions from others would give up before understanding the already elusive responses.

The FEIR needs to have the commenter's Question ***text*** **adjacent** to the Answer so we can know ***exactly*** what question was asked, and decide whether the answer is relevant and meaningful to the question.

3. Please include a copy of the December 2003 **"Board Review Draft EIR"** for the 95-10 Project to **provide 8,400 acre-feet/year** (AFY) desalination plant using offshore horizontal directionally drilled (HDD) wells by the Monterey Peninsula Water Management District in the administrative record.

4. Please include a copy of the FINAL MINUTES of the of the Monterey Peninsula Water Management District Board of Directors Regular Meeting on January 24, 2008 ***showing the District voted 7-0 to revive the 95-10 Project*** in the administrative record.

> FINAL MINUTES
> Regular Meeting
> Board of Directors
> Monterey Peninsula Water Management District
> January 24, 2008
>
> Director Brower made a motion to: 1) seek cost proposals from the engineering and environmental consultants to complete the Environmental Impact Report for the MPWMD Seawater Desalination Project at Sand City; 2) develop a timeline displaying the necessary steps involved to complete the project; and 3) to present this information at the March 27, 2008 Special Board Meeting. The motion was seconded by Director Edwards.
>
> The motion was approved unanimously on a vote of 7-0.
>
> 22. Consider Request of Director Bob Brower to Direct Staff to Prepare a Report on the Status of the MPWMD Seawater Desalination Project at Sand City, for Review on a Future Board Agenda

During the public comment period on this item, David Dilworth, representing HOPE urged the Board to move forward with this project.
Robert Greenwood, Carmel Valley Association, expressed his support for Director Brower's request and urged the Board to move forward.

4a. Please note this action was never reported in the local media.

5. Please include a copy of the FINAL MINUTES of the of the Monterey Peninsula Water March 27, 2008 Management District Board of Directors Special Meeting/Board Workshop Monterey Peninsula Water Management District in the administrative record.

It shows the District voted 6-1 to ***make the 95-10 Project the Board's highest priority among the seven projects.***

> "Director Brower made a motion that the Board's highest priority among the seven projects listed in the Matrix of Water Supply Alternatives, should be the District's proposed 8,400 acre-feet per year seawater desalination project in Sand City. In addition, the project should be known as the "95-10 Project." The motion was seconded by Director Lehman and adopted on a vote of 6 – 1. Directors Brower, Doyle, Edwards, Lehman, Markey and Potter voted in favor of the motion. Director Pendergrass was opposed."

5a. Please note this action was never reported in the local media.

This feasible alternative was rejected because "***To date, there is no detailed project description for the project, and project engineering studies or designs have not begun.***" – which is actually a more accurate description of the FEIR's proposal and alternatives.

Yet there has been more work done to prepare for the Monterey Peninsula Water Management District's 95-10 project than any alternative analyzed in the FEIR.

So essentially the Monterey Peninsula Water Management District's ***95-10 Project*** alternative was rejected because it had ***more work done on it*** than any of the FEIR's proposal and alternatives.

ES.4.1.4 Growth

"***the Phase 2 project would have a significant growth inducing impact. Since there are no feasible mitigation measures that would lessen the impact, the impact would be considered significant and unavoidable***"

This shows the growth causing impacts of the project - in spite of the project proponents denial that the project would allow any growth.

The impacts of illegal pumping have not been analyzed. This project proposes that ground water is pumped yet none of the participants have a legal right to do so in the locations identified. These impacts need to be analyzed.

HOPE respectfully objects to the project and the inadequate CEQA review and requests the FEIR be rewritten and recirculated to include and seriously analyze the two feasible alternatives we have requested --

1. The **Monterey Peninsula Water Management District's 95-10 project combined with other small projects to make our water supply legal.**

2. **Administration of the favored** project **by the Monterey Peninsula Water Management District** instead of the Marina Coast Water District.

Thank you,

David Dilworth
For the Board of Trustees

5-6

1-11-11

From: Molly Erickson [erickson@stamplaw.us]
Sent: Monday, January 10, 2011 4:50 PM
To: Borkowski, Gail T. x5842
Subject: Ag Land Trust letter on Regional Project -- corrected page 46
Attachments: Ag.Land.Trust.ltr.to.COB.11.01.10.pdf

Ms. Borkowski:

Attached is a letter enclosing the corrected page 46, showing that exhibit V was included in the exhibits delivered to the County. Thank you for alerting us to the accidental omission of exhibit V from the table of exhibits.

Regards,

Molly

Molly Erickson
Law Offices of Michael W. Stamp
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214
fax: 831-373-0242

5-6

1-11-11

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January 10, 2011

Via Email
Gail T. Borkowski
Clerk of the Board
Board of Supervisors
County of Monterey
168 W. Alisal Street, 1st Floor
Salinas, CA 93901

Subject: January 10, 2011 letter to the Board of Supervisors on Regional Project; corrected page 46

Dear Ms. Borkowski,

The letter we submitted in hard copy and electronic format today to the Board of Supervisors did not list exhibit V in the Table of Exhibits. The attached page is the corrected page that lists exhibit V.

Thank you for your courtesy.

Very truly yours,

Molly Erickson

Enclosure: As noted.

5-6
1-11-11

	pipeline agreed on for Monterey Peninsula. March 31, 2010.
S	January 11, 2011 Monterey County Board of Supervisors Staff Report for Item S-6, Attachments B-1 and B-2 as taken from the Monterey County Clerk to the Board website.
T	Figures 4.4-2a, 4.4-2b and 5-3 from the CalAm Coastal Water Project Final Environmental Impact Report.
U	Application of the Division of Ratepayer Advocates for Rehearing of Decision 10-12-016, filed January 3, 2011 in the matter of California Public Utilities Commission Application 04-09-019.
V	North County Land Use Plan, Local Coastal Program Certified June 1982, Monterey County, California (excerpts) Monterey County Coastal Implementation Plan, Part 2, Regulations for Development in the North County Land Use Plan Area (Chapter 20.144) (excerpts)

S-6

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January 10, 2011

Via Hand Delivery
Jane Parker, Chair
and Members of the Board of Supervisors
Monterey County Water Resources Agency
168 W. Alisal Street, 1st Floor
Salinas, CA 93901

Subject: January 11, 2011 Board Agenda Item No. S-6
Regional Desalination Project

Dear Chair Parker and Members of the Board of Supervisors:

This Office represents the Ag Land Trust, which owns property that would be affected by the proposed Regional Project. The Ag Land Trust was formerly known as the Monterey County Agricultural and Historical Land Conservancy.

The Ag Land Trust strongly objects to any approval of the proposed Regional Project under the environmental documentation prepared to date. In addition to comments provided by the Ag Land Trust in the past, which we incorporate here as part of this letter, the Ag Land Trust joins in the objections made by others to the Board's approval of the Regional Project.

Because the CPUC's Decision Is Not Final,
Action by the Monterey County Water Resources Agency Is Premature.

The CPUC's December 2010 decision 10-12-016 approving the Regional Project has been challenged by the CPUC's Division of Ratepayer Advocates which on January 3, 2011 filed an application for rehearing. The application for rehearing cites specific problems and errors in the CPUC's December 2010 decision. Because it has been challenged, the CPUC's decision is not final.

The proposed resolution before the Board relies on the CPUC's December 2010 action (see pp. 4-5 of the staff report, the 8th "Whereas" and 9th "Whereas" on p. 2 of the proposed Board resolution, and the last "Whereas" and item #4 on p. 3 of the proposed resolution).

The staff report fails to disclose that a petition for rehearing has been filed, or that the CPUC's December 2010 decision is not final.

The Monterey County Water Resources Agency should not act on the Regional Project until there is a final CPUC decision.

The CPUC Decision Does Not Resolve Critical Issues
That Must be Resolved Before Any Regional Project Can Be Approved.

Even if the CPUC decision were final, which is it not, the CPUC decision does not resolve significant and fundamental issues regarding the Regional Project. These issues have not been addressed. Ag Land Trust has raised these issues in a lawsuit filed in Monterey County Superior Court.

Ag Land Trust's lawsuit points out fatal flaws in the EIR, the incorrect lead agency for the EIR, the lack of water rights, and the violation of the Monterey County Water Resources Agency Act due to the exportation of Salinas Valley groundwater by the Regional Project.

Further Important Objections of Ag Land Trust.

The Board of Supervisors should not take action to approve the Regional Project for the following reasons:

1. The County staff's newly proposed "Attachments B-1 and B-2" to the Board findings are inconsistent with the EIR.

2. The Regional Project lacks the necessary water rights that would allow the Project to be constructed. The Monterey County Water Resources Agency cannot pump groundwater wells to supply the Project – as proposed – without rights to the groundwater. No valid water rights have been identified that could be used for the Project.

3. The environmental impact report (EIR) for the Regional Project does not comply with the California Environmental Quality Act (CEQA).

4. Marina Coast Water District is the lead agency for the Regional Project, not the CPUC.

5. The Regional Project would violate the Monterey County Water Resources Agency Act by exporting groundwater from the Salinas Valley Groundwater Basin.

6. Ag Land Trust has challenged the project in a lawsuit. As of today, that litigation is pending in Monterey County Superior Court.

In this letter, we address each contention in order. We specifically call the Board's attention to the contents of the documents we submit herewith as attachments

to this letter, as well as the documents we provided to the Board in April 2010. The documents provide further factual and legal support for the positions of the Ag Land Trust.

Interest of Ag Land Trust.

Ag Land Trust owns 396 acres in fee and holds 66 easements in Monterey, San Mateo, and San Benito counties. Its mission is to preserve the prime agricultural lands of the Salinas Valley. Ag Land Trust owns property located to the west of Highway One north of the city of Marina. Known as the West Armstrong Ranch, that property is under active agricultural use.

Ag Land Trust property is directly implicated by the EIR maps of the intake well location. Ag Land Trust's West Armstrong Ranch property is the site of the proposed source water intake wells for the Regional Project, according to the maps in the EIR. The Monterey County Water Resources Agency would own and operate the six intake wells, which are proposed to be located along the coastal dunes west of Highway One.

New Attachments B-1 and B-2 Are Inconsistent with the EIR and Were Not Evaluated in the EIR.

In the staff report to the Board for the January 11, 2011 meeting, the County staff for the first time has presented some new documents called Attachments B-1 and B-2 to the proposed Board findings. It is unclear what these attachments say, and it is unclear for what purpose the attachments are intended. Although staff calls them B-1 and B-2, the documents are not labeled with "B-1" or "B-2." The two documents bear the identical legend: "Monterey Regional Water Supply Program - Intake Wells."

The new attachments state on them, respectively: "Source: Figure 4.4-2a and Figure 5-3 from the Coastal Water Project Final EIR" and "Source: Figure 4.4-2b and Figure 5-3" from the EIR.

- EIR Figure 4.4-2a is a map called "Vegetation Communities: Northern Project Region." EIR figure 4.4-2a does not contain well locations or pipeline information, and is at a scale of approximately 1"=6,000 ft.
- EIR Figure 4.4-2b is a map called "Vegetation Communities: Central Project Region." EIR figure 4.4-2b does not contain well locations or pipeline information, and is at a scale of approximately 1"=5,000 ft.
- Revised EIR Figure 5-3 is at a scale of approximately to 1"=5,000 ft. Figure 5-3 shows general layouts of "Co-located North Marina Desalination Facility & Surface Water Treatment plan." Figure 5-3 includes specific layouts for the proposed source water pipeline.

In contrast, newly proposed Attachments B-1 and B-2 purport to show "Intake Wells", even though none of the three source documents provide that information. To further compound the confusion, new Attachments B-1 and B-2 omit the "Source Water Pipeline" shown in the EIR Figure 5-3, which is a key element of that EIR figure.

