



Monterey County

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

Board Report

Legistar File Number: RES 19-098

July 15, 2019

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Matter Type: BoS Resolution

Public hearing to consider two appeals, one by Marina Coast Water District, and one by Public Water Now, from the April 24, 2019 Planning Commission decision approving a Combined Development Permit for a 6.4 million gallon per day (mgd) desalination plant and related facilities covering an approximately 25-acre area as a component of the overall Monterey Peninsula Water Supply Project (MPWSP). [NOTE: This hearing is relative to the desalination plant portion only]

Project Location: 14175 Del Monte Blvd, Marina CA 93933, off the private Charlie Benson Lane, north of the City of Marina.

Proposed CEQA Action: Consider an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) previously certified by the California Public Utilities Commission for the Monterey Peninsula Water Supply Project (SCH#2006101004).

PLN150889 - CALIFORNIA AMERICAN WATER CO

RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution (Attachment B) to:

- a. Consider the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Monterey Peninsula Water Supply Project, certified by the California Public Utilities Commission on September 13, 2018 (SCH#2006101004).
- b. Deny the appeal by Marina Coast Water District from the April 24, 2019 Planning Commission decision approving the Combined Development Permit (PLN150889/Cal Am)
- c. Deny the appeal by Public Water Now from the April 24, 2019 Planning Commission decision approving the Combined Development Permit (PLN150889/Cal Am)
- d. Approve a Combined Development Permit consisting of:
 1. A Use Permit for a 6.4 million gallon per day (mgd) desalination plant and related facilities; and
 2. An Administrative Permit and Design Approval to allow development in the Site Plan zoning district including the following facilities related to the desalination plant:
 - i. Pretreatment, reverse osmosis (RO), and post-treatment systems;
 - ii. Backwash supply and filtered water equalization tanks;
 - iii. Treated water storage and conveyance facilities;
 - iv. Brine storage and conveyance facilities;
 - v. Administration building and laboratory;
 - vi. Other related operational facilities; and
 - vii. 91,000cy of grading (of 51,000cy of cut and 40,000cy of fill), to be balanced onsite.
- e. Adopt the Mitigation Monitoring and Reporting Plan

The attached draft resolution includes findings and evidence for consideration (Attachment B). Staff recommends approval of the project subject to 22 Conditions of Approval.

PROJECT INFORMATION:

Owner: California American Water Company
APN: 229-011-021-000
Zoning: PG/40-D-S and F/40-D-S
Agent: Christopher Cook
Plan Area: Greater Monterey Peninsula Area Plan
Flagged and Staked: No

SUMMARY:

On April 24, 2019, the Planning Commission approved a Combined Development Permit (Cal-Am/PLN150889), by a vote of 6 to 4, to allow a desalination plant and related facilities. The desalination plant project is part of the Monterey Peninsula Water Supply Project (MPWSP), a project by the California-American Water Company (Cal Am) to develop a new water supply for Cal Am's Monterey District service area as a means of complying with the cease and desist order issued by the State Water Resources Control Board.

The MPWSP has multiple components located in multiple jurisdictions, including the following:

A source water intake system consisting of subsurface slant wells extending offshore into the submerged lands of Monterey Bay National Marine Sanctuary. The system is proposed to be located within the CEMEX mining area within the City of Marina. (City of Marina, California Coastal Commission)

A 6.4 million gallon per day desalination plant and appurtenant facilities (the subject project) on Charlie Benson Lane, off Del Monte Boulevard, north of the City of Marina. (County of Monterey, PLN150889)

Water conveyance pipelines and associated facilities, including the Carmel Valley Pump Station (County of Monterey, PLN150653)

Improvements to the Seaside Groundwater Basin ASR system, including two additional injection/extraction wells, and associated pipelines (U.S. Army, Seaside groundwater basin water master, City of Seaside).

Monterey County is a permitting authority only for the components of the MPWSP located in the unincorporated area of the County: this desalination plant as well as a pump station in Carmel Valley, which is being processed under a separate entitlement and for which a separate appeal is pending. The subject (desal) project is a 6.4 million gallon per day (mgd) desalination plant on the upper terrace (about 25 acres) of a 45.5 acre parcel on Charles Benson Road, a private road off of Del Monte Boulevard, located north of the City of Marina. The County has permitting authority over the desalination plant because it is located in the inland unincorporated area of the County.

An appeal from the Planning Commission's decision was timely filed on May 16, 2019 on behalf of Public Water Now (Attachment H). A second appeal was timely filed on May 20, 2019 on behalf of Marina Coast Water District (Attachment G). The appeals challenge the Planning Commission's approval and contend the decision is contrary to law and is not supported by evidence. Staff has reviewed the appeal contentions, and the recommendations have not changed. Discussion of the appeal contentions is provided below, and a detailed summary of contentions and responses are provided in the attached resolution (Attachment B).

