



County of Monterey

Item No.

Board Report

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

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

RECOMMENDATION:

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

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

SUMMARY/DISCUSSION:

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

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

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

21089.

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

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

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

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

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

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

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

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

OTHER AGENCY INVOLVEMENT:

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

FINANCING:

None identified at this time.

DocuSigned by:

Ara Azhderian

Prepared and approved by:

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Ara Azhderian, General Manager (831)755-4860

Attachments:

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