Attachments B-1 and B-2 are at a different and much finer scale than the EIR figures claimed as sources. The new attachments contain internally inconsistent scales (3960 feet and 4000 feet), without explanation of the inconsistencies. Neither of the attachments' scales is consistent with the EIR figures cited as "source" for the attachments. No explanation is provided for that inconsistency. No explanation is provided as the source for the purported increased detail provided on Attachments B-1 and B-2. The purported detail is of specific concern because a few days before the CPUC certified the EIR, the EIR preparer's project manager expressly denied the existence of any information about the project intake well location, other than what was in the EIR.[1]

While EIR Figure 5-3 identifies "Potential Sea Water Well and Pipeline Locations" in blue, the new Attachments B-1 and B-2 label the blue swaths on them as "Potential Intake Well Location." There is no explanation for the inconsistencies between the EIR documents and the Attachments B-1 and B-2, including the inconsistencies as to the legends, the different terminologies, the graphics, or the reduction from the plural ("locations") to the singular ("location"). There is no explanation why a vegetation map from the EIR was used as a source for these two attachments that purport to show "intake wells."

There is no explanation of solid yellow areas on the new Attachments B-1 and B-2. There is no explanation of the reasons behind the shapes marked in yellow, or brown, or green. There is no explanation why the "basic habitats" designation is missing from large areas of the figures, including the agricultural designation for the Ag Land Trust West Armstrong Ranch property, which should be shown in brown with diagonal lines, but is not designated as such. The agricultural land is visible on the graphic from its cultivated rows. Similarly, many other habitats are not marked on the Attachments B-1 and B-2, even though the legend purports to show "basic habitats." For example, the sizeable dunes habitat is not marked, although it can be observed on

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[1] Repeated efforts were made to obtain better maps, including GIS maps, of the proposed well locations. These efforts took place in November and December 2009, prior to the CPUC's purported certification of the EIR. In response to these efforts, Eric Zigas, the project manager for the EIR preparer, insisted repeatedly that there were no maps than those presented in the EIR, and refused to provide additional information, more detail, GIS data, or more legible maps.

the graphic. Only select areas are indicated in color with a designation of "basic habitats," and those selected areas appear to be existing roads. There is no explanation of why those roads and specific areas were selected to be yellow or green or brown, or of who owns those areas, or of who made the selection of those areas, or who decided that the majority of the areas on the map would not be designated with habitat information. The color-designated areas on Attachments B-1 and B-2 are a mystery. They are not pipelines or wells, according to the EIR figures.

Attachments B-1 and B-2 are inconsistent with the EIR. The attachments do not show any proposed specific well locations or pipeline locations. Attachments B-1 and B-2 are meaningless from a CEQA perspective, because they were not evaluated in the EIR. They neither correct or change the CEQA analysis. They represent new information that is not identified as being new, and were largely hidden from public review.

Attachments B-1 and B-2 were not announced openly, instead, they were silently added to the proposed Board findings. The proposed findings were released to the public only three days' prior to the Board meeting, without any notice to the public of the existence or significance (if any) of the Attachments B-1 and B-2.

The Attachments B-1 and B-2 on the Board Clerk's agenda website are essentially illegible. True and correct copies of those two attachments printed from the Board Clerk's website are attached to this letter.

The authors of the new Attachments B-1 and B-2 are not identified. The attachments, and the information on the attachments, have not been reviewed in the CEQA process, were not adopted in the EIR, and are not consistent with the EIR. The data that is purported to be shown on the attachments is misleading, and alters information provided in the EIR. The attachments mislead the public and decisionmakers because they appear to imply that a pipeline route exists in the marked area, but the legend does not identify it as a pipeline route and no such pipeline route appears in the EIR. The attachments should not be included in the record of proceedings. (The Staff report expressly asks the Board to include in the record "The figures attached to these Findings" [Staff report, p. 7, third bullet].)

For all of the above reasons, Ag Land Trust challenges Attachments B-1 and B-2, including their existence, their inclusion in the record, and their proposed attachment to the Board findings. The Board should reject Attachments B-1 and B-2.

There Are No Valid Water Rights for the Regional Project.

Water Rights Are Essential for the Regional Project.

In order to pump groundwater for the Project, the County Water Resources Agency must hold valid water rights. However, no valid water rights for the project have been identified. The EIR failed to address the critical and controversial issue of water rights for the project. The FEIR responded inconsistently and superficially to the public's DEIR comments on water rights.

None of the three Regional Project proponents has the water rights that allow the proponents to pump groundwater to supply the desalination plant: not Monterey County Water Resources Agency, not Marina Coast Water District, not Monterey Regional Water Pollution Control Agency. Nor does CalAm have the necessary water rights. Moreover, absent prescriptive actions by the proponents, there is no method by which they can acquire such rights in an overdrafted groundwater basin such as the Salinas Valley Groundwater Basin.

Monterey County Water Resources Agency General Manager Curtis Weeks has admitted that the County does not have the necessary water rights to pump groundwater for the Regional Project.

In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies. *(Katz v. Walkinshaw* (1903) 141 Cal. 116.) In an over-drafted basin, there is no surplus water available for new "groundwater appropriators" except those prior appropriators that have acquired or gained senior appropriative groundwater rights through prior use, prescriptive use, or court order. This is the situation in the overdrafted Salinas Valley percolated groundwater basin. California groundwater law holds that waters that have left the bed and other waters of a stream to the extent that the waters have lost their character as part of the stream flow, and that no longer are part of any definite underground stream, are percolating waters. (*Vineland I.R. v. Azusa I.C.* (1899) 126 Cal. 486.)

MCWRA has failed to specifically identify and address the actual sources of the asserted appropriative rights and/or alleged entitlements claimed by MCWRA for the water that MCWRA proposes to pump from new wells that would provide intake water for the desalination plant. Pumping water from a well without legal authority or rights would be illegal conduct. We are not aware of any water rights, appropriative or prescriptive, that are held or previously claimed by MCWRA that could be used to pump groundwater from the overdrafted Salinas Valley Groundwater Basin. No such claims were evaluated in the EIR.

River water from the Salinas Valley Water Project is not available to be extracted from the wells. The river water from the SVWP is released from the "management and control" of the MCWRA at the rubber dam, when MCWRA allows the water to be used or to percolate into the non-adjudicated aquifers of the Salinas. At that point MCWRA gives up any appropriative water rights to the surface water from the SVWP. Once that water is used by farmers or percolated into the ground, it is "abandoned" and, as percolated groundwater, is available to be pumped and used by the landowners whose lands overly the confined aquifers of the Salinas Valley. There are hundreds of intervening landowners with overlying groundwater rights in the unadjudicated over-drafted groundwater basin in the area of the Salinas River, Castroville, and North County.

MCWRA has not released any legal analysis, based upon the established doctrines and tenets of California groundwater law, to explain whose water MCWRA proposes to pump into the proposed intake pipeline for the desalination plant. No public review or environmental review has been performed of any such claims or explanations. The proposed budget does not include a line item for money to purchase the necessary water rights. When this amount is added to the project costs, the costs will increase significantly. The affect on ratepayers will be significant.

The proposed project will not benefit the North County area. The 1998 Montgomery-Watson report (prepared for MCWRA) determined that there is no hydrologic connection between the Salinas River and the over-drafted Prunedale percolated groundwater aquifers. This is generally because water does not run uphill. The MCWRA has not proven any continuous control maintained by MCWRA over water used or percolated into Salinas Valley confined aquifers at the Salinas River. Loss of continuous management and control of appropriated surface water results in an abandonment and forfeiture of the right to use such water by the initial appropriator (e.g., MCWRA) if it is allowed to percolate into the ground, absent an adjudication of the groundwater basin. The Salinas Valley Groundwater Basin is not adjudicated.

<u>CEQA Requires a Detailed Analysis of Water Rights.</u>

CEQA requires a detailed analysis of water rights issues, including ownership of those rights, when such rights reasonably affect the project's supply. Assumptions about supply are simply not enough. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 431; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 721 (*SCOPE*); *Save Our Peninsula, supra*, 87 Cal.App.4th 99, 131-134, 143 [EIR inadequate when it fails to discuss pertinent water rights claims and overdraft impacts].) The reasoning in those cases also applies to the proper analysis of the rights associated with the Regional Project's water supply.

As the Supreme Court has held, the "ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable *impacts* of supplying water to the project." (*Vineyard Area Citizens*, *supra*, 40 Cal.4th at 434, italics in original.) The EIR must "clearly and coherently explain" this issue, "using material properly stated or incorporated in the EIR." (*Id.*, at p. 421.) In *Vineyard Area Citizens*, the proposed project did not have legal rights to the projected water supply (*id.*, at p. 424), which required analysis under CEQA. (*Id.*, at p. 428; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830-831 [inadequate EIR did not include information as to impacts of supplying water]; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182 [EIR must inform decision makers of what the impact will be of the source of water for the project, and if that impact is adverse how it will be addressed].)

In an overdrafted, percolated groundwater basin, California groundwater law holds that the doctrine of correlative overlying water rights applies (*Katz v. Walkinshaw* (1903) 141 Cal. 116), whereby no surplus water is available for new groundwater appropriators, except by prescription. Salinas Valley basin is an overdrafted groundwater basin. The EIR was required to address the issue fairly and fully. The EIR failed to do so.

<u>Monterey County Water Resources Agency, Which Would Own and Operate the Intake Wells, Admitted It Did Not Have Water Rights for the Regional Project.</u>

Monterey County Water Resources Agency – which is projected to own and operate the wells – has admitted that it does not have water rights for the wells. MCWRA stated that it "intends to acquire an easement, including rights to groundwater, from the necessary property owner(s) to install the desalination wells. These rights have not been perfected to date . . . ."

There is no evidence that the owners of the land where the wells are proposed have sufficient ground water rights for the Regional Project wells, nor is there an adequate analysis of the impacts the transfer of any rights might have on the overlying fertile agricultural land. Ag Land Trust has not approved the use of its water rights for the Project.

To secure the amount of water demanded to serve the CalAm service area and the existing and future demands of the Marina district, Monterey County likely would have to initiate the groundwater adjudication of the entire Salinas Valley, affecting many owners and users. That issue was not addressed in the EIR.

The Public Presented Substantial Evidence of Water Rights Impacts that Were Not Adequately Addressed in the EIR.

Ag Land Trust repeatedly raised the issue of the impacts of water rights, including in its November 6, 2006 letter to the CPUC, April 15, 2009 letter to the CPUC, June 15, 2009 letter to Monterey County, November 2009 letter to Marina Coast, December 2009 letter to the CPUC, a letter prior to Marina Coast's March 16, 2010 decision, and a letter prior to Marina Coast's April 5, 2010 CEQA approvals of the Regional Project. These letters are all in the possession of Monterey County Water Resources Agency.

In its 2006 letter, Ag Land Trust stated that CalAm, a water appropriator under California law, has no rights to appropriate groundwater from the overdrafted Salinas Groundwater Basin. (FEIR, AgLTr-3.) In its response, the Final EIR admitted that "CalAm claims no rights to groundwater in the Salinas Valley." (FEIR, response to AgLTr-3.) Not addressing the question, and, at best, confusing the issue further, the FEIR added that "no Salinas Valley groundwater will be exported from the Basin." (FEIR, response to AgLTr-3.) Water rights address the right to take the water from the ground. Exportation of that water, once pumped, is a related but different issue. The FEIR attempted to bypass the central issue – the EIR's failure to analyze legal water rights and who owns and holds those rights – by avoiding it. CEQA does not allow an EIR to avoid analysis of significant issues. The issue of water rights needed to be analyzed in the EIR, where it can be seen, tested, and subjected to public review.

Comments on the EIR and to the CPUC showed that the issues involving water rights for the Regional Project directly or indirectly foreseeably will or may lead to adverse physical changes in the environment. CEQA requires disclosure and sufficiently detailed EIR analysis of these resulting physical impacts. (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1019; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445-446.) Subdivision (e) of CEQA Guidelines section 15064 provides that when the economic or social effects of a project cause a physical change, this change is to be regarded as a significant effect in the same manner as any other physical change resulting from the project. (See, e.g., *El Dorado Union High School Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 131 [potential of increased student enrollment in an already overcrowded school resulting from construction of the proposed apartment complex was an environmental effect that required treatment in an EIR because it could lead to the necessity of constructing at least one new high school].) Here, if water rights are obtained for the Regional Project – and there is no evidence that any are available – the resolution of the water rights issues will lead directly and indirectly to physical changes upon the Basin's future, the use of prime agricultural land, and the future development and use of land in North County.

