

# DRAFT RESOLUTION

## Before the Board of Supervisors in and for the County of Monterey, State of California

In the matter of the application of:

**CALIFORNIA AMERICAN WATER COMPANY (PLN150653)**

### **RESOLUTION NO. ----**

Resolution by the Monterey County Board of Supervisors:

- 1) Considering Final Environmental Impact Report/Environmental Impact Statement for the Monterey Peninsula Water Supply Project (SCH#2006101004);
- 2) Denying the appeal by Marina Coast Water District of the April 24, 2019 Planning Commission's decision approving a Use Permit and Design Approval for a pump station and associated grading;
- 3) Approving a Use Permit and Design Approval for a 764 square foot pump station, including grading of 36 cubic yards of cut and 720 cubic yards of fill; and
- 4) Adopting a Mitigation Monitoring and Reporting Plan.

[PLN150653, California-American Water Company Co, 26530 Rancho San Carlos Road, Carmel Valley Master Plan (APN: 015-251-030-000)]

**The appeal by the Marina Coast Water District from the decision of the Monterey County Planning Commission to approve a Use Permit and Design Approval for a pump station (PLN150653/ California-American Water Company) came on for public hearing before the Monterey County Board of Supervisors on August 27, 2019. Having considered all the written and documentary evidence, the administrative record, the staff report, oral testimony, and other evidence presented, the Board of Supervisors finds and decides as follows:**

### **FINDINGS**

1. **FINDING:** **PROCESS** – The County has processed the subject Use Permit and Design Approval application for a pump station (RMA-Planning File No. PLN150653—CALIFORNIA AMERICAN WATER COMPANY) (“Project”) in compliance with all applicable procedural requirements.  
**EVIDENCE:** a) On November 30, 2016, the California-American Water Company (“CalAm” or “Applicant”) filed an application for a Combined Development Permit consisting of:
  1. A Use Permit to allow construction and operation of a 764-square foot pump station.

2. A Design Approval for development located within a Design Control “D” zoning designation.
- b) The Project consists of a Use Permit and Design Approval for a 764 square foot pump station (aka “Carmel Valley Pump Station” or “Pump Station”), including grading of 36 cubic yards of cut and 720 cubic yards of fill. The pump station is a component of the overall Monterey Peninsula Water Supply Project (MPWSP), a project by the California-American Water Company (CalAm), a privately owned public utility, to develop a new water supply for CalAm’s Monterey District service area. The Carmel Valley Pump Station would provide additional water pressure for delivery of water to the Segunda Tanks, which would then serve the Carmel Valley and Upper Valley Carmel areas. The Pump Station would have a pumping capacity of 3 mgd and would be enclosed in a single story building, approximately 764 square feet in size, on a 4-acre site owned by Cal Am. The Pump Station project requires discretionary approval by the County of Monterey because it is located in the unincorporated area of the County and therefore is within County’s land use permitting jurisdiction. This Use Permit and Design Approval pertain only to the Carmel Valley Pump Station component of the MPWSP.
  - c) The project was referred to the Carmel Valley Land Use Advisory Committee (LUAC) for review. Based on the LUAC Procedure guidelines adopted by the Monterey County Board of Supervisors, this application did warrant referral to the LUAC because it includes development requiring CEQA review and a Design Approval subject to review by the Planning Commission. The LUAC reviewed the project on December 2, 2018, and recommended approval by a vote of 6 to 0.
  - d) The project was set for public hearing before the Monterey County Planning Commission on April 24, 2019. Notices of the public hearing were published in the *Monterey County Weekly* on April 11, 2019, posted near the project site on April 14, 2019, and mailed to property owners on April 10, 2019.
  - e) On April 24, 2019, the Monterey County Planning Commission held a duly noticed public hearing and approved the Combined Development Permit by a vote of 10-0 (Monterey County Planning Commission Resol. No. 19-007).
  - f) Pursuant to Section Pursuant to Section 21.80.050 of Title 21 (inland zoning ordinance) of the Monterey County Code, on May 20, 2019, the Marina Coast Water District (“MCWD” or “Appellant”), represented by Howard F. Wilkins III of Remy, Moose, Manley, timely filed an appeal from the April 24, 2019 decision of the Planning Commission. The appeal challenges the Planning Commission’s approval and contends that the findings or conditions are not supported by the evidence and the decision was contrary to law. See finding No.16 (Response to Appeal) for the summary of MCWD’s specific contentions and the County responses to those contentions.
  - g) A complete copy of the appeal is on file with the Clerk of the Board of Supervisors and is attached as Attachment D to the staff report to the Board of Supervisors for the August 27, 2019 hearing.

- h) The Board of Supervisors conducted a duly noticed public hearing on the appeal and the project on August 27, 2019. The hearing is de novo. Notice of the hearing on the matter before the Board of Supervisors was published on August 15, 2019 in the *Monterey County Weekly*, notices were mailed and emailed on August 12, 2019 to all property owners and occupants within 300 feet of the project site, and to all persons who requested notice; and at least (3) notices were posted at and near the project site by August 17, 2019.

2. **FINDING:** **CONSISTENCY** – The Project, as conditioned, is consistent with the applicable plans and policies which designate this area as appropriate for development.

- EVIDENCE:**
- a) During the course of review of this application, the project has been reviewed for consistency with the text, policies, and regulations in:
    - The 2010 Monterey County General Plan;
    - Carmel Valley Master Plan;
    - Monterey County Zoning Ordinance (Title 21 of the Monterey County Code (MCC));

No conflicts were found to exist. Although the appellants allege that the Project is inconsistent with certain County plans and regulations, the County’s determination is that these allegations do not have merit, as set forth below and in the responses to appeal contentions below.

- b) The property is located at 26530 Rancho San Carlos Road, (Assessor’s Parcel Number (APN) 015-251-030-000), in the Carmel Valley Master Plan area. The parcel is zoned LDR/2.5-D-S-RAZ, which allows water system facilities including wells and storage tanks serving (15) or more service connections with a Use Permit. Therefore, the project is an allowed land use for this site.
- c) The parcel zoning includes a Design Control (“D”) overlay, which provides a district for the regulation of the location, size, configuration, materials, and colors of structures and fences in those areas of the County of Monterey where the design review of structures is appropriate to assure protection of the public viewshed, neighborhood character, and to assure the visual integrity of certain developments without imposing undue restrictions on private property. The structure will be 764 square feet, which is smaller than the majority of the surrounding homes in the area. The colors and materials have been selected to blend with the natural environment and include brown concrete masonry unit (CMU) wall with a steel roll-up door, and a terracotta roof.
- d) The parcel zoning includes a Site Plan Review (“S”) overlay, which is intended to provide district regulations for review of development in those areas of the County of Monterey where development, by reason of its location, has the potential to adversely affect or be adversely affected by natural resources or site constraints, without imposing undue restrictions on private property. The subject 4-acre parcel is relatively flat and is accessed from an existing access road off of Rancho San Carlos Road. The property slopes gradually toward the southwest and borders the Carmel River. The parcel currently has an existing abandoned well in the southeast portion of the site with associated equipment fenced in on an elevated concrete pad and wood deck, all of

which is proposed to be demolished. A gravel driveway will provide access to the site with a 14 by 30 foot concrete pad in front of a roll-up garage door. The proposed pump station has been sited in a flat area near the middle of the site on an existing concrete pad. The entire parcel is within the flood zone; however, the pump station will be located out of the floodway.

- e) The project is consistent with the regulations for residential allocation zoning districts (“RAZ”) of Section 21.52 of Title 21, which limits the number of dwelling units that can be constructed on legal lots of record. The project does not propose construction of any residential dwelling units.
- f) The project meets all development criteria for the LDR (Low Density Residential) zoning district. The maximum allowable height per zoning is 30 feet. The structure will be 19.5 feet at its tallest point. Required setbacks per zoning are: front, 30 feet; side, 10 feet; rear, 20 feet. The setbacks will be: front, 316; side, 53 feet and 160 feet; and rear, 350 feet. The structure will be 270 feet from Carmel Valley Road.
- g) The project planner conducted a site inspection on August 8, 2018 to verify that the project on the subject parcel conforms to the plans listed above.
- h) The project is consistent with requirements for Environmentally Sensitive Habitat (ESHA) per Section 21.66.020 of Title 21 (Inland Zoning Ordinance) of the Monterey County Code. (See Finding 14.)
- i) The project is in a high archeological sensitivity zone. Pursuant to Section 21.66.050, an archaeological assessment and report (LIB190035) was submitted, and measures recommended by the archeologist have been required (See Finding 15 and Condition 5 ).
- j) The project is consistent with circulation policies of the 2010 General Plan and Carmel Valley Master Plan and will not result in long-term increases in traffic in the vicinity. A well and water system facilities currently exist on the property. The well is abandoned and will be demolished and replaced with a pump station. The pump station is accessory to the water system distribution facilities for Cal-Am. The pump station will be unmanned and regular repair and maintenance activities at the site will continue without significant change from current conditions.
- k) The application, project plans, and related support materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development found in Project File PLN150653.

3. **FINDING:** **SITE SUITABILITY** – The site is physically suitable for the use proposed.

**EVIDENCE:** a) The project has been reviewed for site suitability by the following departments and agencies: RMA- Planning, Monterey Peninsula Fire Protection District, RMA-Public Works, RMA-Environmental Services, Environmental Health Bureau, and Water Resources Agency. There has been no indication from these departments/agencies that the site is not suitable for the proposed development. Conditions recommended have been incorporated.

- b) Staff identified that the site is in a high archeological sensitivity zone. Accordingly, County required the preparation of the following archaeological report:

- “Phase I Carmel Valley Pump Station Cultural Resources Survey, Monterey County, California” (LIB190035) prepared by AECOM Technical Services, Oakland, CA, November 21, 2018.

The above-mentioned technical report by an outside consultant indicated possible archaeological resources could be found during construction. Recommendations in the archaeological report, specifically requiring an on-site archaeological monitor, will reduce the impact to a less than significant level. County staff has independently reviewed the report and concurs with its conclusions and implemented this recommendation with a condition of approval.