The Board of Supervisors hearing on the project is de novo. Staff recommends denial of the appeals and granting of the Combined Development Permit. Staff has prepared a draft resolution denying the appeals and granting entitlements subject to conditions.

The California Public Utilities Commission (CPUC) was the lead agency under the California Environmental Quality Act (CEQA) for the MPWSP and the National Oceanic and Atmospheric Administration (NOAA) was the lead agency for environmental review under the National Environmental Policy Act (NEPA). The CPUC, as lead agency, certified the Environmental Impact Report/Environmental Impact Statement for the MPWSP (EIR/EIS) and issued a Certificate of Public Convenience and Necessity (CPCN) for the MPWSP on September 13, 2018. The County of Monterey is a responsible agency under CEQA, and as such, is considering the EIR/EIS certified by the CPUC for the consideration of permits for portions of the MPWSP project within the unincorporated areas of Monterey County. As a responsible agency, the County will adopt its own Mitigation Monitoring and Report Plan (MMRP), which requires verification that mitigation measures which apply to the desalination plant have been implemented in accordance with the CPUC-adopted MMRP.

Public Water Now has requested that the Board continue the hearing to a date after September 5, 2019. (See Attachment M).

DISCUSSION:

Two components of the MPWSP require discretionary approval from Monterey County: the desalination plant, and the Carmel Valley Pump Station. These two projects are located in separate areas of the unincorporated county, involve different potential impacts, and require their own applications and entitlements. The Carmel Valley Pump Station is being processed separately under PLN150653 and will be considered on its own merits. There are also several other pipeline components associated with desalination plant located in the unincorporated area of Monterey County. These pipelines convey water to and from the plant. These pipeline components do not require discretionary entitlements from the County. A detailed list of these pipeline components is included in **Attachment A - Detailed Discussion**.

Subject Project

The subject project is the 6.4 Million Gallon Per Day (mgd) desalination plant and related facilities, including pretreatment, reverse osmosis (RO), and post-treatment systems, backwash supply and filtered water equalization tanks, treated water storage and conveyance facilities, brine storage and conveyance facilities and an administration building and laboratory facilities. Construction activities include the following (square footage is approximate): a 26,000 square foot Reverse Osmosis and

treatment building, a 6,300 square foot administration building, a 3,300 square foot filter building, seven 540 square foot filter vessels, two 50-foot diameter filtered water tanks, two 101-foot diameter treated water tanks, a 1,269 square foot Cal-Flo containment basin, a 700 square foot CO2 tank, a 350 square foot recycle pump station, two 17,000 square foot backwash reclamation basins, a 61,000 square foot Brine EQ Basin, and a 560 square foot brine pump station. A more detailed project description can be found in **Attachment A - Detailed Discussion**.

CEQA:

The California Public Utilities Commission, as the Lead Agency under CEQA, prepared a Draft Environmental Impact Report (DEIR) for the MPWSP. The DEIR was circulated to responsible agencies and interested parties, including the State Clearinghouse (SCH#2006101004) during the public comment period from January 13, 2017 to March 29, 2017. The CPUC certified the EIR/EIS on September 13, 2018 and adopted a Mitigation Monitoring and Reporting Plan. The CPUC is responsible for implementation of the Mitigation Monitoring and Reporting Plan. A Condition of Approval (Condition 5) has been added to the conditions of approval in the attached draft resolution permitting the desalination plant component of the project, to require the applicant to provide evidence to the County that the mitigation measures that pertain to the desalination plant have been implemented. Additional discussion on CEQA can be found in **Attachment A - Detailed Discussion**.

The Environmental Impact Report/Environmental Impact Statement has been distributed to the Board and is available at the Resource Management Agency Office at 1441 Schilling Place, 2nd floor, Salinas, CA 93901 and online at:

<http://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma-/planning/current-major-projects/monterey-peninsula-water-supply-project-california-american>

Reduced Capacity Alternative

The Environmental Impact Report examined a 9.6 mgd desalination plant; however, Alternative 5a was identified as the environmentally superior alternative and is the project which the CPUC approved. Alternative 5a is a reduced capacity desalination plant, to produce 6.4mgd combined with a purchase agreement to obtain 3,500 acre-feet per year (afy) of advanced treated water from another source, The Pure Water Monterey Groundwater Replenishment Project (GWR). The 6.4 mgd desalination plant component is the project before the County. This alternative project will result in reduced operation energy use and reduced impact on air quality compared to the 9.6 mgd plant. Additionally, the GWR project will provide water to the Castroville Seawater Intrusion project growers as a benefit to the groundwater basin. Alternative 5a was approved by the CPUC, and the 6.4mgd desalination plant is the proposed project for the subject entitlements.