The FEIR also asserted that "since CalAm has no rights to the Salinas Valley groundwater, it must enter into an agreement with MCWRA [Monterey County Water Resources Agency] for use of the water. This contractual agreement is assumed in the Draft EIR." However, there is no support for the EIR assumption that the Monterey County Water Resources Agency has any water rights that it could assign to CalAm, and Monterey County has admitted in writing that it does not have water rights for the Regional Project. The assumption is unreasonable. The EIR failed to disclose this key assumption.

Other members of the public also raised concerns about water rights, and got evasive and confusing responses from the EIR preparer. The Salinas Valley Water Coalition is a not-for-profit organization comprised of agricultural landowners, farmers and businesses within the Salinas Valley. The Salinas Valley Water Coalition's "primary purpose is to participate" in "governmental processes in order to preserve the water rights of its members, to protest their water resources, and to effect water policy decisions in a manner that provides their protection while sustaining agricultural production and quality of like." The Salinas Valley Water Coalition asked this about the Regional Project:

> Under what water right, and whose, will groundwater be pumped and surface water diverted? On what basis?

(FEIR, SVWC-10.)

The FEIR response, in key part, was this:

> [W]ater rights are not considered an environmental issue. Groundwater extracted for the Coastal Water Project would be covered under the right held by the entity that owns and operates the wells. . . . Details of the water rights is [sic] beyond the scope of CEQA because the acquisition of water rights does not determine the feasibility of this project.

(Response to SVWC-10, underlining added.) The EIR is wrong. Water rights are an environmental issue and must be addressed in the EIR. Further, the "taking" of water from private land owners, the loss of agricultural lands and production capacity that would result, the changes in the productive uses of land and the effect upon farmworker jobs are all significant impacts that must be evaluated. They were not evaluated in the EIR.

The Salinas Valley Water Coalition also expressed specific concerns about "significant adverse impacts to the agricultural lands within the Salinas Valley because of potential impact to the existing water rights." (FEIR, SWVC-9.) While the Coalition expressed this concern in the context of the then-project component of diversion of Salinas River water, the concern was clear: what are the impacts of the project on existing rights and existing land use? In response, the FEIR merely stated that the diversion component was no longer part of Phase 1 of the project, and provided no information as to potential impacts on agricultural lands resulting directly or indirectly from the Regional Project.

Pajaro Sunny Mesa Community Services District also asked questions about water rights, but was turned away without information. In its April 15, 2009 comment letter on the Draft EIR, the District stated that the project proponents did not have the necessary groundwater rights. The FEIR response accused the District of misunderstanding the CPUC's jurisdiction and authority. It then launched into a discussion of Marina Coast's authority, and two pages of vague assertions about possible Marina Coast claims of prescriptive water rights in an amount which "would be subject to proof." The FEIR also mentioned possible Monterey County Water Resources Agency claims for possible supplements to water supplies which "are questions of facts and the amount of supplement is subject to proof" which might be used "so long as no injury results to vested rights." These allusions to "possible" unquantified water rights claims that might be asserted, and might not be proven at some unknown time in the future, are not sufficient in an EIR analysis of water rights for an actual project. The FEIR also failed to address how these uncertain claims would be applicable to the Regional Project, or the serious legal complexity and impact upon other properties resulting from the assertion of these claims. To another comment about the lack of valid water rights (FEIR, PSMCSD-2), the Final EIR provided no response, instead taking the peculiar position that because the comment referred to concerns expressed prior to the release of the Draft EIR, the EIR preparer would not respond to the comments or the concerns.

Even CalAm asked about water rights (FEIR, CalAm-19) and was rebuffed with the FEIR response that "all water rights . . . would have to be obtained at the appropriate time."

The Open Monterey Project commented directly on the DEIR's lack of analysis of water rights, and asked specific questions. (FEIR, TOMP-4 and TOMP-6.) To a question about all rights claimed by Monterey County, the Final EIR responded only as to surface water rights, and ignored groundwater. (FEIR, response to TOMP-4.) To a full page of detailed comments seeking "the specific water rights for the project and each of its alternatives," specifically the groundwater rights, and describing the law as to the overdrafted Salinas basin (FEIR, TOMP-6), the Final EIR referred to two other

responses which did not address the important issues raised (FEIR, response to TOMP-6). As shown by the examples provided, the EIR response to comments was not a "good faith, reasoned analysis in response" as required by CEQA (CEQA Guidelines, § 15088, subd. (c); *SCOPE*, *supra*, 106 Cal.App.4th 715, 722-732).

In sum, the EIR never comprehensively or adequately examined the important issue of water rights. Instead, the EIR avoided responding and took various unsupported and inconsistent positions, including:

- Water rights do not have environmental impacts.
- CalAm does not have rights.
- CalAm would acquire rights from Monterey County.
- Monterey County has no rights.
- Marina Coast or Monterey County might have uncertain and unasserted rights in an unknown amount.

The EIR does not include the key admission by Monterey County Water Resources Agency that it does not have water rights that would support the Monterey County's pumping of ground water by wells for the Regional Project.

<u>What the EIR Did Not Do.</u>

The EIR did not evaluate the existence or nonexistence of water rights for the Regional Project. The EIR failed to investigate water rights and the legal owners thereof, perhaps because the CPUC or its EIR preparers do not have the necessary expertise, or is not familiar with the on-the-ground conditions in Monterey County. We have repeatedly been told that the CPUC has not before prepared an EIR for a water supply project, and, for that reason, for the Regional Project environmental review the water division had to borrow staff from its energy division who had some familiarity with CEQA.

Monterey County Water Resources Agency has no statutory authority over water rights or public water agencies and has no authority to grant or approve such rights. The CPUC has no statutory authority over water rights or public water agencies and has no authority to grant or approve such rights. At the very least, before making any decisions on the Regional Project, the EIR, Marina Coast and the CPUC were required to have the various claims and issues evaluated under CEQA, test them analytically, subject them to public scrutiny, and provide the decision makers and the public with the analysis. Without the reasoned good faith analysis, the EIR fails as an informational document. (*SCOPE, supra,* 106 Cal.App.4th 715, 722.) It is not enough for the EIR simply to contain information submitted by the public and experts. In particular, water is too important to receive such cursory treatment.

The issue of the Regional Project's extraction of groundwater from the overdrafted Salinas Valley Groundwater Basin is an additional (and related) material issue inadequately handled by the EIR, Marina Coast, the CPUC, and Monterey County Water Resources Agency. Groundwater extraction would be an illegal appropriation of water from private property owners because no applicable water rights have been established. In essence, the effect of designing the Regional Project to rely on illegal extraction and wrongful appropriation of groundwater from the basin needs to be fully developed in an EIR.

The EIR did not analyze the significant impact of an illegal taking of groundwater from overlying landowners or in regard to the feasibility of the plan itself. Instead, the FEIR accepted as unquestionably true and certain the legally and factually flawed rationale that a purported return of a portion of the water to the basin somehow allows the illegal extraction of groundwater from the overdrafted basin.[2] The EIR's result-oriented analysis missed the fact that the extraction of the groundwater for use would be an illegal appropriation. This significant deficiency in the EIR must be addressed, and the EIR should identify detailed mitigations for all of the adverse impacts and proposed illegal actions and takings.

The EIR also defaulted on the mandatory discussion of the specific abilities and limitations in regard to any augmented or developed water proposed for the Regional Project. Instead of addressing the controversial issues of water rights applicable here, the FEIR deferred entirely to Lloyd Lowrey, the lawyer for Marina Coast Water District, for an untested legal argument. Mr. Lowrey's argument then was presented as the FEIR's discussion. The EIR contains no independent review or investigation of the project proponent's legal argument and no substantiating facts. Both steps are required by CEQA.

California law on the ability of an agency to claim the right to salvage any or all of any developed water in the circumstances here, and any limits on that claim, has not yet been defined by the Courts. The Salinas Valley is <u>not</u> an adjudicated groundwater basin. The EIR overstates the situation. The EIR does not point to any California case where the analysis argued in the EIR has been endorsed or decided by the Courts. The two cases relied upon Marina Coast's lawyer (and therefore the FEIR) are cited in a footnote: *Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1370 (*Amrhein*) and *Lanai Company, Inc. v. Land Use Commission* (S. Ct. Ha. 2004) 97 P.2d 372, 376. The EIR failed to investigate the cases cited by Mr.

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[2] That flawed approach appears to be an attempt to comply with the Monterey County Water Resources Agency Act (Water Code appendix, Ch. 52), which prohibits exportation of groundwater from the Salinas Valley Groundwater basin.

Lowrey, including the outcome in *Amrhein* in favor of Pajaro Sunny Mesa's claims. The citations in both cases are to portions of the introductory factual recitations in the cases, and not to Court holdings or legal analysis, and thus are not fairly considered precedents or statements of settled law.

For all the above reasons, MCWRA should not act on the Regional Project unless these key questions about water rights have been publicly addressed and resolved.

The EIR Does Not Comply with the Mandates of CEQA.

The EIR is deeply flawed. The EIR's analysis of the Regional Project does not comply with CEQA. The EIR should not be relied upon by any public agency to approve the Regional Project. Ag Land Trust asserts that the Monterey County Water Resources Agency is a responsible agency, and acts at its peril in reliance on the challenged EIR. In the alternative, if the Court decides that the CPUC is the lead agency for the Regional Project, then Ag Land Trust asserts that the CPUC's approval of any project based upon that EIR is contrary to law and constitutes a prejudicial abuse of discretion under CEQA, and that any reliance on the challenged EIR by the Monterey County Water Resources Agency is at the Agency's peril.

The Ag Land Trust's CEQA petition alleges very serious issues with EIR. The EIR contains serious factual and analytical omissions. Those flaws go to the very heart of the EIR. CEQA's goal is informed decision making. The EIR's informational flaws and analytical gaps do not comply with CEQA.

The Regional Project is proposed primarily by three public agencies: Marina Coast Water District, Monterey County Water Resources Agency, and Monterey Peninsula Water Pollution Control Agency.

1. Marina Coast Water District would construct and own: the desalination plant; a 1.9-mile, 42-inch pipeline for source water; a 0.5-mile, 35-inch brine return pipeline; a 7-mile, 36-inch pipeline for desalinated water; an administration and operations building; laboratory facilities; chemical buildings; parking lot; access roads; and an electrical building. Marina Coast's customers would receive some of the desalinated water. Marina Coast would purchase capacity in outfall facilities for disposal of brine.

2. Monterey County Water Resources Agency would construct and own the source water intake wells and a 1.9-mile 42-inch pipeline from the wells to Marina Coast's pipeline. The Agency would utilize its existing inland monitoring well network.

3. Monterey Regional Water Pollution Control Agency would construct and own a brine receiving facility. The Agency would sell capacity in its outfall facilities to Marina Coast for brine from Marina Coast's desalination plant.

Because they are all public agencies, none of the three primary project proponents is subject to CPUC authority. The only project participant who is subject to CPUC authority is CalAm, which has a relatively small part of the Regional Project facilities. CalAm would construct and own a distribution system that would take Marina Coast's desalinated water from a "delivery point" at Marina Coast's southern boundary. CalAm then would deliver the water to its customers on the Monterey Peninsula.

The EIR admits that the CPUC does not have authority over the Regional Project's major components. We draw your attention to the specific citations to the EIR and related legal argument in the Ag Land Trust's opening brief and reply brief on CEQA petition in Monterey County Superior Court, attached as exhibits to this letter. The facts and analysis contained therein are incorporated in this letter.