- c) A Final Environmental Impact Report/Environmental Impact Statement (“EIR/EIS” or “EIR”) for the Monterey Peninsula Water Supply Project (SCH #2006101004) was prepared by the California Public Utilities Commission (CPUC) as lead agency under the California Environmental Quality Act (CEQA) and by the National Oceanic and Atmospheric Administration (NOAA) as lead agency under the National Environmental Policy Act (NEPA). The CPUC certified the EIR/EIS on September 13, 2018. The EIR identified potential impacts to geologic resources, biological resources, hazards and hazardous materials, traffic and transportation, air quality, greenhouse gas emissions, noise and vibration, public services, aesthetic resources, cultural and paleontological resources, energy conservation, socioeconomics and environmental justice. Mitigation measures identified in the EIR will reduce all impacts to a less than significant level, except for cumulative traffic and transportation and air quality impacts. (See findings 6 through 11 below.) The County, as a responsible agency, has required through Condition 16 proof that mitigation measures related to the Carmel Valley Pump Station have been carried out. The CPUC adopted a statement of overriding considerations for cumulative impacts related to traffic and transportation and cumulative Air Quality Impacts resulting from construction, and the County is also adopting a statement of overriding considerations. (See below.)
- d) Staff conducted a site inspection on December 2, 2018 to verify that the site is suitable for this use.
- e) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN150653; Final Environmental Impact Report/Environmental Impact Statement for the Monterey Peninsula Water Supply Project (SCH #2006101004); D. 18-09-017, Appendix C (CEQA/NEPA Findings).

4. **FINDING:** **HEALTH AND SAFETY** - The establishment, maintenance, or operation of the project applied for will not under the circumstances of this particular case be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the

neighborhood of such proposed use, or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.

- EVIDENCE:**
- a) The project was reviewed by the RMA - Planning, Monterey County Fire Protection District, Public Works, Environmental Health Bureau, and Water Resources Agency. The respective agencies have recommended conditions, where appropriate, to ensure that the project will not have an adverse effect on the health, safety, and welfare of persons either residing or working in the neighborhood.
  - b) Necessary public facilities are available. The project is part of a water supply system and does not require additional separate water or sewer connections to serve the proposed construction.
  - c) Construction noise is not anticipated to exceed noise standards of Monterey County Code Section 10.60.030. The EIR identified mitigation measures to ensure construction noise is minimized, including advance notice to residents (Mitigation Measure 4.12-1A) and sound control devices for construction equipment (Mitigation Measure 4.12-1B). All applicable Mitigation Measures have been carried forward through Condition 19, which requires verification of implementation of all measures identified as applying to the Carmel Valley Pump Station in the CalAm Monterey Peninsula Water Supply Project Mitigation Monitoring and Reporting Program (Exhibit C).
  - d) The EIR found that construction of the MPWSP as a whole would have significant and unavoidable cumulative impacts to traffic and transportation and air quality. (See Finding\_11.) The Mitigation Monitoring and Reporting Program (Exhibit C) includes mitigation measures to reduce these impacts to the extent feasible, which have been carried forward by Condition 16, but the measures do not reduce these impacts to less than significant. The CPUC adopted a statement of overriding considerations based on project benefits, and the County is also adopting a statement of overriding considerations (see below).
  - e) Staff conducted a site inspection on August 8, 2018 to verify that the site is suitable for this use.
  - f) The application, project plans, and related support materials submitted by the project applicant to the Monterey County RMA - Planning for the proposed development found in Project File PLN150653. Final Environmental Impact Report/Environmental Impact Statement for the Monterey Peninsula Water Supply Project (SCH #2006101004); Final CPUC Decision, Appendix C (CEQA/NEPA Findings).

5. **FINDING:** **NO VIOLATIONS** - The subject property is in compliance with all rules and regulations pertaining to zoning uses, subdivision, and any other applicable provisions of the County's zoning ordinance. No violations exist on the property.

- EVIDENCE:**
- a) Staff reviewed Monterey County RMA - Planning and Building Services Department records and is not aware of any violations existing on subject property.
  - b) Staff conducted a site inspection on August 8, 2018 and researched County records to assess if any violations exist on the subject property.

- c) The application, plans and supporting materials submitted by the project applicant to Monterey County RMA-Planning for the proposed development are found in Project File PLN150653.

6. **FINDING:** **CEQA (Previously Adopted EIR)** – The Board of Supervisors has considered the Environmental Impact Report/Environmental Impact Statement (SCH #2006101004) for the Monterey Peninsula Water Supply Project (MPWSP) that was previously certified by the California Public Utilities Commission (CPUC) (hereinafter referred to as “the EIR” or the “EIR/EIS”.)

- EVIDENCE:**
- a) A Final EIR/ Final EIS for the project was prepared by the CPUC as lead agency under the California Environmental Quality Act (CEQA) and by the National Oceanic and Atmospheric Administration (NOAA) as lead agency under the National Environmental Policy Act (NEPA). The CPUC certified the EIR/EIS on September 13, 2018. (See Draft Environmental Impact Report/Environmental Impact Statement (“DEIR”) for Monterey Peninsula Water Supply Project, which was circulated for public review from January 13, 2017 to March 29, 2017, and Final EIR/EIS (“FEIR”) for the Monterey Peninsula Water Supply project (SCH#2006101004), dated March 2018, certified by the CPUC on September 13, 2018.) The EIR assessed the current environmental conditions and evaluated the environmental effects associated with the construction and operation of all project components, including the Carmel Valley Pump Station.
  - b) The County is a responsible agency under CEQA due to the County’s land use permitting authority for some of the project elements that are within the unincorporated area of the County, including the Carmel Valley Pump Station. As a responsible agency, the County’s role is more limited than a lead agency. The County has responsibility for mitigating or avoiding only the direct and indirect environmental effects of those parts of the project which it decides to ... approve.” (California Code of Regulations, Title 14 (CEQA Guidelines) sec. 15097(g).) The County has considered the environmental effects of the pump station project as analyzed in the EIR and has required all feasible mitigation measures within the County’s powers for the component of the MPWSP within the County’s jurisdiction and found no feasible alternative (See findings below). To the extent there is pending litigation challenging the CPUC certification of the EIR and compliance with CEQA, the County as responsible agency must assume that the EIR for the project does comply with CEQA, and that the approval of the project herein constitutes permission to proceed with the project at the applicant’s risk pending final determination of such litigation. (Pub. Res. Code sec. 21167.3.)
  - c) The EIR includes mitigation measures that will reduce all impacts to a less than significant level, with the exception of Traffic and Transportation and Air Quality impacts. The CPUC adopted a Mitigation Monitoring and Reporting Plan with its decision on September 13, 2018. As a responsible agency, the County has included Condition 16 to require verification that all mitigation measures pertaining to the Carmel Valley Pump Station are implemented.

- d) Issues that were analyzed in the EIR include: geology/soils, hydrology/water quality, groundwater resources, marine resources, biological resources, hazards and hazardous materials, land use/land use planning/recreation, traffic/transportation, air quality, greenhouse gas emissions, noise/vibration, public services/utilities, aesthetic resources, cultural/paleontological resources, agriculture/forestry resources, mineral resources, energy conservation, population/housing, socioeconomics/environmental justice. Findings with respect to each of the identified significant effects are set forth below pursuant to CEQA Guidelines sections 15091 and 15093.

7.

**FINDING:**

**CEQA (NO SUPPLEMENTAL OR SUBSEQUENT EIR IS**

**NEEDED).** The Board of Supervisors finds that no Supplemental or Subsequent EIR is required pursuant to Public Resources Code Section 21166 and CEQA Guidelines, Sections 15162 or 15163 since adoption of the Final EIR. Pursuant to Public Resources Code section 21166, “no subsequent or supplemental environmental impact report shall be required by the lead agency or by the responsible agency” unless major revisions of the EIR are required due to substantial changes in the project or substantial changes in circumstances or “new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”

- a) There have not been any substantial changes to the project which require major revisions to the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects. The EIR analyzed the same project for which the applicant is seeking the Use Permit and Design Approval.
- b) No substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effect.
- c) No new information of substantial importance has been presented, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, that shows any of the following: that “the project will have one or more significant effects not discussed in the previous EIR”; that significant effects previously examined in the EIR “will be substantially more severe than previously shown in the previous EIR”; that “mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative”; or that “mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.” (CEQA Guidelines section 15162.) A Final EIR was adopted by the CPUC on September 13, 2018. No new information has been presented since that time. Appellants contend that significant new information has been presented since certification of the EIR that meets the standard for



supplemental environmental review. For the reasons set forth in the response to the appeal contentions below, (see Finding 16), the County finds appellant's contentions on this point without merit and finds that supplemental environmental review is not required under CEQA for the Carmel Valley Pump Station project which is the subject of the discretionary entitlement issued herein by the County.

8. **FINDING:** **CEQA: EFFECTS WITH NO IMPACT OR LESS THAN SIGNIFICANT IMPACT** – The FEIR found that construction of the Carmel Valley Pump Station will have no impact or less than significant impacts on the areas listed below and fully detailed in the FEIR.
- EVIDENCE:** a) The following impacts, fully detailed in the FEIR, would have no impact: 4.2-2, 4.2-5, 4.2-7, 4.2-8, 4.2-9, 4.2-10, 4.2-11, 4.3-3, 4.3-4, 4.3-5, 4.3-6, 4.3-9, 4.3-10, 4.3-11, 4.4-4, 4.5-1, 4.5-2, 4.5-3, 4.5-4, 4.5-5, 4.5-6, 4.6-5, 4.6-7, 4.6-8, 4.6-9, 4.6-10, 4.7-3, 4.7-4, 4.8-2, 4.9-5, 4.12-4, 4.13-4, 4.13-5, 4.14-2, 4.15-1, 4.16-1, 4.16-2, 4.16-3, 4.16-C
- b) The following impacts, fully detailed in the FEIR, would be less than significant: 4.2-3, 4.2-4, 4.2-6, 4.3-1, 4.3-7, 4.3-8, 4.4-1, 4.4-2, 4.4-3, 4.4-C, 4.5-C, 4.7-1, 4.7-5, 4.7-6, 4.8-1, 4.8-C, 4.9-1, 4.9-2, 4.9-4, 4.9-7, 4.9-8, 4.10-3, 4.10-4, 4.10-5, 4.12-2, 4.12-3, 4.12-5, 4.12-6, 4.13-3, 4.14-1, 4.14-3, 4.14-C, 4.15-3, 4.15-C, 4.17-C, 4.18-2, 4.18-3, 4.19-2, 4.19-C, 4.20-2.