Issues/Potential Impacts

Potential impacts and issues associated with the development have been identified. The following is a brief summary of the potential impacts and how they are addressed. A more detailed explanation can be found in the Detailed Discussion - **Attachment A**.

Design/Visual Impacts

A Visual Impact Analysis was completed by Denise Duffy & Associates in August of 2017 and found that none of the desalination plant structures will be visible from any public viewing area due to existing topography and vegetation, distance, and the site's remote and industrial setting (**Attachment F**). County staff has reviewed the visual impact analysis and agrees with its conclusions. The site will be located off a private road near the Monterey Regional Environmental Park (Marina landfill site).

Site Control

The site zoning includes an "S" zoning overlay, which requires site plan review in areas where development, by reason of its location, has the potential to adversely affect or be adversely affected by natural resources or site constraints. The development has been sited on a flat portion of the site close to other adjacent industrial activities. This location allows direct access to the site from the existing Charlie Benson Lane, a private road. Siting the development on the upper terrace of the 46-acre parcel avoids the 1.7 acre portion of the parcel containing prime farmland and is the area of the parcel farthest from the Salinas River corridor. Additionally, the proposed location avoids disturbance of Monterey Spineflower, a sensitive species identified on the lower terrace of the parcel. Site development will require the removal of 13 Monterey Cypress trees to accommodate the proposed driveways. Monterey Cypress trees are not protected in the Greater Monterey Peninsula Area Plan, so no entitlements are required for their removal.

Agricultural

The parcel is zoned Permanent Grazing but is bordered by industrial uses. The project has been sited to avoid the Farmland-zoned 1.7 acre portion of the site containing Prime Farmland. Consistent with Policy AG-1.2 of the Monterey County General Plan, the project provides a 200 foot buffer between the desal plant facilities and the adjacent farmland west of the site. Existing agricultural activities would not be impacted by the project because no agricultural activity is currently present on the site. The site has not been used for grazing or other agricultural purposes since 1956.

Archaeology/Native American Resources

Monterey County GIS designates the site as within a moderate archaeological sensitivity zone. A records search and a field survey were conducted in preparation for the EIR, which fulfills the requirement for a Phase 1 report as required by Monterey County Code Section 21.66.050. No prehistoric archaeological resources have been previously identified in the direct APN for the MPWSP Desalination Plant. Mitigation measures 4.15-2b and 4.15-4 identify procedures for work to stop and consultation to occur with the appropriate Native American representative and the Native American Heritage Commission if resources or remains are discovered during construction activities.

Traffic

Construction is projected to occur over a 25-month period. Per the proposed construction management plan, construction would be allowed 7 a.m. to 7 p.m., Monday through Saturday. (See Attachment C; see also Condition 20). The EIR estimated a maximum of 55 round-trip large construction truck trips per day and up to 97 round-trip construction worker trips per day in passenger vehicles. The EIR analyzed the combined construction-related traffic increases in the North Marina area and found that truck trips generated by concurrent construction activities would be dispersed throughout the day and over the area road network. The maximum increases in traffic

resulting from concurrent construction of project components during peak periods of construction would fall within the daily fluctuations of traffic volumes and would not be noticeable to the average motorist on Highway 1 or on the higher-volume segments of Reservation Road.

Biological

The subject property is mostly comprised of non-native annual grassland with some cover of ruderal species. Biological surveys conducted for the EIR identified Monterey spineflower approximately 50 feet from the area of disturbance, on the opposite side of the access road, as well as the potential for sensitive plant species to occur, including Congdon's tarplant. Several animal species could possibly be impacted due to the site's proximity to the Salinas River, including California red-legged frog, California tiger salamander, coast range newt, and American badger. The site could provide nesting habitat and foraging areas for bird species such as red-tailed hawk, red-shouldered hawk, and American kestrel, special status bat species, short-eared owl, northern harrier, white-tailed kite, American peregrine falcon, California horned lark and loggerhead shrike and common passerines. Mitigation Measures listed in the EIR and adopted by the Mitigation Monitoring and Reporting Program will reduce all impacts to a less than significant level.