Under CEQA, Marina Coast Is the Lead Agency, Not the CPUC.

CEQA Statute and Guidelines.

Public Resources Code section 21067 defines "lead agency" in terms of the agency which has "principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." CEQA Guidelines, principally section 15051, subdivisions (a) through (d), amplify and implement section 21067. Section 15051 does so by first recognizing that in some cases, "two or more public agencies will be involved with a project" (§ 15051, first paragraph). Recognizing that being "involved" with a project can take on different roles, section 15051 separates these types of projects into two groups: those carried out by a public agency (subdivision (a)) and those carried out by a nongovernmental person or entity (subdivisions (b) and (c)). Subdivision (d) provides for agreements as to lead agency. Lead agency determinations may be challenged by other agencies, by the applicant, or by the public.

The entire text of section 15051 of the CEQA Guidelines is as follows:

> Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:
>
> (a) If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would

be located within the jurisdiction of another public agency.

(b) If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.
(1) The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.
(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the prezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

Subdivision (a) of Section 15051.

CEQA Guidelines, section 15051, subdivision (a) mandates as follows:

If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.

Under section 15051, because the Regional Project "will be carried out by" three public agencies, one of those public agencies must be lead agency. The CPUC is not

the proper lead agency for the Regional Project. Because Marina Coast Water District was the first public agency to act to approve the Regional Project under CEQA, it is the lead agency under CEQA and is required to defend the adequacy of the EIR. (*Citizens Task Force on Sohio v. Board of Harbor Commissioners* (1979) 23 Cal.3d 812 (*Sohio*).)

Sohio is the leading Supreme Court decision on lead agency under CEQA. In that case, the EIR was for an interstate project proposed by a CPUC-regulated entity (see current CEQA Guidelines, § 15051, subd. (b), which applies to projects proposed by nongovernmental entities). Even though the CPUC had jointly prepared the EIR and had statewide authority, the Port of Long Beach acted first to approve the project. The Supreme Court held that where a local public agency was the first to act to approve a project, it became the lead agency for purposes of CEQA and "hence was required to defend the adequacy of the entire EIR." (*Sohio, supra*, 23 Cal.3d at p. 814.) The superior court therefore had jurisdiction over the CEQA petition that challenged the CEQA action by the Port, the local public agency.

Sohio shows that a local agency is the lead agency responsible for defending the entire EIR in this situation, even where the project is proposed by a CPUC-regulated public utility, and even where the CPUC has jointly participated in the preparation of an EIR, which is a lead agency task (CEQA Guidelines, § 15050).

Subdivision (b) of Section 15051.

Back in 2003, when the CPUC decided that it would be lead agency, that conclusion predated the 2008 proposal of the Regional Project. The CPUC's 2003 decision was predicated on the two Cal Am proposals (the Coastal Water Project and the North Marina alternative) and Cal Am's being subject to CPUC jurisdiction. In 2003, the CPUC based its decision on subdivision (b) of section 15051, which applies only to private, non-governmental project:

> If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.

Subdivision (b) does not apply to public agencies' projects. However, after the public agencies' Regional Project was proposed, the CPUC did not reconsider its 2003 decision that it would be lead agency, and the CPUC did not reissue its 2006 Notice of Preparation of an EIR, even though the public agencies' Regional Project was in a different location than either of CalAm's private projects, would be carried out by governmental entities not subject to CPUC control instead of a nongovernmental entity, and would have different environmental effects. (See CEQA Guidelines, § 15082.)

Subdivision (b) applies only to projects carried out by a "nongovernmental person or entity. . . ." Because the Regional Project is a public agency project, subdivision (b) does not apply. For this reason, the Board should not rely on the language in the proposed decision and proposed alternate decision that relies on CEQA Guidelines Section 15051(b) for the CPUC's status as lead agency.

The CPUC has no jurisdiction, authority, or supervision over Marina Coast or the two other principal public agencies. The CPUC has no power to carry out the substantive requirement of CEQA to impose and enforce mitigation measures in order to reduce environmental impacts, because the CPUC has no jurisdiction over the public agencies. This lack of authority is crucial. Major environmental impacts are related to the desalination plant, its construction and operation, and the commitment by Marina Coast to provide water for much of the population of the Monterey Peninsula. The CPUC cannot "supervise" or "approve" any action or construction or physical change in the environment by Marina Coast or any of the other public agencies. Subdivision (b) does not apply. The CPUC is not the lead agency under CEQA.

Subdivision (c) of Section 15051.

Subdivision (c) similarly applies only when the project is carried out by a nongovernmental person or entity. It applies "[w]here more than one public agency equally meet the criteria" of subdivision (b) for the nongovernmental project. In that situation, "the agency which will act first on the project in question shall be the lead agency" under subdivision (c).

Subdivision (c) on its own terms is applicable only if subdivision (b) applies, which means that the project must be one that is carried out by a nongovernmental entity. Even if one assumes for purposes of argument that CalAm is carrying out the Marina Coast project, Marina Coast was the public agency to "act first on the project" when Marina Coast approved the project in April 2010. Under *Sohio, supra,* 23 Cal.3d 812, 814, there can be no doubt that Marina Coast then became the lead agency if subdivision (c) applies. As the lead agency, Marina Coast is required to defend the EIR upon which it took action. (*Ibid.*)

Sohio is instructive here. In *Sohio*, the EIR was for an interstate project proposed by a CPUC-regulated entity (see current CEQA Guidelines, § 15051, subd. (b), which applies to projects proposed by nongovernmental entities). Even though the CPUC had jointly prepared the EIR and had statewide authority, the Port of Long Beach acted first to approve the project. The Supreme Court held that where a local public agency was the first to act to approve a project, it became the lead agency for purposes of CEQA and "hence was required to defend the adequacy of the entire EIR." (*Sohio, supra*, 23 Cal.3d at p. 814.) The superior court therefore had jurisdiction over the

CEQA petition that challenged the CEQA action by the Port, the local public agency. *Sohio* shows that a local agency is the lead agency responsible for defending the entire EIR in this situation, even where the project is proposed by a CPUC-regulated private entity ("public utility"), and even where the CPUC has jointly participated in the preparation of an EIR, which is a lead agency task (CEQA Guidelines, § 15050).

The CPUC has not been carrying out the Regional Project. Marina Coast has been carrying out – and approving – the Regional Project. (See Guidelines, § 15051, subd. (a).) The CPUC has not been "supervising or approving the project as a whole." (Guidelines, § 15051, subd. (b).) Marina Coast has. The CPUC does not have jurisdiction over the three public agency proponents of the Regional Project. And the CPUC was not the first public agency to approve the Regional Project. (Guidelines, § 15051, subd. (c).)

Subdivision (d) of Section 15051.

Subdivision (d) states that where two or more agencies have a substantial claim to be lead agency under subdivisions (a), (b) and (c), "the public agencies may by agreement designate an agency as the lead agency." There is no such agreement for the Regional Project. The CPUC cannot be lead agency in any event because it is not a proper lead agency for the Regional Project, as discussed above, and an agreement under subdivision (d) may not be used to anoint an improper lead agency.

The Coastal Water Project EIR Is Deeply Flawed and Does Not Comply with CEQA as Applied to the Regional Project.

The 2009 Environmental Impact Report.

On January 30, 2009, the CPUC released a draft environmental impact report (EIR) for the two CalAm projects, as well as for the recently added Regional Project.

On August 10, 2009, at the request of Marina Coast, the CPUC agreed to bifurcate the certification of the EIR from any CPUC action on a project. That Marina Coast request set into motion the chain of events which enabled Marina Coast to approve the project first, before any final CEQA action by the CPUC.

In November 2009, the CPUC released a Final EIR. In response to public comments expressing confusion over the Draft EIR discussion of lead agency for the Regional Project, the Final EIR stated:

> [F]or the Regional Project, the CPUC would have jurisdiction over CalAm's portion, but not MCWD's [Marina Coast's portion].
>
> If the . . . Regional Project is selected, the M[arina] C[oast] W[ater] D[istrict], as owner and operator of the desalination plant, would approve the plant itself (and any associated facilities that it would own) and would apply the EIR to that decision . . . .

For the Regional Project, the Final EIR stated that Marina Coast "would own and operate desalination facilities," have "primary responsibilities related to water supply, project implementation, and agency coordination," and would "initiate contact with" and "be responsible for coordinating" with other local agencies, including Monterey County Water Resources Agency, Monterey Peninsula Water Management District, Seaside Basin Watermaster, City of Marina, City of Seaside, Transportation Agency of Monterey County, State Parks, Caltrans and the Army.

The Final EIR also stated that:

> [T]he CPUC will neither consider adoption of the Regional Project in its entirety nor consider adoption of all projects composing the . . . Regional Project.

In short, the EIR acknowledged that the CPUC does not have a role in supervising and approving the actions of the local public agencies on the Regional Project, because the CPUC does not regulate or supervise the public agencies. The EIR expressly contemplated that the CPUC would act first. The EIR's "Master Response – Local Agencies' Authority and Roles" stated that "If the California Public Utilities Commission (CPUC) approves a project, local agencies would then begin the process of local permitting and approvals." That is not what happened. Before the CPUC approved any project, the local agencies, headed by Marina Coast, approved the Regional Project.

On December 17, 2009, the CPUC certified the Final EIR "for the Coastal Water Project." The CPUC stated that its action was necessary "before determining whether to approve Cal Am's request for a [Certificate of Public Convenience and Necessity]." The CPUC did not act at that time to approve or recommend any project based on the Coastal Water Project EIR.

The 2009 CPUC decision expressly contemplated that the CPUC would act first to use the EIR to make a decision on the project, and that other public agencies would

act after the CPUC to make "subsequent approvals for the project, or for portions thereof" (underlining added for emphasis).

Marina Coast Water District Then Acted First to Approve the Public Agencies' Regional Project under CEQA.

Marina Coast will own and construct the desalination plant plus essential related facilities, all on Marina Coast's land. The EIR acknowledges that Marina Coast will approve all Marina Coast's facilities, and that the CPUC cannot and will not approve Marina Coast's facilities. Because it is the public agency with "the principal responsibility for carrying out or approving" the Regional Project, Marina Coast is the lead agency under CEQA. (Pub. Resources Code, § 21067 [definition of lead agency]; CEQA Guidelines, § 15051, subd. (a) ["If the project will be carried out by a public agency, that agency shall be the lead agency"].)

On March 16, 2010 and April 5, 2010, Marina Coast was the first public agency to approve the Regional Project under CEQA. On April 5, the Marina Coast Board of Directors approved and adopted CEQA findings, a CEQA mitigation monitoring chart, and a CEQA statement of overriding considerations for the Regional Project. Marina Coast's CEQA approvals of the project were unconditional.

The EIR for the Regional Project Violates CEQA.

Ag Land Trust challenged the compliance with CEQA as applied to the proposed approvals of the Regional Project. Ag Land Trust seeks an EIR that complies with CEQA. Ag Land Trust has specified and documented several significant failures in the EIR in regard to information gathering, investigation and consideration of unanalyzed or underanalyzed significant impacts. Several of those failures are documented in Ag Land Trust's opening brief and reply brief in the CEQA matter pending in Monterey County Superior Court. Those briefs are attached to this letter.

The EIR Failed to Consider the Mandatory Contingency Plan and Made No Environmental Analysis of Impacts of a Contingency Plan.

Large Desalination Plants Are Unreliable.

Desalination plants are notoriously unreliable. No other plants of comparable size or complexity are operating in California. Despite this fact, there is no discussion in the EIR of the reliability of desalination plants, which is a critical omission, because the entire project depends on desalination. The EIR fails to identify any plant anywhere in California that supplies the primary potable water supply for tens of thousands of residents and businesses, as the Regional Project is intended to do. The only

discussion about reliability is from the public, questioning the reliability of desalination plants.