9. **FINDING:** **EIR-ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT** - The EIR identified potentially significant impacts to Geology, Soils, and Seismicity, Surface Water Hydrology and Water Quality, Terrestrial and Biological Resources, Hazards and Hazardous Materials, Traffic and Transportation, Greenhouse Gas Emissions, Noise and Vibration, Public Services and Utilities, Aesthetic Resources, Cultural and Paleontological Resources, Energy Conservation, and Socioeconomics and Environmental Justice, which could result from the project as originally submitted. Changes or alterations have been required in or incorporated into the project which avoid or substantially lessen the potentially significant environmental effects of the Pump Station identified in the Final EIR. For each potential impact summarized below, the mitigation measures are identified that reduce that potential impact to less than significant. (For full text of the referenced mitigation measure, see the MMRP, attached hereto as Exhibit C.)
- EVIDENCE:** a) Geology, Soils, and Seismicity. The proposed project would potentially have an adverse effect on Geology, Soils, and Seismicity.
- IMPACT 4.2-1: The proposed Project could cause substantial soil erosion or loss of topsoil during construction. Mitigation Measure 4.6-2b from the EIR includes requirements to return impacted areas to pre-project conditions or greater, restore native vegetation, and provisions for salvaging topsoil. Mitigation measure 4.16-1 from the EIR includes measures for preserving topsoil and subsoil layers, avoiding over-compaction, and ripping following construction activities to allow the uppermost 3 feet of soil to achieve appropriate soil density, inspecting

existing agricultural drainage systems, and restoring disturbed areas to pre-construction conditions.

- b) Surface Water Hydrology and Water Quality. The proposed project would potentially have an adverse effect on Surface Water Hydrology and Water Quality.

IMPACT: 4.3-2: Degradation of water quality could occur from construction-related discharges or dewatering effluent from open excavations and water produced during well drilling and development. Mitigation Measure 4.7-2b from the EIR requires a groundwater dewatering control and disposal plan to specify how contaminated groundwater (if encountered) will be handled and disposed of in a safe, appropriate, and lawful manner. Contaminated groundwater can be disposed of at a permitted waste management facility or discharged, under permit, to a publicly owned treatment works.

- c) Terrestrial Biological Resources. The project would potentially result in significant impacts to terrestrial biological resources.

IMPACT 4.6-1: The project could result in substantial adverse effects on species identified as candidate, sensitive, or special status, either directly, indirectly, or through habitat modification, during construction. Mitigation Measure 4.6-1a requires CalAm to retain a lead biologist to oversee compliance with and implementation of avoidance and mitigation measures.

Mitigation Measure 4.6-1b requires training for all construction workers to ensure they are aware of special status species and measures to avoid, minimize, and/or mitigate impacts.

Mitigation Measure 4.6-1c requires the construction contractor so implement avoidance and minimization measures to protect special-status species and sensitive natural communities.

Mitigation Measure 4.6-1e requires focused botanical surveys to be conducted for special status plants in all potentially suitable habitat during the appropriate blooming period for each species and in accordance with guidelines established by the CDFW and to implement avoidance measures as appropriate.

Mitigation Measure 4.6-1i requires a biologist to conduct pre-construction nesting surveys for all nesting birds protected by the federal Migratory Bird Treaty Act and Section 3503 of the California Fish and Game Code. If nest are found, continuous monitoring shall occur and appropriate avoidance and minimization measures shall be applied.

Mitigation Measure 4.6-1j requires biologist conducted preconstruction surveys for American badger dens, excavation of potential dens to prevent use during construction, and avoidance and minimization measures for active dens.

Mitigation Measure 4.6-11 requires a preconstruction habitat assessment by a qualified biologist within 100 feet of construction activities for bat species and avoidance and minimization measures if appropriate.

Mitigation Measure 4.6-1n requires development and submittal of a Habitat Mitigation and Monitoring Plan to appropriate resource agencies.

Mitigation Measure 4.6-10 requires preconstruction surveys for California re-legged frog and California tiger salamander, and if necessary, relocation plans, and avoidance buffers. Habitat restoration must be completed upon completion of construction activities.

Compensatory mitigation in the form of permanent on-site or off-site creation, restoration, enhancement, or preservation for permanent impacts shall be provided at a minimum ratio of 2:1.

Mitigation Measure 4.6-1p requires Best Management Practices in construction areas within or adjacent to native plant communities that may be susceptible to non-native plant species invasion.

Mitigation Measure 4.14-2 requires measures to protect nighttime views from exterior lighting, including lot intensity fixtures and downward and shielded fixtures.

Mitigation Measures 4.6-1f, 4.6-1g, and 4.6-1h require avoidance and minimization measures to protect Smith's Blue Butterfly, protected lizard species, and Western Burrowing Owl, respectively.

IMPACT 4.6-2: The Pump Station could impact California red-legged frog habitat.

Mitigation Measures 4.6-1a, 4.6-1b, 4.6-1c, 4.6-1n, and 4.6-1o, described above, and 4.6-2b, described below, address this impact.

Mitigation measure 4.6-2b requires avoidance, minimization, and compensation measures for sensitive natural communities, the special status species that utilize these sensitive communities and ESHA as defined by the California Coastal Commission.

IMPACT 4.6-3: the project could impact a potentially jurisdictional wetland feature mapped within the Pump Station area. Construction activities could temporarily impact 0.0005 acre of this feature.

See Mitigation Measure 4.6-1b and 4.6-1c

Mitigation measure 4.6-3 requires a jurisdictional wetland delineation to determine the extent of waters of the U.S. and water of the state within the proposed Pump Station's footprint and anticipated construction disturbance area. Disturbance is to be avoided, or where it cannot be avoided, temporarily impacted jurisdictional water shall be restored to pre-construction conditions or better at the end of construction. Compensation for permanent impacts shall be provided at a 2:1 or greater ratio and shall include development of a Wetland Mitigation and Monitoring Program.

IMPACT 4.6-4: The proposed project could be inconsistent with local policies for biological resources, such as with local tree ordinances.

Mitigation Measure 4.6-4 requires CalAm to identify measure and map trees subject to local tree removal ordinances and to comply with applicable ordinances or permit requirements.

IMPACT 4.6-5: The project could introduce or spread invasive non-native species during construction.

Mitigation Measures 4.6-1a, and 4.6-1p, described above, require oversight by a lead biologist, and implementation of special status species

and sensitive natural community protective measures such as cleaning tools and equipment, to reduce the introduction or spread of invasive species.

IMPACT 4.6-6: Lighting used for security at the pump station could impact birds and bats whose habitat includes the Carmel River riparian corridor.

Mitigation Measure 4.14-2 requires exterior lighting to be low-intensity, downward cast and shielded and designed and placed to minimize glare.

- d) Hazards and Hazardous Materials. The EIR identified potentially significant impacts to hazards and hazardous materials.

IMPACT 4.7-2: The project could encounter hazardous materials from other hazardous materials release sites during construction.

Mitigation Measure 4.7-2a requires a site-specific Health and Safety Plan including designation of a site safety and health supervisor and procedures for safety, protection, and decontamination.

Mitigation measure 4.7-2b requires a groundwater control and disposal plan specifying procedures for handling contaminated groundwater.

- f) Traffic and Transportation. The project would potentially result in significant impacts to traffic and transportation.

IMPACT 4.9-3: The project could result in increased traffic safety hazards for vehicles, bicyclists, and pedestrians on public roadways during construction.

Mitigation Measure 4.9-1 requires CalAm to obtain all necessary encroachment permits, and to develop a traffic control and safety assurance plan with measures to ensure safe and convenient access through circulation and detour plans, traffic control devices, scheduling truck trips around peak commute hours and heavy recreational use periods. Encroachment permits are required for work performed in the County right-of-way. Additionally, the County has required submittal of a Construction Management Plan (Condition No. 14) coordinated with the plans and information required by this Mitigation Measure.

IMPACT 4.9-6: The project could result in increased wear and tear on designated haul routes used by construction vehicles.

Mitigation Measure 4.9-6 requires CalAm to enter into an agreement with the affected jurisdictions to document the pre-construction condition of roads and agree to a rehabilitation agreement to return all roads to pre-construction condition. The County has required submittal of a Construction Management Plan (Condition No. 14) coordinated with the plans and information required by this Mitigation Measure.

- g) Greenhouse Gas Emissions. The project would potentially result in significant impacts to Greenhouse Gas Emissions.

IMPACT 4.11-1: Total construction and operation emissions from the project would exceed the 2,000 metric tons per year significance threshold, which could constitute a significant impact without mitigation.

Mitigation Measure 4.11-1 Requires a GHG Emissions Reduction Plan that details the carbon footprint of all operational components, and a summary of recovery and conservation technologies available. CalAm

is required to ensure that operational electricity use results in net zero GHG emissions through renewable energy, Renewable Energy Certificates, and Carbon Offsets.

See Mitigation Measure 4.18-1 in Impact 4.18 below.

IMPACT 4.11-2: The project could conflict with Executive Order B-30-15 due to exceeding emissions significance thresholds.

See Mitigation Measure 4.11-1, described above.

See Mitigation Measure 4.18-1 below.

IMPACT 4.11-3: The project could conflict with AB 32 Climate Change Scoping Plan.

See Mitigation Measure 4.11-1.

- h) Noise and Vibration. The project could have significant impacts related to noise and vibration.

IMPACT 4.12-1: Construction activities for the Pump Station are expected to occur during daytime hours only. Condition of Approval 14 specifies that the Construction Management Plan must state hours of construction confined to between 7am and 7pm on weekdays only. The closest residence is located approximately 50 feet to the north and east of the pump station site. During construction, the resultant daytime noise level at this sensitive receptor could be as high as 77.9dBA Leq, which would be a significant impact in the absence of mitigation.

A portable 50kW diesel powered generator will be stored onsite for use in the event of a power outage. Noise from this source would be occasional operation for testing purposes and will generate less noise than a diesel automobile and is not anticipated to exceed the noise standards of Monterey County Code Section 10.60.030, which prohibits noise levels exceeding 85 dBA measured 50 feet therefrom.

Mitigation measure 4.12-1a requires notice to residents within 300 feet of a daytime construction area at least 14 days prior to the commencement of construction activities.