In fact, similar-sized desalination plants lack long term reliability, and fail to operate at full capacity for reliable periods of time. There are very poor track records of the two comparable plants in the United States. The Yuma, Arizona plant has never operated outside of short test periods. The Tampa Bay plant has never operated commercially or reliably. The mothballed Santa Barbara plant had the same problem. Large desalination plants of the size proposed by Marina Coast have proved to be unreliable and have been non-operable for long periods of time. None has ever operated at full ("installed" or "projected") capacity.

The only active California Coast desalination plants are a tiny fraction of the size proposed for the Regional Project – ranging in maximum capacity from 0.002 million gallons per day (MGD) capacity to 0.4 MGD. The Regional Project is proposed to have a capacity of 10 MGD. Critically, none of the active desalination plants involve municipal or domestic uses, such as proposed for the Regional Project. There is no evidence of any municipality in the United States using a large-scale desalination plant for a reliable potable water supply.

The California Coastal Commission recently analyzed a small mixed use project in Monterey that intended to rely on a desalination plant as its water supply. The Coastal Commission found that the risk was too high that the proposed desalination component may fail and thereby cause the project to place demands on the illegal and environmentally harmful CalAm water supply system. For a Monterey County pilot plant, the Coastal Commission approved a permit on a 4-3 vote because (1) it was a temporary, experimental plant and (2) product water from the pilot plant would not be distributed for human consumption.

A 2004 California Coastal Commission report stated that reverse osmosis plants, like the proposed Regional Project, are subject to frequent full or partial shutdowns due to sensitivity to water quality, frequent cleaning and maintenance, and frequent replacement of essential parts. Yet the EIR failed to adequately investigate, analyze or mitigate the impacts of the lack of reliability of the proposed desalination plant.

When questioned on the issue of reliability, MCWRA General Manager Curtis Weeks has made vague references to desalination plants in Alameda County and Orange County. However, in response to public records requests made by this Office seeking the records that Mr. Weeks relied on for his references, Mr. Weeks did not have any documentation that supported any claims of reliability by plants in Alameda or Orange County, or in any other County. Further, those plants are not comparable to the

proposed Regional Project. Further, Marina Coast Water District does not have any data or documentation as to reliability of desalination plants in general or in particular.

The Regional Project Does Not Include a Contingency Plan. The EIR Failed To Identify the Requirement for a Contingency Plan.

The environmental documents fail to disclose the significance of the County requirement that each desalination plant include a contingency plan (Monterey County Code, Ch. 10.72). The EIR mentioned the County Code, but failed to disclose its key requirements.

The County Code requires that a permit be obtained for all desalination facilities (§ 10.72.010), and specifically requires that the permit application shall include:

> [A] contingency plan for alternative water supply which provides a reliable source of water assuming normal operations, and emergency shut down operations. Said contingency plan shall also set forth a cross connection control program.

(County Code, § 10.72.020.)

The purpose of the County's requirement is because the desalination plant may fail, shut down for any reason, or not provide the full amount of projected water. When that happens, human health and safety would be at risk unless a reliable back-up supply is in place. As proposed, much of the population of the City of Marina, the former Fort Ord and the Monterey Peninsula population would rely on the Regional Project for their primary domestic and business water supply. If the Regional Project supply fails, either for a short term or for a long term, those customers simply would not have a water supply. The Regional Project does not include a "contingency plan for alternative water supply" or "a cross connection control program," as the County requires.

The environmental documents failed to identify the County requirements cited above for a contingency plan or a cross connection control program. In response to public comment that the project should include an operations plan, the EIR merely responded "comment noted." (E.g., comment SVWC-12 and response thereto.) These were not the good-faith reasoned responses required by CEQA. (CEQA Guidelines, § 15088, subd. (c).)

By failing to identify this County requirement and by failing to include consideration of the required contingency plan for an alternative water supply, the EIR

is fatally flawed, because such a plan for a reliable alternative supply is required, both by ordinance and by the agency's substantive obligation under CEQA to mitigate impacts.

The Project Proponents Know that a Contingency Plan Is Required.

Marina Coast Water District, the primary proponent of the Regional Project, knows of the County permit requirement. In November 2009, Marina Coast submitted draft application materials to Monterey County seeking permits to construct and operate a desalination plant. Those materials do not mention a contingency plan. In February 2010, project proponents distributed a document which purported to rebut the public's assertion that the Regional Project did not include a contingency plan. That document claimed there was an "application to Monterey County Health Department in Process" and listed "emergency backup" supplies. That claim was false, as shown by Ag Land Trust's public records request to Monterey County Health Department in March 2010. The draft application materials did not identify any contingency or back-up plans. (The records produced by the County Health Department are exhibits to this letter.)

The only "emergency backup" plan proposed by the Regional Project proponents has been to take water from the Carmel River and the Seaside Basin – the very overpumped, illegal, and unsustainable water supplies that triggered the need for a new, legal water supply. Both the Carmel River and the Seaside Basin are governed by legal rulings that severely limit Cal Am's legal right to take water from them. The EIR failed to make the required effort to identify the certain environmental harm caused by use of these "backup" sources, or the water rights it would rely on to pump from these sources.

In addition to describing the contingency plan, the EIR was required to identify, analyze and assess the impacts attributable to the plan. If the back-up water supply is to be the Seaside Basin and the Carmel River, the extra burden placed upon those water sources would severely exacerbate already environmentally critical situations. Given the known impacts on the Carmel River and Seaside Aquifer from the current pumping, and the overdrafted Salinas Valley Groundwater Basin, it is likely that any required alternative source of supply would have significant environmental impacts. None of these impacts is identified or discussed in Marina Coast's environmental analysis of the Project. The impacts of pumping Carmel River Water and Seaside Basin water should have been analyzed in the EIR. That analysis was not part of the EIR done here. (*Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99 [EIR inadequate for failing to address off-site impacts of a project]; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 734 [same].)

Under CEQA, the EIR Is Fatally Flawed Because the Project Description Omitted the Contingency Plan and the Analysis Failed to Address Potentially Significant Environmental Impacts.

The failure to include the mandatory contingency plan in the project description[3] and the environmental review is a serious informational and analytical flaw. An EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. A complete description of a project must address not only the immediate environmental consequences of going forward with the project, but also all reasonably foreseeable consequences of the initial project.

CEQA forbids piecemeal review of the significant environmental impacts of a project. CEQA mandates that environmental considerations do not become submerged by chopping a large project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences. The CEQA Guidelines define "project" broadly as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . . ." (CEQA Guidelines, § 15378, subd. (a).)

The Courts emphasize that an EIR must disclose uncertainty regarding project elements or impacts, and, where uncertainty exists, the impacts of back-up plans must be investigated and discussed, because it is likely they will be implemented. No such uncertainty about the desalination plant's reliability was disclosed here, and no impacts of the mandated back-up or contingency plan was discussed in the Regional Project EIR. Generalities, without details or estimates concerning the amount of water the contingency programs might make available, are not a proper substitute for a discussion which allows those who did not participate in the EIR's preparation to understand and meaningfully consider the issue at hand. With regard to the Regional Project, no EIR analysis was provided of the adequacy of the water supply in light of the uncertainty flowing from the lack of reliability of desalination plants in general or of the Regional Project in particular. This absence of discussion and analysis undermines the informational function of the EIR for the project.

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[3] The principal source for the EIR's project description of the Regional Project is a document prepared by RMC Water and Environment. RMC is Marina Coast's lead technical consultant for the Regional Project.

There is strong CEQA case law recognition of the CEQA requirement that where significant uncertainties exist around water supply, and where, in light of those uncertainties, back-up or contingency plans are proposed, the plans must be included in the project description and disclosed, investigated and discussed in the EIR analysis. Here, the Regional Project is intended to provide a primary water supply to tens of thousands of residents and businesses. Significant uncertainties exist about the project's ability to succeed on an uninterrupted basis. It is reasonably foreseeable that a back-up potable water supply will be used, at least to some extent and at some times. An EIR analysis of the impacts of using that back-up supply is required. The project description failed to mention the possibility of desalination plant failure – temporary or permanent – or the possibility production of potable water production being less than projected. These are all reasonably foreseeable consequences of the Regional Project.

The EIR's Assumption of Constant Pumping is Unreasonable.

All Modeling Scenarios Unrealistically Assumed the Intake Wells Would Be Pumped Constantly, Without Support for the Assumption.

The EIR's conclusions with regard to the Regional Project Impacts are based on modeling scenarios that were prepared and submitted by the project proponents. (Regional Project Scenario 4f, prepared for Marina Coast Water District, Regional Project Scenarios, prepared for RMC Water and Environment, consultant to Marina Coast.) The EIR failed to scrutinize and test these project-proponent-submitted claims. It is not disputed that computer models are based on assumptions, and the assumptions made for a model or for a specific model run (a scenario) can control the outcomes. Here, all of the modeling scenarios assumed constant pumping of the six vertical intake wells. The claimed benefits of the project with regard to seawater intrusion rely on the assumption of continuous pumping. The project proponent's claims are that constant pumping along the coast would form a "trough" that would "arrest the advance of seawater intrusion." Scenario 4f, the favored scenario, included six wells that would "pump groundwater continuously" for 56 years. To make matters even less transparent, the EIR does not identify all of the assumptions used by the project proponents for their modeling.

Continuous pumping was not a part of the Regional Project description under CEQA.[4] Most significantly, continuous pumping is not required as a condition or a

[4] The EIR calls it the "proposed" pumping, but constant pumping was not part of the project description under CEQA Guidelines section 15082. Constant pumping was first proposed by the consultants to Marina Coast in a document that was provided for the first time to the public as Appendix Q to the Final EIR, after the public comment period

mitigation, so there is no requirement that it occur even though the EIR assumes that pumping will occur without interruption for 56 years.

The EIR preparer's duty is to critically review all information provided by the project proponent, especially where it is questioned. (*Save Our Peninsula, supra,* 87 Cal.App.4th 99, 122.)

There was no EIR peer review of the "constant pumping" assumption or of the Regional Project modeling scenarios. The EIR did not contain any modeling for any scenarios with assumptions other than constant pumping. Such other scenarios might have shed light on the different kind and magnitude of impacts. Similarly, the EIR failed to discuss the impacts of noncontinuous pumping – where pumping would be interrupted or cease altogether – and such interruptions are reasonably foreseeable.

It is reasonably foreseeable or likely that one or more of the proposed wells will not pump continuously for 56 years. The record evidence shows that the operations of desalination plants are uncertain and unreliable, and there is no contrary evidence in the record. If the desalination plant becomes partially or fully inoperable, for any period, the Regional Project's six wells could not pump constantly at the projected rate necessary to create a "trough" because there is no place to put the water after it is extracted from the ground. It is foreseeable that one or more of the six wells will be down for repairs at various times. It is foreseeable that pumping will cease at the end of the project's lifetime.

By relying on scenarios presented by the Regional Project proponent that were all unrealistically predicated on constant pumping, the EIR essentially assumed that constant pumping would always be done. That assumption is not reasonable for several reasons. The EIR failed to investigate or disclose any information on the reliability of desalination plants, or what would happen if the proposed plant is non-operable for long periods of time (or even for short periods), or if it never operates at full capacity.

The EIR had the duty to investigate these critical issues generally, and specifically as it related to the EIR assumption of constant pumping. The EIR should have investigated whether the wells pump water continuously if the desalination plant is inoperable, or if any of the pumps needed maintenance, or any other reason. The EIR also should have investigated the environmental impacts of any cessation in the constant pumping assumed by project proponents. Given the new nature of desalination technology, and the uncertain and unproven nature of the technology as

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had closed.

applied to such a large and important project, the EIR should have included an investigation and discussion of these issues in its analysis.

Impacts During the Life of the Project.

In addition to failing to adequately investigate and identify the potential environmental impacts of non-continuous pumping throughout the life of the project, the EIR also failed to investigate the potential environmental impacts that may occur when pumping terminates at the end of the plant's useable life, which the EIR anticipates to be approximately 50 to 56 years.