Mitigation Measure 4.12-1b requires equipment with internal combustion engines to have effective sound control devices. Impact tools must be hydraulically or electrically powered if possible, and where pneumatic tools must be used, exhaust mufflers shall be used to lower noise levels by approximately 10dBA. External jackets shall be used on impact tools, where feasible, in order to achieve further reduction of 3dBA. Staging areas and noise sources shall be located as far from sensitive receptors as possible.

Mitigation measures 4.12-1a and 4.12-1b will reduce the ambient noise at the closest residences to 1.1 dBA Leq.

- h) Public Services and Utilities. The project would potentially result in significant impacts to Public Services and Utilities.

IMPACT: Construction of the pump station could damage or interfere with existing water, sewer, stormwater drainage, natural gas, electric, or communication utility service lines, potentially interrupting service.

Mitigation Measure 4.13-1a requires location of all utility lines that could be encountered during excavation.

Mitigation Measure 4.13-1b requires coordination with affected utilities and notification of residents and businesses of any interruption in service

Mitigation Measure 4.13-1c requires measures to safeguard employees

Mitigation Measure 4.13-1d requires CalAm to prepare an emergency response plan with procedures to follow in the event of a leak or explosion.

Mitigation Measure 4.13-1e requires notification of the fire department in advance of any work that is to be performed within or adjacent to any gas lines.

Mitigation Measure 4.13-1f requires CalAm to contact utility providers to reconnect any disconnected utility lines as soon as it is safe to do so.

IMPACT 4.13-2: The project could exceed landfill capacity or be out of compliance with federal, state, and local statutes and regulations related to solid waste during construction.

Mitigation Measure 4.13-2 requires a construction waste reduction and recycling plan in coordination with the Monterey Regional Waste Management District and Monterey County's Integrated Waste Management Plan.

- i) Aesthetic Resources. The project could result in impacts to aesthetic resources.

IMPACT 4.14: The pump station could introduce permanent new sources of light and glare.

See Mitigation Measure 4.14-2 in Impact 4.6-6

- j) Cultural and Paleontological Resources. The project would potentially result in significant impacts to Cultural and Paleontological Resources.

IMPACT 4.15-2: The project could cause a substantial adverse change during construction in the significance of an archaeological resource.

Although no known archaeological resources have been identified on the project site and the field survey did not indicate any potential for archaeological resources, unknown resources could be disturbed during construction.

Mitigation Measure 4.15-2b identifies procedures that must be followed in the event of inadvertent discovery of cultural resources, including stopping work within 100 feet and notifying lead agencies, a qualified archaeologist, and the appropriate Native American representative.

Pursuant to Monterey County Code Section 21.66.050, a Phase 1 Inventory Report was prepared and conditions recommended in the report, specifically monitoring by a qualified archeologist during ground disturbance has been included as a condition of approval (Condition 5).

IMPACT 4.15-4: While no known human remains have been documented within the project area, there is a possibility of potential discovery of human remains.

Mitigation Measure 4.15-4 identifies procedures that must be followed in the event of inadvertent discovery of Human Remains, including stopping work within 100 feet and notifying the Monterey County Coroner, and the Native American Heritage Commission, which will make recommendations on how to proceed if the remains are determined to be Native American.

- k) Energy Conservation. The project would potentially result in significant impacts to energy conservation.  
 IMPACT 4.18-1: The project requires the use of fuels for construction equipment and could result in wasteful use of energy.  
 Mitigation Measure 4.18-1 requires a Construction Equipment Efficiency Plan to identify measures and standards to maximize efficiency of construction equipment and vehicles, to provide opportunities for worker carpooling, and to use existing electricity over portable generators when feasible.
- l) Socioeconomics and Environmental Justice. The project could result in impacts concerning socioeconomics and environmental justice.  
 IMPACT 4.20-1: Pipeline construction, connected to the pump station, could affect access to businesses, streets, parking spaces, and trails, which could result in impacts to individual impacts in affected locations.  
 See Mitigation Measure 4.9-1, which requires CalAm to obtain all necessary encroachment permits, and to develop a traffic control and safety assurance plan with measures to ensure safe and convenient access through circulation and detour plans, traffic control devices, scheduling truck trips around peak commute hours and heavy recreational use periods. The County has required submittal of a Construction Management Plan (Condition No. 14) coordinated with the plans and information required by this Mitigation Measure.
- m) Condition 16 has been added to require implementation of Mitigation Measures applicable to the Carmel Valley Pump Station.

10.

**FINDING:**

**CUMULATIVE ENVIRONMENTAL IMPACTS MITIGATED TO LESS THAN SIGNIFICANT-**

The EIR identified potentially significant impacts to Geology, Soils, and Seismicity, Surface Water Hydrology and Water Quality, Terrestrial and Biological Resources, Hazards and Hazardous Materials, Traffic and Transportation, Greenhouse Gas Emissions, Noise and Vibration, Public Services and Utilities, Aesthetic Resources, Cultural and Paleontological Resources, Energy Conservation, and Socioeconomics and Environmental Justice, which could result from the project as originally submitted. Changes or alterations have been required in or incorporated into the project which avoid or substantially lessen the potentially significant environmental effects identified below of the Pump Station identified in the Final EIR.

**EVIDENCE:**

- a) Cumulative Surface Water Hydrology and Water Quality Impacts. The project could contribute to cumulative impacts to surface water hydrology and water quality.  
 IMPACT 4.3-C: Nearly all cumulative projects involve excavation and use of heavy equipment during construction and have the potential to degrade surface water quality. During construction, if the MPWSP's dewatering effluent from open excavations were to contain materials from previous spills or leaks, discharges or contaminated dewatering effluent to vegetated upland areas or the local storm drain system could result in a significant impact. During project operations, operational discharges from implementation of the MPWSP could exceed Ocean

Plan water quality objectives for certain constituents, which would result in a significant impact.

See Mitigation measure 4.7-2b, which requires a groundwater dewatering control and disposal plan to specify how contaminated groundwater (if encountered) will be handled and disposed of in a safe, appropriate, and lawful manner. Contaminated groundwater can be disposed of at a permitted waste management facility or discharged, under permit, to a publicly owned treatment works; 4.3-4, which requires water quality monitoring; and 4.3-5, which requires implementation of protocols to avoid exceeding water quality objectives.

- b) Cumulative Impacts related to Greenhouse Gas emissions. The project may have cumulative impacts related to greenhouse gas emissions. IMPACT 4.11-1: Total construction and operation emissions from the project would exceed the 2,000 metric tons per year significance threshold, which could constitute a significant impact without mitigation.  
See Mitigation Measure 4.11-1 and 4.18-1.
- c) Cumulative Impacts related to Noise and Vibration. The project could result in cumulative impacts to noise and vibration. IMPACT 4.12-C: The Pump Station could generate noise in excess of the daytime standard. Combined with cumulative projects, these noise increases could have a potentially significant cumulative effect.  
See Mitigation measures 4.12-1a and 4.12-1b.
- d) Cumulative Impacts related to Public Services and Utilities. The project could result in cumulative impacts to Public Services and Utilities. IMPACT: 4.13-C: Construction of the Pump Station could interfere with existing water, sewer, stormwater drainage, natural gas, electric, or communication utility service lines, potentially interrupting service if the relocation could not be avoided. Cumulative projects involving future construction could also cause utility impacts, and the cumulative impacts could be significant.  
Construction could be inconsistent with the Monterey County Integrated Waste Management Plan if waste is not properly recycled and the total volume of waste is landfilled. The Integrated Waste Management Plan is intended to address countywide diversion goals, thus, inconsistency with this plan could result in a significant contribution to a potentially significant cumulative impact.  
See Mitigation Measure 4.13-a through 4.13-1f.
- e) Cumulative Impacts related to Energy Resources. The project could contribute to cumulative impacts to Energy Resources. IMPACT 4.18-C: Pump Station construction would require the use of fuel or energy, which in the context of local and regional energy supplies, in combination with energy demands of the cumulative project list, could result in a significant cumulative impact.  
See Mitigation Measures 4.10-1b which requires idling restrictions, and 4.18-1, which requires a Construction Equipment Efficiency Plan to identify measures and standards to maximize efficiency of construction equipment and vehicles, to provide opportunities for worker carpooling, and to use existing electricity over portable generators when feasible.



11. **FINDING:** **ENVIRONMENTAL IMPACTS NOT MITIGATED TO LESS THAN SIGNIFICANT** – The EIR found that the MPWSP, including the Pump Station, would result in significant and unavoidable cumulative impacts that would not be mitigated to a less than significant level even with incorporation of feasible mitigation measures. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible mitigation measures that would reduce these impacts to less than significant. The County makes the following findings with respect to the following significant and unavoidable impacts of the Pump Station project.

**EVIDENCE:** a) Cumulative Traffic and Transportation Impacts. Cumulative Traffic and Transportation impacts could be significant and unavoidable despite implementation of mitigation measures.

IMPACT 4.9-C: Construction of all MPWSP components, which includes the Pump Station, combined with other cumulative projects identified in the EIR could result in potentially significant cumulative impacts on traffic and transportation access and facilities. Construction schedules could overlap, causing a short-term increase in vehicle traffic, reductions in available travel lanes, increased wear and tear on designated haul routes used by construction vehicles, and increased demand for parking spaces. The pump station is only expected to generate up to 14 construction worker round trips, which is within daily fluctuations of traffic volumes for Carmel Valley Road and Highway 1; however, the Pump Station is conservatively assumed to contribute to this significant cumulative impact.

Mitigation Measure 4.9-1 requires CalAm to obtain all necessary encroachment permits, and to develop a traffic control and safety assurance plan with measures to ensure safe and convenient access through circulation and detour plans, traffic control devices, scheduling truck trips around peak commute hours and heavy recreational use periods.

Mitigation Measure 4.9-7 requires coordination with affected jurisdictions and parties to design staging areas to minimize parking impacts in publicly used parking lots.

Mitigation Measure 4.9-C requires CalAm to coordinate with the appropriate agency, including the County, to develop and implement a Construction Traffic Coordination Plan to lessen cumulative effects of the MPWSP, including the Pump Station, and local development project construction-related traffic associated with all project sites in the vicinity of MPWSP components and whose construction schedules overlap that of the MPWSP. In accordance with this requirement, County is requiring the applicant to submit a Construction Management Plan (Condition 14). Implementation of Mitigation Measure 4.9-C could reduce the MPWSP's impacts to less than significant; however, CalAm and the County cannot guarantee that all other agencies will participate in coordination efforts, so this effect remains potentially significant.