Groundwater has several unknowns. Unknown variables lead to assumptions being made in each analysis. The unknowns and assumptions reasonably can be reduced through testing the groundwater system through pumping and monitoring wells. This was not done here to the level that would provide usable data for reliable conclusions. The testing that was done for the EIR was minimal and based on an insufficient number of wells and locations. For that reason, the EIR conclusions are not reliable or adequate information. Even after test wells are used to validate assumptions, there remains the unaddressed variable of time, as well as changes caused by climate changes, other events, and other uses.

The EIR did not present any information of the results of a non-constant pumping scenario. Given the coastal location of the wells, seawater is a far greater influence on the aquifer than groundwater. Cessation of pumping is reasonably likely to lead to a potentially serious exacerbation of seawater intrusion, causing or increasing the permanent changes to the physical environment.

The Contradicted Assumption that Pumping Causes a Trough that Would "Stop" Sea Water Intrusion.

The EIR claimed that the scenarios of pumping of the intake wells showed the creation of an underground "trough" in the water level due to the volume of water being pumped. The project proponents' model scenario claimed that continuously operating the six wells "will maintain a barrier that would prevent future seawater intrusion." To the Board of Directors of the Marina Coast Water District, Marina Coast's General Manager described the physics of the Regional Project well field as follows:

> 'Cause we're gonna put wells, and wells do like that. They cause a, what's called a cone of depression and they're going to suck from the circle around there and the water is going to fall in. It's primo technology, it's used all over the place to stop sea water intrusion is to put wells along your

> beach. It causes a trough where the ocean can't get by, cause the wells are picking it up as it falls into that trough.

"That's what's going to stop the sea water intrusion," General Manager Heitzman stated. There are several CEQA problems with this approach.

The EIR claim of a "trough" that would halt seawater intrusion is inconsistent with the theory behind the Monterey County's past efforts, as pointed out in comments in the EIR. (E.g., Ag Land Trust comments, LandWatch comment 11.) For the Salinas Valley Water Project (SVWP) and Castroville Seawater Intrusion Program (CSIP), Monterey County's stated goal is to reduce pumping by coastal agricultural users because coastal pumping removes the groundwater that provides a barrier to seawater. Pumping the groundwater causes the adjacent seawater to flow in to replace it. The theory behind the Salinas Valley Water Project and Castroville Seawater Intrusion Program is that by eliminating coastal pumping, seawater intrusion will be slowed or halted. The earlier EIRs are opposite and repugnant to the one proposed in the Regional Project EIR, which is that significant increased, continuous pumping at the coast will halt seawater intrusion.

Both theories cannot be correct, and the EIR fails to address the inconsistencies. The CPUC has made no effort to clear up the inconsistencies despite public testimony and questions on it. If Monterey County's assumption – applicable to Salinas Valley Water Project and Castroville Seawater Intrusion Program – is correct, then the pumping for the Regional Project will make seawater intrusion worse, not alleviate it. Pumping from coastal wells cannot both reduce and increase seawater intrusion. The dramatic and permanent harms of increasing seawater intrusion are too important to risk without an adequate investigation and more complete analysis.

In any event, the claims that the pumping will stop seawater intrusion are not supported by the Final EIR conclusion that, under the Regional Project, the rate of seawater intrusion is similar to baseline conditions. In fact, the area in the vicinity of the intake wells and the area south of Salinas River would mouth remain intruded with seawater even longer under Regional Project conditions than under baseline conditions. In other words, there is no environmental benefit to the purported trough, and the changes to the immediate environment are reasonably likely to worsen the impacts and increase the degree of physical change. Environmental harm would result, because the groundwater under fertile agricultural land would be more contaminated with more seawater for a longer period, which would harm the overlying groundwater rights and cause adverse environmental impacts. And if the modeling were done for scenarios of non-constant pumping, further potential environmental impacts would be disclosed. The EIR failed to provide the essential information and investigation, and the

environmental review, if used to approve the Regional Project, is prejudicially inadequate under CEQA.

The Project Would Export Groundwater from the Salinas Valley Groundwater Basin, Which Is Prohibited by Law.

California law prohibits groundwater exportation due to concern about the "balance between extraction and recharge" within the Salinas Valley Groundwater Basin. (Monterey County Water Resources Agency Act, § 52-21.) The environmental documents for the Regional Project do not dispute that the Salinas Valley Groundwater Basin is in overdraft and has been increasingly in overdraft for six decades, as shown by the steady inland progression of seawater intrusion. The Regional Project would pump groundwater directly from the overdrafted Salinas Valley Groundwater Basin and is subject to the Agency Act.

The MCWRA Act does not distinguish between "production" or "pumping" with regard to the export ban. Neither word is mentioned. The fact is that the export would remove useful groundwater from the basin.

There is no dispute that the Regional Project would export Salinas Valley Groundwater to the Monterey Peninsula, outside of the Salinas Valley Groundwater basin. The project's intake wells would pump brackish water, which is groundwater combined with seawater. The groundwater would be pumped "at unspecified volumes", then desalinated. The desalination process would result in brine and product (potable) water. Therefore, the product water would have its origin in both groundwater and seawater. Most of the product water is intended to be exported to the Peninsula (in an average year, 8,800 AFY, which is 84% of the 10,700 AFY of product water, would be exported). The EIR asserts that on an annual average basis, the project would deliver product water to the Marina Coast Water District service area in an amount equal to the amount of groundwater pumped.

The Draft EIR did not address the specific proportions of ground water and seawater that would be pumped by the intake wells, even though this issue is critical to the issue of compliance with the Agency Act. In an effort to address this omission and other omissions related to the impacts of the project operations, the Final EIR added a new technical appendix that contained revisions to the Regional Project: Appendix Q. Appendix Q was prepared by the Regional Project proponents. Appendix Q provided significant new information, and the EIR should have been recirculated, as CEQA required. (Pub. Resources Code, § 21092.1, CEQA Guidelines, § 15088.5.)

Appendix Q made claims for the first time about the proportion of groundwater in the project's intake water. Appendix Q "estimated" that the intake water will be

approximately 85% ocean water and 15% groundwater. Those estimated proportions were calculated only for the first 10 years. In fact, there is no reliable factual support that the "estimated" 85%/15% proportions would apply at the well field site, because the "estimate" came from groundwater samples from a well located at the Marina Coast Water District office in Marina, not from the proposed well field for the Regional Project located north of Marina. Appendix Q admitted that "on a local scale there were variations in ground water levels and chloride concentrations between scenarios." In other words, at the proposed well field, the proportion of groundwater might be significantly larger than 15%.

There was no peer review of Appendix Q's claims. The Final EIR admitted that the "predicted" average percentages were only for "the first 10 years of the model simulation." The FEIR discussion did not address what happened after the first ten years of the model simulation, which is a glaring omission, particularly in light of the significance of this issue, and the project life span of 56 years.

In fact, Appendix Q predicted groundwater percentages of up to 40% in the source water throughout the 56-year simulation period.[5] Using the data in the FEIR, water engineer Roger Dolan calculated that the Regional Project would violate the Agency Act "most of the time." Mr. Dolan expressed his serious concerns with that reasonably foreseeable violation because he supported the project, and he pointed out that the calculations simply did not support the EIR's conclusions. His expert calculations exposed the inadequacy of the discussion to date, and showed that the illegal export of groundwater "will occur when the fraction of groundwater in the well water for the desalination plant exceeds 16.2%."

Mr. Dolan provided his calculations, which showed that "balancing export by desalinating more brackish well water is virtually impossible under" Scenario 4f, the model scenario proposed by the Regional Project proponents. He emphasized that "producing enough product water from seawater that is surplus to the demands to balance the exported flows . . . is not covered in the EIR." He pointed out that when the intake water included 40% groundwater, the project would be required to keep that amount within the Salinas Valley Basin, and would deliver only 2,550 AFY to CalAm, which is far below the 8,800 AFY in the project description. He then calculated that with

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[5] In the intake water (also called source water and feedwater), the Total Dissolved Solids (TDS) concentrations are projected to range between 21,300 to 34,500 milligrams per liter (mg/L) throughout the 56 year period. Seawater has a TDS of 35,000 mg/L. 21,300 divided by 35,000 is 60%. In other words, 21,300 mg/L is 60% of the typical concentration of seawater. The remaining 40% would be considered groundwater, which is fresh water.

a 40% groundwater proportion, using the desalination plant's full capacity, the maximum amount that the Regional Project could deliver to CalAm would be 6,300 AFY, which is still significantly below the 8,800 AFY in the EIR project description. In other words, the project would deliver far less potable water than CalAm needs to replace its illegal pumping under Order 95-10 and the Seaside Basin adjudication. This would force CalAm to find yet another water supply source. Also, in this latter scenario, product water in the amount of 4,200 AFY would have to be retained by Marina Coast Water District in order to keep it in the Salinas Groundwater Basin and thereby comply with the Agency Act. Because the EIR project description describes Marina Coast Water District as accepting delivery of 1,700 AFY of desalinated water, any amount greater than 1,700 AFY delivered to Marina Coast Water District potentially would have unanalyzed impacts, including growth-inducing impacts. These reasonably foreseeable scenarios were not discussed in the EIR, and their potential impacts were not analyzed.

Other members of the public also challenged the FEIR's assumption about the percentage of groundwater. These other challenges came from, for example, LandWatch, directors of Monterey Peninsula Water Management District, CPUC's Division of Ratepayer Advocates, Carmel Valley Association, and Ag Land Trust. The EIR did not calculate groundwater exportation under any scenario other than its selected and "estimated" proportion of 85% seawater/15% groundwater. The significance of the information is very important. The EIR's failure to analyze the information in a manner that complies with CEQA's procedural mandates is a fatal flaw.

If the Regional Project pumps 24,867 AFY of source water, as the EIR states, 3,730 AFY (15%) must be returned to the Salinas Valley Groundwater Basin in one form or another. Because Marina Coast Water District proposes to use 1,700 AFY, that means 2,030 must be returned some way or another to the Basin. Brine does not count because it would be discharged to the ocean. The EIR indicates that 15% of all source water would be returned to the Basin.

Brackish water is a blend of the limited fresh groundwater supply and the unlimited, underlying, intruded seawater. The water in the aquifer is a fresh water layer that lies on top of a salt water layer with a transition zone separating the two. In the layered model, water from the two layers and the transition zone blend as they flow into the well and thus the well that produces brackish water is actually drawing fresh groundwater and seawater.

The Basin is intruded and the saltwater intrusion is ongoing. Therefore, the groundwater is not flowing out to sea. It is retreating inland. The Salinas Valley Water Project (SVWP) will not cause the groundwater elevation in the basin to exceed sea level.

The SVWP documents, including the SVWP EIR, do not reference any potential reversal of saltwater intrusion. The project seeks to attempt to halt intrusion -- not reverse intrusion. The principal benefits to the predicted build-up of groundwater levels in the Marina area seem more likely to result from the prohibition of continued pumping of wells in the coastal area. Those water demands will be met by surface water from the SVWP and recycled water. The net new water anticipated by the SVWP is only 30,000 AFY in Nacimiento Reservoir. Given the magnitude of the water budget for the Salinas Valley, it is beyond the ability of that small an increment to reverse or even halt the intrusion. In any event, the point is irrelevant as the export issue is not affected by the question of whether there is a net flow of groundwater out to sea, or not.

The Geoscience Support Services groundwater modeling report done for CalAm (25 July 2008) shows the projected salinity of the well water for the North Marina and Regional Project wells over time. The report shows imputed fluctuation in the salinity ranging from a low of about 22,000 TDS to a high of about 30,000 TDS. The water averages about 25,000 TDS and begins at about 24,000 TDS quickly rising to around 27,000 TDS (77% seawater) and ending 56 years later at about 23,500 TDS (67% seawater). There was no clear reason given for the ups and downs, but the report shows that the 22,000 TDS figure will be reached about 32 years after commencement of pumping and corresponds to 62% seawater assuming groundwater salinity of 500. The EIR is full of references to a 15% groundwater figure but the opening estimate of 24,000 TDS from this document would correspond to about 32% groundwater.