- b) Cumulative Air Quality Impacts. The project could contribute to cumulative Air Quality impacts which cannot be mitigated to below a level of significance.

IMPACT 4.10-1: Short-term emissions associated with the Pump Station would not exceed the Monterey Bay Air Resource District's CEQA threshold, but short term emissions of the Pump Station combined with all other MPWSP components could contribute to an exceedance of state and/or federal standard for ozone, NO<sub>2</sub> and PM<sub>10</sub> based on estimated maximum daily mass emissions levels. Mitigation Measure 4.10-1a requires use of available construction equipment that meets the highest emissions standards or is alternatively powered.

Mitigation Measure 4.10-1b requires limits for idling times.

Mitigation measure 4.10-1c requires a dust control plan including watering, covering haul trucks, applying soil stabilizers, replanting native vegetation, and installing erosion control measures.

Mitigation Measure 4.10-1e requires CalAm to work with MBARD to put forth a good faith effort to fund an off-site mitigation program that would be contemporaneous with Pump Station construction to offset construction-related NO<sub>x</sub>.

IMPACT 4.10-2: The project could conflict with the 2012 air quality plan (AQMP), which documents MBARD progress toward attaining the state 8-hour ozone standard. Any project that could conflict with this goal is considered in conflict with the AQMP. While the Pump Station construction emissions alone would not exceed the significance threshold for NO<sub>x</sub>, short-term construction emissions from the MPWSP as a whole, including the Pump Station, would exceed the significance threshold even with implementation of mitigation measures; therefore construction emissions could conflict with the 2012 AQMP, which is considered a significant impact.

See Mitigation Measures 4.10-1a, 4.10-1b, and 4.10-1e

IMPACT 4.10-C: Construction activities for the MPWSP as a whole, including the pump station, would generate short-term emissions in quantities that would exceed the significance threshold for NO<sub>x</sub>. The cumulative impact of the MPWSP's construction emissions and the potential to contribute to a violation of an ambient air quality standard and conflict with implementation of the applicable air quality plan would be significant when combined with the emissions of cumulative projects, and the MPWSP's, including the Pump Station's incremental contribution to the cumulative impact would be cumulatively significant.

See Mitigation Measures 4.10-1a, 4.10-1b, 4.10-1c and 4.10-1e.

12. **FINDING:** **NO FEASIBLE ALTERNATIVES:** Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the project alternatives identified in the EIR.
- EVIDENCE:** a) The County is a responsible agency. As stated in CEQA Guidelines section 15096(g)(1), when considering alternatives, "a Responsible Agency is more limited than a Lead Agency. A Responsible Agency

has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.” In this case, the project which the County is approving is the Pump Station, and therefore, the County has responsibility to consider only the alternatives to the Pump Station which could lessen or avoid the direct or indirect environmental effects of the Pump Station. The EIR/EIS analyzed alternatives to the MPWSP, but the only alternative relevant to the Pump Station is the No Project Alternative. The County finds that the No Project Alternative is not feasible for the reasons described below.

- b) The No Project alternative involves not constructing the MPWSP, including the Pump Station. CalAm would continue to operate its Monterey District facilities in compliance with the Cease and Desist Orders and the Seaside Groundwater Basin Adjudication. Pursuant to the State Water Resources Control Board Order WR 2016-0016 (“Revised CDO”), amending State Water Board Order WR 2009-0060, Cal Am must cease its unlawful diversions from the Carmel River by December 31, 2021. This is an extension from the December 31, 2016 deadline established by Order WR 2009-0060. At the end of the Revised CDO extension period, CalAm would have an estimated 6,380 afy of potable water available for delivery within its service area from existing sources, and would not “payback” any water to the Seaside Groundwater Basin. The No Project/No Action alternative would have the least significant environmental impacts; however, it would not meet the project objective to develop a water supply for the Cal Am Monterey District to replace existing Carmel River diversions in excess of Cal Am’s legal entitlement. It would not provide a replacement water supply for CalAm customers, it would not provide water supply reliability, and it would not provide supply to allow for replenishment of water that CalAm previously pumped from the Seaside Basin in excess of CalAm’s adjudicated right. In addition, it would not provide supply for the development of vacant legal lots of record or supply to meet other demand. The limited available water supply could trigger rationing measures and could lead to water shortages throughout the Monterey District service area. Further, the Project benefit served by the return water for the community of Castroville would not come to fruition.
- c) If the No Project Alternative is combined with the Groundwater Replenishment (Pure Water Monterey) water purchase agreement, the Pump Station is still needed for water system delivery, due to a hydraulic trough in the Cal Am peninsula distribution system (see further explanation in the Statement of Overriding Considerations and response to appeal contentions).

13. **FINDING:** **EIR-STATEMENT OF OVERRIDING CONSIDERATIONS** - In accordance with Section 15093 of the CEQA Guidelines, the County has evaluated the economic, legal, social, technological, or other benefits of the project against its unavoidable significant environmental impacts in determining whether to approve the Project, and has determined that the benefits of the Project outweigh its unavoidable,

adverse environmental impacts so that the identified significant unavoidable impact(s) may be considered acceptable.

The proposed Carmel Valley Pump Station project will result in development that will provide benefits described herein to the surrounding community and the County has a whole.

- EVIDENCE:**
- a) Pursuant to the State Water Resources Control Board Order WR 2016-0016 (“Revised CDO”), amending State Water Board Order WR 2009-0060, Cal Am must cease its unlawful diversions from the Carmel River by December 31, 2021. Although Cal Am has lowered its diversions from the Carmel River since the adoption of State Water Board WR 2009-0060, the State Board noted that Cal Am’s “diversions still remain thousands of acre feet per annum above the amount available under Cal Am’s lawful water rights.” (Revised CDO, at p. 1.) The MPWSP project, of which the Pump Station is a component, would enable CalAm to cease illegal diversions from the Carmel River and meet its obligations under the State Water Board’s Cease and Desist Orders.
  - b) The majority of water sources and the CalAm distribution system currently flow from the Carmel Valley, around the Monterey Peninsula, to the north. With implementation of the PWM project and the MPWSP, that flow will be reversed from north to south. The resulting change in hydraulics requires construction of the Pump Station to relay water out in to Carmel Valley. The Begonia Iron Removal Plant currently pulls water from the Carmel River and delivers it to CalAm's Forest Lake Tanks in Pacific Grove and the Segunda Tanks in Upper Carmel Valley. Once desalinated water from the MPWSP replaces the Carmel River source water, the Plant would operate at a reduced capacity in the summer, and could not deliver water to the Forest Lake or Segunda Tanks. To deliver water to the Segunda Tanks during the summer, water sourced from the MPWSP desalination plant would instead need to be pumped in the opposite direction, from the Forest Lake Tanks to the Segunda Tanks. As the Forest Lake Tanks are at a lower elevation than the Segunda Tanks, the Pump Station is necessary to provide the water pressure for delivery to the Segunda Tanks, which would then serve the Cannel Valley and Upper Cannel areas. As summarized in the EIR/EIS, the Carmel Valley Pump Station “would provide the additional pressure needed to fill Segunda Reservoir.” (Final EIR, at 3-37 and 8.7-192.)
  - c) The current CalAm distribution system on the Monterey Peninsula was originally built to deliver water from Carmel Valley, down to the Monterey Peninsula cities. As such, a hydraulic trough currently exists in the CalAm peninsula distribution system, preventing water delivery at adequate quantities from the Seaside Groundwater Basin to most of Monterey and all of Pacific Grove, Pebble Beach, Carmel Valley, and the City of Carmel areas. This hydraulic trough is an area of the distribution system with very small pipe diameters and very low elevation, such that the current infrastructure cannot generate the high flow rates and high pressure needed to convey water from the north between two pressure zones. This system deficiency must be addressed whether the MPWSP desalination plant is built or not. For example, even if the MPWSP is not constructed, the hydraulic trough must still be addressed to convey water supplies from whichever source replaces the

Carmel Valley River, including PWM (Pure Water Monterey) Groundwater Replenishment Project supplies. Accordingly, CalAm's Monterey Pipeline bypasses the hydraulic trough. The Monterey Pipeline will convey potable water from the PWM Project and desalination plant, when available, to the Monterey Peninsula. Once constructed, the Pump Station is necessary to pump water from the Forest Lake Tanks, through the Monterey Pipeline, up to the upper Carmel Valley.

- d) The Pump Station would enable CalAm to maintain its current level of service throughout the entire Carmel Valley, and would provide system redundancy as an additional means of conveying water to CalAm customers. By delivering water sourced from the proposed desalination plant, the Pump Station would provide a more reliable and sustainable water supply source than the Carmel River, and less water would be extracted from the Carmel River during the summer season, providing associated environmental benefits.

14. **FINDING:** **ENVIRONMENTALLY SENSITIVE HABITAT AREAS** –The project is consistent with Monterey County Code Section 21.66.020 (Standards for Environmentally Sensitive Habitats), which requires that development on parcels containing Environmentally Sensitive Habitats (ESHA) only be permitted if it will not have a significant adverse impact on the habitat's long-term maintenance.

- EVIDENCE:** a) A biological survey was conducted for the EIR and fulfills the requirement of Section 21.66.020.C, which provides as follows:
- C. Regulations: Biological Survey Requirement.*
1. A biological survey shall be required for all proposed development meeting one or more of the following criteria:
    - a. The development is proposed within a known environmentally sensitive habitat, based on the most current resource maps, other reliable other available resource information, or through the planner's on-site investigation;
    - b. The development is located within one hundred (100) feet of an environmentally sensitive habitat, and has potential negative impact on the long-term maintenance of the habitat.
  2. The survey shall be required, submitted, and meet approval of the Director of Planning prior to the project application being determined complete.
  3. The survey shall be prepared by a qualified biologist, as selected from the County's list of consulting biologists maintained by the Planning Department. Report preparation shall be at the applicant's expense.
  4. The biological survey shall contain the following elements:
    - a. Identify the property surveyed, with accompanying location map and site plan showing topography and all existing and proposed structures and roads, and the proposed project site or sites;
    - b. Describe the method of survey;
    - c. Identify the environmentally sensitive habitat found on the site and within one hundred (100) feet of the site with an accompanying map delineating the habitat location or locations.
    - d. Describe and assess potential impacts of the development on the environmentally sensitive habitat(s) identified in the survey found on the site or on neighboring properties;
    - e. Recommend mitigation measures which will reduce impacts;
    - f. Assess whether the mitigation measures will reduce the development's impact

*to an insignificant level.*

The biological survey conducted for the EIR fulfills this requirement. The FEIR states (pg 4.6-6) that multiple surveys were conducted by Environmental Science Associates (ESA), and AECOM, between 2012 and 2016. The applicant submitted a map of the Pump Station Biological Survey to the County, which identifies habitat types. Although no sensitive species were identified within the area of disturbance, special status species that could potentially be impacted during construction include: California red-legged frog, Monterey pine, Coast Range newt, red-tailed hawk, white-tailed kite, American peregrine falcon, American kestrel, loggerhead shrike, pallid bar, western red bat, Monterey dusky-footed woodrat, and Monterey shrew. A Monterey Pine tree is present on the site near a portion of the bioswale. Monterey Pine trees are not a protected species within the Carmel Valley Area Plan, and individual trees are not considered special-status; however, the FEIR notes that Monterey Pine trees in this area could potentially be considered special-status if they are within or in close proximity to, the assumed historical range reported by the CNDDDB (pg. 4.6-59). The tree is not proposed to be removed or impacted by the development.

- b) The project is not proposed within environmentally sensitive habitat (ESHA). It is proposed within 100 feet of ESHA. Monterey County Code Section 21.66.020.D provides as follows:

*D. General Development Standards.*

*1. Development, including vegetation removal, excavation, grading, filling, and construction of roads and structures be prohibited in environmentally sensitive habitats. exception, resource dependent uses, including nature education and research, hunting, fishing and aquiculture, may be allowed within environmentally sensitive habitats if it has been determined through the biological survey that impacts of such uses will not harm the habitat's long-term maintenance.*

*2. Development on parcels containing or within one hundred (100) feet of environmentally sensitive habitats, shall be permitted only they will not have a significant adverse impact on the habitat's long-term maintenance, either on a development or cumulative basis. Development shall only be approved where conditions of approval are available which will mitigate adverse impacts to and allow for the long-term maintenance of the habitat, as determined through the biological survey.*

*3. Removal of indigenous vegetation and land disturbance, such as grading, excavation, paving, and fill, in or within one hundred (100) feet of environmentally sensitive habitats shall be limited to that necessary for the structural improvements and driveway access. Modifications to the proposal shall be made for siting, location, design, bulk, vegetation removal, and grading where such modifications will reduce impacts to the habitat.*

*4. The use of native species consistent with and found in the project area shall be required in landscaping required as a condition of project approval.*

*5. Development activities which would adversely affect the breeding habitat of rare, threatened and endangered birds shall be regulated by conditions of project approval to avoid significant impacts during their breeding and nesting seasons.*

The project is consistent with the above-referenced standards for development within 100 feet of ESHA. The EIR recommended

mitigation measures which, when implemented, will reduce impacts to a less than significant level, making the project consistent with Section 21.66.020. D. Consistent with D.2 above, the Pump Station will not have a significant adverse impact on the habitat's long term maintenance. Mitigation measures include: designating a lead biologist to oversee and ensure implementation of special-status species protective measures; requiring worker training to ensure that workers are aware of the special-status species and the measures necessary to avoid, minimize, or mitigate impacts; general measures such as installation of exclusion fencing, trash abatement program to ensure special-status species predators are not attracted to the site, limiting construction to non-nesting season when feasible or requiring a no-disturbance buffer around active nests; a Habitat Mitigation and Monitoring Plan to describe all restoration and compensatory requirements; avoidance and minimization measures for the California Tiger Salamander and Red-legged Frog (including pre-construction surveys, relocation procedures, exclusion fencing, and monitoring of vegetation removal and grading); measures to avoid impacts to wetlands; compliance with tree removal requirements if applicable (no tree removal is proposed); requiring low-intensity exterior lighting.

- c) The County, as a responsible agency, has required verification that mitigation measures pertaining to the Carmel Valley Pump Station are implemented according to the Mitigation Monitoring and Reporting Plan (Condition 16).

15. **FINDING:** **ARCHAEOLOGICAL RESOURCES** – The project, as conditioned, is consistent with County standards for archeological resources.

- EVIDENCE:**
- a) The project site is in an area designated as having high archaeological sensitivity. Per Monterey County Code Section 21.66.050, a Phase 1 inventory report (LIB190035) was prepared. No records of archaeological resources were identified in the project vicinity and no archaeological resources were found, with the exception of shell midden that may have been imported from offsite. The archaeological report recommended monitoring by a qualified archaeologist during project related ground disturbance.
  - b) In accordance with Monterey County Code Section 21.66.050 measures recommended by the archaeologist have been required. Condition 5 has been added to require monitoring by a qualified archaeologist during ground disturbance.
  - c) Mitigation Measure 4.15-2b, adopted with the Mitigation Monitoring and Reporting Plan (Exhibit C), requires work to stop and notification to occur if resources are inadvertently discovered.

16. **FINDING:** **Response to Appeal** – Pursuant to Section 21.80.050 of Title 21, the Appellant, Marina Coast Water District, timely filed an appeal from the April 24, 2019, decision of the Planning Commission. Upon consideration of the written and documentary evidence, the staff report, oral testimony, other evidence presented, and the administrative record as a whole, the Board responds, as a general response, that MCWD's contentions and

objections are not specific to the Carmel Valley Pump Station. MCWD's contentions relate to the MPWSP and the desalination plant but not specifically to the Pump Station, and accordingly, the Board finds that MCWD has failed to provide substantial evidence or explanation to support its contentions as they relate to the Pump Station, the project which is under the County's consideration and jurisdiction and which is the subject of this resolution. Additionally, to the extent that MCWD made the exact same contentions regarding CalAm's application for the desalination plant component of the MPWSP, the Board of Supervisors has considered these same contentions with respect to the Combined Development Permit for the desalination plant and denied MCWD's appeal. See Board of Supervisors' Resolution No. 19-258. To the extent that the specific contentions are relevant, if at all, to the Pump Station project at issue, the Board provides the following responses to the Appellant's contentions:

**EVIDENCE:** a) **Appellant's Contention No. 1:** *Supplemental CEQA review is required due to new information presented after the CPUC's adoption of the Final EIR. The Planning Commission Resolution found that no new information had been presented; however, the Marina Coast Water District as well as other agencies, submitted new information prior to the Planning Commission hearing. Significant new information of substantial importance includes information showing that alternatives found not to be feasible would be feasible and would substantially reduce one or more significant effects of the MPWSP.*

**County Response No. 1:** MCWD submitted a comment letter, with hundreds of pages of attachments, at 5:58 p.m. on April 23 for the Planning Commission hearing on the project scheduled for 9 a.m. on the following morning, April 24. MCWD has attached the same letter to its appeal, which permits County to provide a more detailed response to MCWD's contention that supplemental environmental review is needed. MCWD argues that new information of substantial importance since certification of the EIR has been presented that requires supplemental environmental review; MCWD contends, in sum, that new information shows: expansion of Pure Water Monterey is a feasible alternative; the Seaside Basin has opportunities for storage and banking of groundwater which, together with PWM expansion, is a feasible alternative; and there is new information about MPWSP's potential groundwater impacts. MCWD has presented no substantial evidence of change in project description, change in circumstances, or new significant information that would necessitate additional environmental review of the Pump Station. To the extent that MCWD's contentions have any relevance to the Pump Station, County addresses the specific contentions and concludes that the information is not new information that would require supplemental review under CEQA. As explained in the following findings, information submitted by the appellant and other agencies does not require additional environmental review because it does not show significant effects that were not addressed in the previous EIR or effects that would be



substantially more severe than those addressed, or show that alternatives deemed infeasible are in fact feasible.

- b) **Appellant's Contention No. 2:** *The Planning Commission Resolution found that expanding the Pure Water Monterey Project was not a legally feasible alternative, but this finding is not supported by evidence in light of new information from Monterey One Water (MIW) and Cal Am's decision not to pursue the expansion alternative at this time. MIW's letter states that "MIW and other parties have moved forward to stand ready to provide viable water supply."*

**County Response No. 2:** This contention discusses an alternative to CalAm's desalination plant. Since the Carmel Valley Pump Station is needed for water conveyance regardless of whether the new supply is conveyed from the desalination project or another source, such as the Pure Water Monterey Project, this contention is not particularly relevant to the subject project. To the extent relevant, if at all, to the Pump Station project the appeal does not provide new information requiring supplemental environmental review of the Pump Station project. The CPUC considered the expansion of the Pure Water Monterey Project – this is not new. The CPUC concluded that it “cannot rely upon the concept of potential expansion of the PWM project absent more concrete and specific information to find that additional supply is available to Cal Am.” (D. 18-09-017, at p. 18.) The CPUC ordered Cal Am to file a Tier 2 advice letter within 180 days of the Decision to provide Cal Am's assessment of pursuing additional water supply to be provided by a PWM expansion. (D. 18-09-017 at p. 214, para. 37.) The information submitted by MCWD to the County since the CPUC Decision does not change the conclusion that the PWM expansion is infeasible at this time as an alternative to the desalination plant. The documents submitted by MCWD with its appeal show that the expansion is only in the planning phase, and there is still uncertainty as to whether it would be approved and even if approved, whether it would serve only as a back-up if the desalination plant is delayed. Cal Am's March 2019 advice letter states that Cal Am does not have the necessary information to determine if the potential expansion of Pure Water Monterey can be used to supply its Monterey District. (Cal Am Advice Letter No. 1231, attached to MCWD appeal.) On March 18, 2019, the Monterey Peninsula Water Management District (MPWMD) approved expenditure of up to \$750,000 for supplemental environmental review and design and permitting work for the proposed expansion of Pure Water Monterey project so it could be closer to ready, but MPWMD acknowledges that “It is possible that an expansion of Pure Water Monterey will be deemed unnecessary or infeasible and the costs will be stranded.” For this reason, the staff recommended that the MPWMD Board consider reimbursing Monterey One Water “if the expansion does not move forward.” (March 18, 2019 staff report for MPWMD, attached to MCWD appeal.) MIW stated in response to Cal Am's advice letter that it had allocated \$250,000 toward the cost of environmental review and design work while acknowledging MPWMD's decision to reimburse MIW if “the PWM project is deemed unnecessary or

infeasible.” (April 8, 2019 letter of Perkins Coie on behalf of Monterey One Water to CPUC, attached to MCWD appeal.) A Notice of Preparation has been issued for the Supplemental Environmental Impact Report for the Pure Water Monterey expansion (Attachment H). The evidence shows that it is premature and pre-decisional to make conclusions about whether the PWM expansion would be approved and what the content of that approval would be, which can only be known after the appropriate decision makers evaluate the environmental review M1W is conducting and render a decision. M1W’s letter also characterizes the PWM expansion as a solution if the Cal Am desalination plant is delayed, not as an alternative to prevent approval of the desalination plant in the first instance.