The EIR's groundwater modeling in the North Marina Groundwater Model Evaluation of Regional Project Scenario 4f, Geoscience, 2/26/09 (at p. Q-24) predicts average TDS concentrations of 29,300 mg/L for the feedwater "during the first 10 years." This is approximately 84 to 86 percent of the concentration of seawater (34,000 to 35,000 mg/L). This estimate is an average. The EIR failed to investigate or discuss the impacts of how the Regional Project will consistently meet Monterey Peninsula water requirements given that groundwater from the Salinas Valley Groundwater Basin must be retained within the Basin.

The 2009 Geosciences report also finds that TDS concentrations range from about 21,300 mg/L to 34,500 mg/L through a "56 year period." This is approximately 60 to 98 percent of the concentration of seawater. Thus, under certain conditions, only 60 percent of the water would be available for export to the Monterey Peninsula when the area requires 85% of the desalinated water. Due to the changes in groundwater / seawater fractions in the desalination plant intake water, over the life of the project there will be significant changes in the amount of water that must be kept in the basin, and the amount that may be exported, and the amount of pumping that must take place in order to meet the product water to be delivered to CalAm for export. The EIR failed

to investigate the difference between produced water and the amount of water that will be exported out of the Salinas Valley Groundwater Basin.

The Regional Project will either violate the export ban or fail to meet the CalAm demand at a groundwater fraction that is below the 40% figure. 40% of 8800 afy is 3520 afy that would be exported from the Salinas Valley Groundwater Basin into the Seaside basin and the Monterey Peninsula. That is much more than CalAm could make from seawater and use in the Basin. The source well water is only 60% seawater. This would require the production and retention of about 5900 afy. If CalAm wants 8800 afy from the desalination plant the total production would have to be 14,700. The Monterey County Water Resources Agency (Curtis Weeks) has stated that the Salinas Valley Water Project will drive the higher groundwater fractions, reverse saltwater intrusion, and cause the groundwater to reverse direction and flow back to the sea. If the Agency's hypothesis if correct, that would increase the freshwater percentage of the source water wells for the desalination plant. And that would increase the percentage – and amount – of water that is pumped that must stay in the Salinas Valley groundwater basin. The Coastal Water Project EIR failed to adequately investigate or disclose this issue and impacts of the Regional Project, despite the known information, the public comments, and the conclusions of the Monterey County Water Resources Agency and the SVWP EIR.

Cumulative Impacts of Brine on Outfall Pipeline Capacity.

The Regional Project proposes to use the existing wastewater outfall pipeline owned by the Monterey Regional Water Pollution Control Agency. Studies show that capacity in the Water Pollution Control Agency outfall pipeline may not be available for all outfall flow conditions. If that happens, either existing or planned users will be impacted, or additional capacity would have to be constructed. Either possibility would cause significant substantial or potentially substantial adverse environmental impacts (CEQA Guidelines, § 15382) which have not been addressed to date.

Construction of additional sewer capacity is directly analogous to construction of additional water delivery facilities. Both are crucial elements without which proposed projects cannot go forward. Both have or potentially have significant adverse effects on the environment. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus, supra,* 27 Cal.App.4th 713, 732.) Failure to include discussion of additional sewer capacity in the EIR renders it inadequate, because the EIR ignores the environmental effects of the excluded construction, thereby frustrating a core goal of CEQA. (*Ibid.*)

The February 2008 study by the Monterey Peninsula Water Management District concluded that brine discharge from a desalination plant would exceed outfall capacity during high-flow periods. The same study identified as concerns the "capacity of outfall

to accommodate increased brine flow" and "potential sacrifice of outfall capacity allocated for future development . . . in favor of allocating unused capacity for brine." It is reasonably foreseeable that brine discharge would exceed outfall capacity during high-flow periods. Despite these concerns, the EIR failed to investigate and determine whether the outfall could or would accommodate all operating parameters if the Regional Project is built with its present characteristics.

The EIR failed to investigate and adequately address important issues including the capacity of the existing outfall to accommodate increased brine flow, and the potential sacrifice of outfall capacity allocated for future development in the area in favor of allocating unused capacity for brine. The EIR also did not analyze the availability of wastewater from the Water Pollution Control Agency for the demands of other projects. It is reasonably foreseeable that because wastewater will be used to dilute brine before it is dispersed through the outfall pipeline, that commitment could cause significant impacts on the availability of wastewater to run three existing projects: the Regional Urban Water Augmentation Program (which uses recycled water from the Water Pollution Control Agency); the Castroville Seawater Intrusion Program (which also uses recycled water from the Agency); and the Ground Water Replenishment project that uses treated wastewater and is an essential part of the Regional Project.

The EIR failed to disclose or investigate these issues or their potential significant impacts. The EIR also failed to adequately describe or investigate the fate of desalination-facility cleaning chemicals and other project waste streams. This issue has been openly and publicly discussed since at least early 2008.

Marina Coast Water District and the Monterey Regional Water Pollution Control Agency acknowledged that the CPUC's EIR did not adequately address brine disposal. On August 20, 2009, the Agency Chair discussed "brine outfall and the EIR that goes with that." Keith Israel, the Agency's general manager, stated there would be (1) a study of how much brine the outfall can handle, which would be "complex," and (2) an EIR review that would be completed by consultant Denise Duffy & Associates (Duffy). Duffy was handling the Regional Project analysis for Marina Coast, as well. On October 26, 2009, Duffy informed the Agency Board that the CPUC's Final EIR would be completed soon, at which point Duffy would complete its work and scope regarding the environmental analysis of the Agency outfall. On November 17, 2009, the Agency's principal engineer reported that the Final EIR had been distributed, and Duffy would immediately begin review of the additional environmental work needed for brine disposal. The Duffy analysis was planned, pursuant to CEQA, for "using the outfall for desalination brine disposal," and performed at Marina Coast's cost. MRWPCA also was preparing a technical analysis at Marina Coast's cost, to analyze the feasibility of using the outfall for brine discharge. A preliminary report showed that additional environmental studies, estimated to cost $300,000, were required.

In February 2010, Marina Coast Water District approved a resolution that stated that the Water Pollution Control Agency "will perform any necessary environmental review" for the Brine Receiving Facility to handle brine from the Marina Coast desalination plant (the plant that is the centerpiece of the Regional Project). Marina Coast stated that the Water Pollution Control Agency would be "Lead Agency for analyzing" the environmental impacts of the Brine Receiving Facility for the Regional Project. Marina Coast committed to paying all of the costs of the further environmental review.

These issues should have been included in the EIR. This fractured approach to environmental review of Regional Project components is piecemealing or segmenting, which is prohibited by CEQA. (*Laurel Heights, supra*, 47 Cal.3d 376, 396; CEQA Guidelines, § 15358, subd. (a) [reasonably foreseeable indirect or secondary effects or impacts].)

The EIR should have investigated and disclosed the conditions under which the Water Pollution Control Agency outfall pipe could be used for brine outfall. It was publicly acknowledged that there are problems and potential limitations with the use of the existing outfall pipe. There are serious concerns as to the outfall pipe's existing capacity to accommodate the increased flow that would be caused by the Regional Project's brine discharge. There are serious questions as to the potential sacrifice of existing outfall capacity that was intended for, or has been allocated to future development in the area, which would mean that as-yet-unused capacity would be allocated for brine instead. There are serious questions about the impacts of brine discharge on the existing stormwater capacity in the outfall, and what mitigations would be possible for such reduction in stormwater capacity. There is insufficient information regarding whether storage or operational modifications can be made to accommodate all outfall operating parameters. It is foreseeable that brine discharge would exceed outfall capacity during high-flow periods, and that the discharge would require additional outfall facilities.

The unconfirmed 85% seawater/15% groundwater ratio has significant implications for outfall capacity, as well. Depending on the actual ratio, the amount of brine discharge may be significantly larger than that analyzed in the EIR. The EIR did not disclose the current and maximum capacity of the outfall. The EIR did not investigate the requirements for amending the Water Pollution Control Agency's existing permit. Large volumes of brine may not be added to the outfall under the existing permit issued under the National Pollution Discharge Elimination System, a provision of the Clean Water Act that controls discharge of pollutants into waters of the United States.

The existing outfall capacity exists for essential public health and safety reasons: the outfall pipeline disposes of sewage. There is no analysis in the EIR of how adding new flows of brine disposal to the outfall could affect the ability of the Water Pollution Control Agency to continue to perform its existing public health and safety obligations to its member agencies. There is no analysis of what would happen during ordinary operations or peak operations.

Inadequate Investigation and Disclosure of Impacts to Overlying and Adjacent Properties.

The EIR did not adequately investigate or discuss the Regional Project's impacts on overlying or adjacent properties. The EIR predicts that the project's six intake wells will cause up to a 30-foot drawdown and increased saltwater intrusion under the well field. The well field is proposed to be located on private property. Those properties would be harmed by the increased salinity of their groundwater, which would render it unfit for use, or require more treatment than currently required in order to be usable.

The EIR fails to clearly identify where the project facilities would be located, which is a serious flaw in the inadequate project description. There is no reliable information as to where the wells or the pipelines would be located. Revised Figure 5-3 is the EIR's best depiction of the well and pipeline locations for the proposed seawater intake. Figure 5-3 is a blurry drawing lacking the necessary detail. The figure fails to identify the difference between the blue swath and the brown swath. The EIR does not identify the parcels that would be affected. The EIR inappropriately defers the investigation of specific sites to a future date, and does not contemplate further CEQA review of that information. This deferred analysis is inappropriate under CEQA. It fails to adequately address and identify the potential environmental impacts on the properties. Despite its queries over the years, Ag Land Trust did not receive any response other than the cursory, inadequate ones in the FEIR response to comments.

Violations of Anti-Degradation Policy and Basin Plan.

The EIR also failed to adequately investigate and disclose the extent of the proposed project's violation of the State Water Resources Control Board's Anti-Degradation Policy. The deliberate increase in salinity caused by the project is contrary to longstanding state policy. This policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters.

Under the Anti-Degradation Policy, any actions that can adversely affect water quality in surface and ground waters must (1) be consistent with maximum benefit to the people of the State, (2) not unreasonably affect present and anticipated beneficial

use of the water, and (3) not result in water quality less than that prescribed in water quality plans and policies. Any actions that can adversely affect surface waters are also subject to the Federal Anti-Degradation Policy (40 C.F.R., section 131.12) developed under the Clean Water Act. The Central Regional Water Quality Control Board's Basin Plan implements the Anti-Degradation Policy. The EIR says that the policy "could apply," which is not a sufficient analysis of this potential constraint on the Project itself.

The Statement of Overriding Considerations Is Not Supported.

Because the EIR found that the Regional Project had unavoidable significant impacts on the environment, Marina Coast Water District on April 5, 2010 made a statement of overriding considerations before approving the Regional Project. (CEQA Guidelines, § 15093.) The CPUC also adopted a statement of overriding considerations in its action on December 2010, which is not a final action. Monterey County Water Resources Agency proposes to make a similar statement of overriding considerations.

The proposed statement asserts various "benefits" in support of a statement of overriding considerations. To the extent that any of the benefits has any indication of support in the record, it is only because the EIR truncated or avoided any good faith discussion of the factors, evidence, and information that would display the flaws in the claims of benefits, all in violation of CEQA.

The MCWRA's proposed statement of overriding considerations provides no real balancing of benefits, and its cursory statements are dependent on assumptions. The MCWRA has not taken into account all of the areas where the EIR is deficient, where information is missing, and where the EIR or the CPUC failed to comply with the statutory dictates of CEQA, and failed to fairly discover, investigate, and even-handedly discuss the central project hurdles, burdens, and impacts.

The first claim is based upon a claim of the "reliable" water supply. However, reliability was never demonstrated in the EIR or otherwise, and the omissions of all discussion of back-up plans, contingencies, water rights, legality, and the other important aspects of the Project demonstrate that the evidence in the record does not legally establish a "reliable" or "drought-proof" water supply.