Accordingly, the evidence shows that study and environmental review of the potential PWM expansion is occurring, but what that study and review will show and what will be approved are not yet known and are not within County’s control. The information provided by MCWD does not demonstrate that PWM expansion is a feasible alternative to the Carmel Valley Pump Station, the project which is the subject of this decision. Therefore, the information does not trigger the requirement for County to conduct supplemental environmental review of the Pump Station.

- c) **Appellant’s Contention No. 3:** *The Planning Commission Resolution found, without supporting evidence, that a reduced size alternative (less than 6.4mgd) may not be a substantial reduction in impacts and the MPWSP would not have unavoidable adverse impacts in these areas in any event. CalAm’s most recent demand numbers show that demand has remained flat and has not increased as a result of the fully recovered economy as the FEIR assumed. Since the CPUC determined that reducing the size of the facility from 9.6 to 6.4mgd would substantially reduce environmental impacts due to smaller slant wells and less volume of groundwater pumping, logic and common sense dictate that a further reduction in size would further reduce the same impacts.*

**County Response No. 3:** MCWD has not presented any discussion or evidence as to how a smaller desalination plant is relevant to or a feasible alternative to the Carmel Valley Pump Station, the project under County’s consideration and the subject of this decision. To the extent relevant, if at all, to the Pump Station project, the appeal does not provide new information requiring supplemental environmental review of the Pump Station project. MCWD has not presented substantial evidence of new information that would change the conclusion reached by the CPUC that a smaller 4.8 mgd plant is not a feasible alternative. The CPUC analyzed and rejected a 4.8 mgd desalination plant alternative because it would not satisfy project objectives since it would not supply enough water to meet demand even with the PWM project currently under construction. D.18-09-017, at pp. 69-70, Appendix C (CPUC CEQA Findings), at pp. 72-73; Appendix J (Sept. 12, 2018 responses to comments received after publication of FEIR/EIS, at pp. 30-31.). Demand numbers were determined through the CPUC approval process, which heard considerable testimony on water demand in the FEIR approval process and determined that projections of future demand were reasonable based on growth of

population, development, and tourism. The CPUC's decision explained that a further reduced capacity alternative would result in little to no cost differential, fail to provide a buffer for contingencies, and would not avoid or lessen any significant impacts of the project (D.18-09-017, pp. 69-70.). Additionally, the subject project, the Carmel Valley Pump Station, would still be necessary for water conveyance with a smaller sized alternative.

- d) **Appellant's Contention No. 4:** *New information of substantial importance shows that there are new alternatives which are considerably different from those analyzed in the previous EIR that would substantially reduce one or more significant effects on the environment. Specifically, the 2018 Seaside Groundwater Basin Management Action Plan revealed that the Basin has lost 43,500 Acre-Feet of groundwater storage over the last 30 years. This new information reveals that there are opportunities for storage and banking of groundwater in the Seaside basin, which could provide an alternative water supply that was not considered in the CPUC's EIR. CalAm could meet its supply and demand needs without a desalination component through an expansion of the Pure Water Monterey in conjunction with banking excess supply in the Seaside Groundwater Basin.*

**County Response No. 4:** MCWD has not presented any discussion or evidence as to how the proposed storage and banking opportunities are relevant to or a feasible alternative to the Carmel Valley Pump Station, the project under County's consideration and the subject of this decision. To the extent relevant, if at all, to the Pump Station project, the appeal does not provide new information requiring supplemental environmental review of the Pump Station project. MCWD cites to a 2018 Seaside Groundwater Basin Management Plan as new information, and contends "it would appear that" Cal Am can meet demand by storage and banking together with expansion of the PWM project. This plan is not substantial evidence of new information of a feasible alternative. Groundwater levels in the Seaside Groundwater Basin have been steadily declining for decades, so this does not represent new information. The 2018 Seaside Basin Plan Presentation does not advocate for banking of groundwater. It identifies the MPWSP as a supplemental water supply option to help with groundwater management and to protect against further decline of groundwater levels. Additionally, this alternative relies on storage and banking together with expansion of the PWM project, and the PWM expansion is a not feasible alternative to the Pump Station, as explained above.

- e) **Appellant's Contention No. 5:** *New information of substantial importance shows that the MPWSP will have new or substantially more severe adverse impacts to groundwater resources compared to what was disclosed and analyzed in the CPUC's Final EIR, including impacts related to water quality and water supply. Most notably, this information includes evidence provided by multiple hydrogeologists and Dr. Rosemary Knight of Stanford University. In particular, the Final EIR dismissed the potential for groundwater impacts to occur based on inaccurate assumptions regarding groundwater gradients in the Dune*

*Sand and 180-Foot Aquifers. The CPUC's Findings and Final EIR concluded that groundwater impacts would be less than significant based on the assumption that a landward (i.e., inland) hydraulic gradient was present in both aquifers and would not change over the life of the Project. New information first made available in the MPWPS's recent Monitoring Report No. 154, however, shows that gradients in the Dune Sand Aquifer have changed and were actually seaward in the fall of 2018. Thus, the gradient in the aquifers is the opposite of what was assumed in the Final EIR. As a result of the seaward gradient that currently exists in the Dune Sand Aquifer, the MPWSP will capture much of the freshwater that is presently recharging the underlying aquifers, and will result in significant groundwater impacts that were not analyzed in the Final EIR due to the assumptions used at that time.*

**County Response No. 5:**

MCWD has not presented any discussion or evidence as to how the contentions about the slant wells' impacts are relevant to the Carmel Valley Pump Station, the project under County's consideration and the subject of this decision, because the Pump Station is independent of the slant wells. To the extent relevant, if at all, to the Pump Station project, the appeal does not provide new information requiring supplemental environmental review of the Pump Station. Approval of the slant wells is not before the County. The project before the County is the Carmel Valley Pump Station. The County, as a responsible agency, "has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to .... approve." (CEQA Guidelines sec. 15096 (g)(1)..) Moreover, substantial evidence available within the administrative record of the MPWSP approval process and staff's discussions with the Monterey County Water Resources Agency confirm that MCWD's above contentions are incorrect. The model work for the EIR did not require the assumption of a gradient direction, landward or seaward. (See FEIR Section 4.4 Groundwater Resources and Responses to comments Section 8.2-79 to 8.2-98 and Appendices E1-E3, the Hydrologic Working Group (HWG) Investigation Technical Report (October 2, 2017). The statement that gradients were seaward in Fall of 2018 is an incomplete picture. The Dune Sand Aquifer gradient is landward between the CEMEX monitoring well and Monitoring Well-8S (shallow aquifer) (located further inland) and is locally seaward between the CCEMED monitoring wells and Monitoring Well-7S (shallow aquifer). This is not unique to Fall 2018 and is not new information.

Cal Am correspondence from June 14, 2019 in response to the appeals of the Planning Commission's decision addressed this contention on page A-2 of their letter, explaining that the FEIR included a Master Response confirming that, based on extensive monitoring well data in the area "groundwater in both the Dune Sand Aquifer and 180/180-FTE Aquifer flows inland beneath the project area" (FEIR/EIS, p. 8.2-44). Prior to its decision, in responses to late comments on the MPWSP Final EIR/EIS, the CPUC addressed the issue, explaining that analyses presented in MCWD's comments "misrepresent the (existing) conditions because they disregard

or understate the presence and influence of the ocean, a substantial recharge boundary, and overestimate the extent that groundwater would be captured from inland sources.” (D.18-09-017, Appx. J. p. 16.) “The comments overstate the conditions under which the gradient would reverse and begin to flow seaward.” (D., p. 17.) The new information that the appellant cites is additional monitoring data made available after the CPUC’s decision; however, these data are not significantly different from monitoring data available prior to the CPUC decision and do not constitute new information requiring supplemental environmental review.

The Hydrogeologic Working Group “HWG”, a team of hydrogeologists and groundwater modeling experts representing rate payers, environmental groups, business groups, local governments and government agencies, and key stakeholders on the Monterey Peninsula, also addressed the appellant’s arguments. The HWG noted that the higher groundwater levels in 2018 were the result of an unusually wet 2016-2017 water year, and that an examination of the entire test well monitoring network from 2015 through 2018 shows there is no clear seaward gradient. (HWG Technical Response January 25, 2019, pg 2, 5, attached to June 14, 2019 letter from Cal Am to Board of Supervisors.).

The information from Dr. Knight is not new information requiring supplemental environmental review. The FEIR addressed airborne electromagnetic “AEM” technology and Dr. Rosemary Knight’s findings in detail, including the limitations of AEM technology compared to groundwater monitoring well data. The AEM study did not change the fact that the MPWSP will only draw source water from the identified capture zone, and that any groundwater in that zone is already heavily intruded by seawater. The final AEM study was submitted to the CPUC after publication of the FEIR, and was evaluated by the HWG and the CPUC (see HWG Technical Response (Aug. 15, 2018)), and the CPUC evaluated the final AEM study and HWG’s report in the memorandum responding to late comments. (Appendix J to D.18-09-017). The CPUC found that the final AEM study did not change the FEIR’s conclusion that the MPWSP project would result in less-than-significant impacts to groundwater resources, as mitigated. Most of the source water will be drawn from the ocean and not from inland groundwater sources. The CPUC decision found that the AEM studies do not change the facts that the project 1) will not capture fresh water that could be beneficially used without treatment; and 2) will result in less than significant impacts to groundwater resources as mitigated. (See pg A-5 of June 14, 2019 letter from Cal Am to Board of Supervisors).

- f) **Appellant’s Contention No. 6:** *Additional new information shows that the gradient in the aquifers will continue to shift seaward during the life of the project, further improving groundwater conditions in the SVGB. Most notably, the Salinas Valley Groundwater Basin Sustainability Agency (SVBGSA) is implementing a basin-wide approach to achieve sustainability within the SVB under the Sustainable Groundwater Management Act (SGMA). SVBGSA’s articulation of its basin-wide*

*approach in recent documents demonstrates the CPUC's finding that seaward gradients will not be achieved under SGMA during the Project's lifetime because basin-wide efforts are not being employed is no longer accurate.*

**County Response No. 6:** MCWD has not presented any discussion or evidence as to how SGMA would affect the analysis of environmental impacts of the Carmel Valley Pump Station, the project under County's consideration and the subject of this decision. To the extent relevant, if at all, to the Pump Station project, this contention does not provide new information requiring supplemental environmental review of the Pump Station. SVBGSA's approach under SGMA is not new information that triggers the requirement for supplemental environmental review. During the CPUC proceedings, CPUC addressed a similar contention that the EIR/EIS failed to consider that plans under SGMA could result in restoring groundwater levels and raise groundwater levels enough to flatten the gradient. (D. D.18-09-017, Appendix J., at 18.) The CPUC concluded that future actions and projects resulting from SGMA were too speculative to "opine about" in the EIR/EIS. (id. at p. 19.) That situation has not changed. Thus far, SVBGSA has only released draft chapters of various sustainability plans for public comment. The public release of some draft chapters of a larger plan that is not yet fully written and not adopted is not significant new information requiring supplemental review under CEQA.

- g) **Appellant's Contention No. 7:** *The City of Marina Planning Commission, the first responsible agency to consider an approval for the MPWSP, has already found that there is significant new information of substantial importance that triggers subsequent CEQA review under Public Resources Code section 21166 and CEQA Guidelines Section 15162. Although the City denied the CDP on non-CEQA grounds, it concluded that "any responsible agency that approves a Permit for the Project is first required to conduct this subsequent CEQA review under these provisions." (Id. at p. 3.) As explained in the City Planning Commission Staff Report, there is ample substantial evidence requiring supplemental environmental review under CEQA.*

**County Response No. 7:** The Pump Station is not under the jurisdiction of the City of Marina, and the City did not make a finding with respect to the Pump Station. the documents which MCWD cites for its contention, MCWD's own letter to the County Planning Commission and a City of Marina staff report, are not decisions of the City of Marina, and they do not compel the County to conduct supplemental review of the Pump Station.

- h) **Appellant's Contention No. 8:** *The Planning Commission resolution's finding that the MPWSP is exempt from Chapter 10.72 runs contrary to law. The County's Settlement Agreement is ultra vires and does not provide a basis for exempting the project from Chapter 10.72 because an agreement to circumvent applicable zoning laws is invalid and*

*unenforceable. The County's reliance on the CPUC's advisory opinion is misplaced. The CPUC cannot preempt a local action where the local entity is acting pursuant to statewide, or general, as opposed to local authority. The CPUC's prior advisory opinion does not pre-empt the Sustainable Groundwater Management Act (a subsequently enacted state law)*

**County Response No. 8:**

Chapter 10.72 of the Monterey County Code sets out procedures and requirements for “desalinization facilities” to obtain a construction permit and operation permit from the Director of Environmental Health of the County of Monterey. The Pump Station is not a desalinization facility. Accordingly, Chapter 10.72 does not apply to the Pump Station. (With respect to the desalination plant, County has found that Chapter 10.72 does not apply to the desalination component of the MPWSP. (See Board of Supervisors' Resolution No. 19-258.))

- i) **Appellant's Contention No. 9:** *The County's approval of the proposed MPWSP violates Ordinances 5302 and 5303 that enacted moratorium on drilling new wells within the project area to “address seawater intrusion” in the coastal areas of the SVGB. Any claim that Cal Am's slant wells could be exempt from the moratorium is contradicted by the plain language of the County ordinance that enacted the moratorium, which exempts a well only if it “supplies potable water for the domestic needs” of a public supply system. The MPWSP slant wells are intended to supply water for industrial use in desalination. The desalination plant, not the wells, would later supply potable water for domestic needs but also for agricultural uses and injection.*

**County Response No. 9:**

The County's approval of Cal Am's pump station is not prohibited by Ordinance No. 5302 or 5303. Ordinance No. 5302 is an interim urgency ordinance adopted pursuant to Government Code section 65858 to prohibit, on a temporary basis and pending development of new regulations, new wells within a defined Area of Impact where seawater intrusion is evident and in the Deep Aquifers in the Salinas Valley Groundwater Basin. Ordinance No. 5302, adopted by the Board of Supervisors on May 22, 2018, was an urgency measure of 45 day duration. Ordinance No. 5303, adopted by the Board of Supervisors on June 26, 2018, extended the temporary ban on new wells through May 21, 2020.

First, by the plain language of these ordinances, these ordinances do not apply to the project application under consideration because the application is for a pump station, not for new wells. Ordinance No. 5302, as extended by Ordinance No. 5303, specifically governs applications to construct a new well. (Section 4 of Ordinance No. 5302.) The County is not deciding on the wells for the MPWSP, and no well application for the MPWSP is before the County. The slant wells which are part of the MPWSP are not within the jurisdiction of the County; they are located in the City of Marina and under the jurisdiction of Marina and the California Coastal Commission. This point entirely disposes of MCWD's contention, without

need of examination of the meaning of the exemptions in the ordinance. The Pump Station is also not in the geographic area covered by the ordinance. It is also noteworthy that the ordinance exempts “municipal water supply wells,” in “due regard for exigencies that may arise in respect to domestic water supply ...” (Section 1.C.9 and Section 5.A.4 of Ordinance No. 5302.) The clear intent is not to prevent the drilling of wells needed for provision of domestic water supply during the temporary period during which the interim ordinance is in effect.

- j) **Appellant’s Contention No. 11:** *The County cannot approve the project because Cal-Am does not have and cannot legally obtain, water rights. Monterey County General Plan (Policies PS-3.1 and PS-3.2) requires proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System—including water rights—for any project requiring a discretionary permit.*

**County Response No. 11:** MCWD has failed to demonstrate any connection between its contention about water rights and the Carmel Valley Pump Station, the project under County’s consideration and the subject of this decision. The project before the County is the Pump Station, not the slant wells. The Pump Station is a water conveyance project; the project does not itself require extraction of groundwater. Moreover, Policy PS-3.1 and PS-3.2 do not apply to the Carmel Valley Pump Station and do not require proof of water rights. PS-3.1 applies to “new development for which a discretionary permit is required, and that will use or require the use of water”. PS-3.1(b) exempts “private infrastructure that provides critical or necessary services to the public, and that will have a minor or insubstantial net use of water (e.g. water facilities, wastewater treatment facilities...)” This project is within this exemption for private infrastructure that provides critical or necessary services to the public. The project’s purpose is to reverse the flow of water to convey supply to CalAm customers. It is a water conveyance project that itself does not necessarily increase extraction of water from a groundwater basin.

Policy PS-3.2 provides the criteria for the determination of the Long Term Sustainable Water Supply required by PS-3.1, but since the project is not subject to PS-3.1, PS 3.2 does not apply. Accordingly, the General Plan does not require proof of water rights as a necessary prerequisite for County to grant a permit for this pump station. The County is not the appropriate agency to make a determination of water rights and is not making a determination as to water rights as part of this permit.

- k) **Appellant Contention No. 12:** *The appellant contends that numerous findings in the Planning Commission Resolution are not supported by evidence or are otherwise erroneous, as evidenced by their contentions summarized above.*

**County Response No. 12:** This contention summarizes appellant’s prior contentions. The County’s responsea to these contentions have been detailed in the above responses.



17. **FINDING:** **APPEALABILITY** - The decision on this project is final.  
**EVIDENCE:** a) Section 21.80.090(I) of the Monterey County Zoning Ordinance states that the decision of the appeal authority shall be final.

**DECISION**

**NOW, THEREFORE**, based on the above findings and evidence, the Board of Supervisors of the County of Monterey does hereby:

1. Certify that the County has considered the Final Environmental Impact Report/Environmental Impact Statement for the Monterey Peninsula Water Supply project (SCH#2006101004), dated March 2018, certified by the California Public Utilities Commission on September 13, 2018;
2. Deny the appeal by the Marina Coast Water District from the April 24, 2019 decision of the Monterey County Planning Commission decision approving a Use Permit and Design Approval for a pump station and associated grading.
3. Approve a Use Permit and Design Approval for a 764 square foot pump station, including grading of 36 cubic yards of cut and 720 cubic yards of fill, in general conformance with and subject to the Exhibits listed below, attached hereto and incorporated herein by reference:
  - Exhibit A – Conditions of Approval
  - Exhibit B – Plans
  - Exhibit C – CalAm Monterey Peninsula Water Supply Project Mitigation Monitoring and Reporting Program
4. Adopt the attached Mitigation Monitoring and Reporting Program.

**PASSED AND ADOPTED** this 27th day of August 2019 upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book\_\_\_ for the meeting on \_\_\_\_\_.

Dated:

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

By \_\_\_\_\_  
Deputy

**THIS APPLICATION IS NOT APPEALABLE.**

This decision, if this is the final administrative decision, is subject to judicial review pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6. Any Petition for Writ of Mandate must be filed with the Court no later than the 90th day following the date on which this decision becomes final.

#### NOTES

1. You will need a building permit and must comply with the Monterey County Building Ordinance in every respect.

Additionally, the Zoning Ordinance provides that no building permit shall be issued, nor any use conducted, otherwise than in accordance with the conditions and terms of the permit granted or until ten days after the mailing of notice of the granting of the permit by the appropriate authority, or after granting of the permit by the Board of Supervisors in the event of appeal.

Do not start any construction or occupy any building until you have obtained the necessary permits and use clearances from Monterey County RMA-Planning and RMA-Building Services Department office in Salinas.

2. This permit expires 3 years after the above date of granting thereof unless construction or use is started within this period.