The second claim is about protecting the Seaside Basin for long-term reliability, which has the same infirmities of the first claim. As the record shows, because the Seaside Basin is proposed as the back-up water supply for the Regional Project, it is likely that this benefit will never be realized. It is not a reasonable assertion. It fails to consider the uncertainty of the Regional Project.

The third claim is about addressing Cal Am's obligations under SWRCB Order 95-10. This claim is not reasonable because the Carmel River is proposed as the back-up water supply for the Regional Project. Therefore, it is likely that this benefit will not be realized, or to a significantly smaller extent, if any. The project proponents intend to use the Carmel River as a backup supply to the Regional Project. The EIR failed to disclose this known fact, based on public records, or the harm that such use of the River would cause. The fourth claim regarding protecting listed species in the Carmel River fails due to the same reasons.

The fifth claim addresses protecting the local economy, but fails for two reasons. First, the claim assumes there will no longer be an "uncertain" water supply, but the EIR and the information reviewed by all the public agencies fail to provide any reasonable evidence that the Regional Project will provide a "certain" water supply. Therefore, the local economy is substituting one uncertain supply for another. There is no benefit to the public.

The sixth claim is that water rate increases will be minimized. That claim makes no sense in light of the very significant cost that the Regional Project will add for many years to come to the bills Cal Am ratepayers, from small homeowners to large commercial users. The issue is the size of the increases, not the number of increases. (The MCWRA is avoiding any mention the CPUC's claimed purported benefit in support of the CPUC's statement of overriding considerations – that the Regional Project will maintain the hydrologic balance of the Salinas Valley Groundwater Basin by adhering to Agency Act. As discussed above, it is foreseeable that the project will violate the Agency Act.)

<u>The Impacts to North County Have Been Inadequately Investigated or Disclosed.</u>

Ag Land Trust raises the following additional and significant problems with the EIR analysis, and with the adequacy of the EIR under CEQA, as applied to the Regional Project.

The EIR failed to analyze impacts to North Monterey County, as identified in letters by, among others, the Prunedale Preservation Alliance, Prunedale Neighbors Group, and North County residents Eddie and Jan Mitchell. Those letters are attached as exhibits to this letter. We incorporate the comments in those letters as if fully set forth herein as comments on the EIR.

By pumping groundwater, the Regional Project would induce salt water into the aquifers, and would violate the North Monterey County Local Coastal Program Plan. The County has admitted that the Project would affect Northern Monterey County rural and urban areas, including Castroville, Prunedale, Moss Landing, and Pajaro.

Neither the EIR nor the MCWRA has explained why the proposed Regional Project does not violate the mandate to prevent adverse cumulative impacts upon coastal zone groundwater resources, as required by North County Land Use Plan specific policies 2.5.3.A.1, 2.5.3.A.2, and 2.5.3.A.3, each of which addresses the limited water resources in North Monterey County. Those policies are provided in the references attached hereto.

Reasonable and Less Harmful Alternatives to the Project Were Not Adequately Considered.

The EIR failed to analyze reasonable known alternatives to the Regional Project. We include information in the exhibits that discuss those known alternatives. Those known alternatives include the following:

- The desalination plant proposed by the Monterey Peninsula Water Management District to meet SWRCB Order No. 95-10.
- The desalination plant proposed by Pajaro Sunny Mesa Community Services District.
- The hybrid project proposed by LandWatch Monterey County and the League of Women Voters that did not involve the use of a desalination plant.

Proposed Notice of Determination Is Inconsistent with the EIR.

The Notice of Determination is not consistent with the EIR. The proposed Notice claims that the project location includes a far greater area than the area identified in the EIR. The proposed Notice claims as follows:

> The project location is defined as the California American Water Company (CAW) service area, including the Monterey Peninsula cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City and Seaside, and the unincorporated areas of Pebble Beach, Carmel Valley, and Monterey; the Highway 1 Corridor; the Marina Coast Water District (MCWD) service area including the former Fort Ord and Marina; the City of Salinas; and the Northern Monterey County rural and urban areas, including Castroville, Prunedale, Moss Landing, and Pajaro.

As one example, there is no proposal for this phase of the Regional Project to include the City of Salinas or North Monterey County areas.

The EIR Has Been Challenged in Litigation
Pending in Monterey County Superior Court.

Ag Land Trust's position is that Marina Coast Water District is the lead agency under CEQA. In April 2010, Marina Coast Water District was the first public agency to approve the Regional Project. As lead agency, Marina Coast Water District was required to comply with CEQA prior to approving the Regional Project under CEQA.

The Ag Land Trust sued Marina Coast Water District over Marina Coast's approvals of the Regional Project. The First Amended Petition and Complaint is submitted as an attachment to this letter. It contains one cause of action for violations of CEQA and two declaratory relief causes of action arising out of the Regional Project's lack of water rights and the Project's violation of the Monterey County Water Resources Agency Act's prohibition on groundwater exportation.

The Ag Land Trust litigation is case no. M105109 in Monterey County Superior Court. In September 2010, the Superior Court overruled Marina Coast's demurrer to Ag Land Trust's petition and complaint. As of October 29, 2010, the CEQA cause of action was fully briefed before the Superior Court. The CEQA cause of action is awaiting an oral argument.

Summary.

For all of the above reasons, the Monterey County Water Resources Agency should not approve the Regional Project.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

Michael W. Stamp
Molly Erickson

Attorneys for Ag Land Trust

Attachments: see Exhibit Table

Table of Exhibits

Exhibit	Description
A	Maps of Ag Land Trust properties Printout from Ag Land Trust website Ag Land Trust Information Sheet dated November 19, 2010
B	California Public Utilities Commission Information and Criteria List Frequently Asked Questions About the California Public Utilities Commission's Environmental Quality Act Process
C	Proponent's Environmental Assessment for the Coastal Water Project, Proceeding A.04-09-019. Prepared by California American Water and RBF Consulting. 2005. (excerpts)
D	March 16, 2010 Letter from the Law Offices of Michael W. Stamp to Marina Coast Water District Board of Directors with attachments R through BB (Note: Attachments A through Q were submitted to the Public Utilities Commission with a letter from this Office dated December 16, 2009. Only attachments R through BB are included with this copy of the March 16, 2010 letter that we are attaching as an exhibit.)
E	April 5, 2010 Letter from the Law Offices of Michael W. Stamp to Marina Coast Water District Board of Directors with attachments A through Z
F	April 19, 2010 Letter from the Law Offices of Michael W. Stamp to Marina Coast Water District Board of Directors with attachments A through E
G	Pleadings filed by Ag Land Trust in Monterey County Superior Court, Ag Land Trust v. Marina Coast Water District, Case No. M105019: 2. First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief filed April 6, 2010

	3. Opening Brief of Ag Land Trust on CEQA Petition filed August 27, 2010 4. Reply Brief of Ag Land Trust on CEQA Petition filed October 29, 2010 5. Order Overruling Demurrer to Petition and Complaint filed October 20, 2010
H	Transcript of March 16, 2010 Marina Coast Water District Board of Directors hearing Transcript of April 5, 2010 Marina Coast Water District Board of Directors hearing
I	April 13, 2010 Letter from LandWatch Monterey County to Marina Coast Water District Board of Directors February 24, 2010 Letter from LandWatch Monterey County to Marina Coast Water District Board of Directors
J	April 13, 2010 Letter from Prunedale Preservation Alliance to Marina Coast Water District April 10, 2010 Letter from Eddie Mitchell and JoAnna G. Mitchell to the California Public Utilities Commission January 28, 2010 Letter from the Prunedale Neighbors Group to the Department of Environmental & Natural Resources
K	February 4, 2010 Letter from Roger J. Dolan, P.E. to Curtis Weeks, General Manager, Monterey County Water Resources Agency *Issue Paper: Does the Regional Plan described in the FEIR for the CalAm CWP conform to the Monterey County regulations on export of water from the Salinas Valley?* Roger J. Dolan, P.E. to Curtis Weeks, General Manager, Monterey County Water Resources Agency. February 4, 2010. February 23, 2010 Letter from Roger J. Dolan, P.E. to Curtis Weeks, General Manager, Monterey County Water Resources Agency

	Revised Issue Paper: Does the Regional Plan described in the FEIR for the CalAm CWP conform to the Monterey County regulations on export of water from the Salinas Valley? Roger J. Dolan, P.E. to Curtis Weeks, General Manager, Monterey County Water Resources Agency. February 23, 2010. Curriculum Vitae for Roger J. Dolan, P.E.
L	Letter from the League of Women Voters of the Monterey Peninsula to The Honorable Angela K. Minkin, Administrative Law Judge, California Public Utilities Commission, regarding Statement on Water Supply Alternatives for July 13 and 14 Hearings on the Coastal Water Project with attachment July 13, 2009 Letter from LandWatch Monterey County to The Honorable Angela K. Minkin, California Public Utilities Commission Exhibit MPWMD-AB1 Testimony of Andrew M. Bell District Engineer and Manager of Planning and Engineering Monterey Peninsula Water Management District. State Water Resources Control Board Matter to Determine Whether to Adopt a Draft Cease and Desist Order against California American Water Regarding its Diversion of Water from the Carmel River in Monterey County under Order WR 95-10. Hearing Date: July 23-25, 2008. Exhibit MPWMD-AB3 Monterey Peninsula Water Management District. State Water Resources Control Board Matter to Determine Whether to Adopt a Draft Cease and Desist Order against California American Water Regarding its Diversion of Water from the Carmel River in Monterey County under Order WR 95-10. Hearing Date: July 23-25, 2008. FINAL REPORT Evaluation of Seawater Desalination Projects Proposed for the Monterey Peninsula. Submitted to Monterey Peninsula Water Management District. Prepared by GEI/Bookman Edmonston, Separation Processes, Inc., Malcolm-Pirnie Inc. February 20, 2008. Final Municipal Services Review for the North County Area of Monterey County. Prepared for LAFCO of Monterey County. Prepared by Cypress Environmental and Land Use Planning in

	consultation with Ifland Engineers, Inc. February 2006. California Ocean Desal Proponents: Private and Public. Desal Response Group. Printed from http://www.desalresponsegroup.org/proponents.html on November 17, 2010. Staff Report for Monterey Peninsula Water Management District November 15, 2010 Board Meeting Item 15, Receive Staff Review of August 2008 MPWMD 95-10 Project Constraints and Analysis Report
M	Marina Coast Water District Resolution No. 2010-20 with attached CEQA Findings (78 pages) and attached CEQA Mitigation Monitoring and Reporting Program (27 pages)
N	November 6, 2006 Letter from Monterey County Agricultural and Historical Land Conservancy to the California Public Utilities Commission
O	November 2, 2009 Letter from the Law Office of Michael W. Stamp to Marina Coast Water District Notice of Determination fo the Acquisition of 224-acres (+/-) of Armstrong Ranch Land and Appurtenant Easements filed March 17, 2010 Marina Coast Water District March 16, 2010 Board of Directors Hearing minutes
P	St. Petersburg Times article, *More problems for Tampa Bay Water desalination plant*. March 16, 2009. Cleantech Group LLC article, *Tampa Bay desalination plant rises again*. January 28, 2008. Arizona Daily Star article, *Yuma desalination plant to start flowing*. May 1, 2010.
Q	Monterey Regional Water Pollution Control Agency meeting minutes and related documents
R	Salinas Californian article, *280M+ desalination plant, 10-mile*

	pipeline agreed on for Monterey Peninsula. March 31, 2010.
S	January 11, 2011 Monterey County Board of Supervisors Staff Report for Item S-6, Attachments B-1 and B-2 as taken from the Monterey County Clerk to the Board website.
T	Figures 4.4-2a, 4.4-2b and 5-3 from the CalAm Coastal Water Project Final Environmental Impact Report.
U	Application of the Division of Ratepayer Advocates for Rehearing of Decision 10-12-016, filed January 3, 2011 in the matter of California Public Utilities Commission Application 04-09-019.