Noise

Construction of the desal plant is anticipated to occur over a 24-month period. Construction is anticipated to occur between 7 a.m. and 7 p.m., Monday through Saturday, based on the proposed construction management plan. The nearest sensitive receptors are two rural residences on Neponset Road that are located 2,200 feet and 3,900 feet to the west. Policy S-7.9 of the Monterey County General Plan Safety Element prohibits construction activities that exceed acceptable noise levels within 500 feet of noise sensitive receptors during evening hours of Monday through Saturday, or anytime on Sunday or holidays, without completion of a noise mitigation study and implementation of protective measures. Despite the distance to the nearest receptor and the proposed hours of construction, mitigation measures have been included to reduce the impacts to less than significant.

Summary of Appeals

The following is a summary of the appeal contentions received from both Marina Coast Water District and Public Water Now. A brief response to these contentions has also been included. More detailed responses to these contentions can be found in the draft Resolution - **Attachment B**, Finding 17 (Marina Coast Water District) and Finding 18 (Public Water Now)

Marina Coast Water District Appeal:

On May 20, 2019, the law offices of Remy, Moose, Manley filed an appeal on behalf of Marina Coast Water District (MCWD). The appeal challenges the Planning Commission's approval and contends the decision is contrary to law and is not supported by evidence. Among other contentions, the appeal contends that new information of substantial importance was presented after the CPUC's adoption of the FEIR that warrants supplemental CEQA review. The information which appellant contends warrants supplemental environmental review pertains to feasibility of alternatives -- including the Pure Water Monterey Expansion, the further reduced size desalination plant and opportunities for groundwater storage, and potential impacts on the groundwater basin. In addition, the appeal contends that the Planning Commission's decision violates state and local legislation, including the Sustainable

Groundwater Management Act, Chapter 10.72 of County Code, and County Interim Ordinance Nos. 5302 and 5303, and contends the decision is inconsistent with County policies pertaining to Environmentally Sensitive Habitats and General Plan policies PS-3.1 and PS-3.2 for Long Term Sustainable Water Supply. Finally, the appellant contends that the County cannot approve the project because Cal Am does not have groundwater rights. The appellant's contentions are summarized and responded to in Finding 17 of the attached draft resolution, and the full text of the appeal is included as **Attachment G**.

Public Water Now Appeal:

On May 16, 2019 Melody Chrislock filed an appeal on behalf of Public Water Now, and on May 20, 2016, appellant filed a supplement to its appeal. The appeal challenges the Planning Commission's approval and contends the decision is contrary to law and is not supported by evidence. Specifically, the appeal contends that the decision is inconsistent with County policies, including the coastal North County Land Use Plan, Chapter 10.72 of the County Code, General Plan Policies for Long Term Sustainable Water Supply, and state and local legislation, including the California Constitution, the Sustainable Groundwater Management Act, groundwater rights law, the Monterey County Water Resources Agency "Agency Act", and the State Water Resources Control Board's State 1968 Non-Degradation Policy. The appellant also contends that Planning Commission findings relative to agricultural resources and environmentally sensitive habitats are inadequate and that economic impacts were improperly omitted. Finally, the appellant contends new information regarding the inclusion of Pure Water Monterey Expansion project as a feasible alternative, and regarding potential seawater intrusion impacts on the groundwater basin, require supplemental environmental review. The appellant's contentions are summarized and responded to in Finding 18 of the attached resolution, and the full text is included as **Attachment H**.

Brief Response to Contentions:

Detailed responses to the each of the appellants' specific contentions are included in Finding 17 and Finding 18 of the attached Resolution as suggested findings and evidence. As a responsible agency, the County's jurisdiction relative to the MPWSP is limited to those components within the unincorporated areas of the County. Below are summarized responses to the main contentions received from the appellants.

Comments relative to approval of the land use for the desalination plant include those relative to environmentally sensitive habitat and agricultural resources. As explained above and in the resolution, development is not proposed within environmentally sensitive habitat. Biological surveys conducted for preparation of the EIR fulfill the requirement of Section 21.66.020(C) of Title 21 of the Monterey County Code for approving development near environmentally sensitive habitat, and mitigation measures ensure that the development will not have a significant adverse impact on the habitat's long-term maintenance. The development is an allowed use within the PG zoning designation and the proposed coverage (areas with structures over 2 feet in height) of 1.22 acres or .03 percent of the project site is well under the allowable 11.5 acres or 25% of the 46 acre parcel. It avoids impacts to prime farmland and will not impact surrounding agricultural uses.

Many of the appellant's contentions refer to impacts of the slant wells, which are located within the City of Marina and are not within the County's jurisdiction. Nevertheless, many of these contentions were discussed and responded to within the existing administrative record of the MPWSP, including the FEIR, and the CPUC's Findings and Evidence in approving the MPWSP, including Appendix J to the decision (D.18-09-017), which is a 51-page memorandum, dated September 12, 2018, from the CPUC's EIR/EIS preparation team to the Commissioners of the CPUC and Administrative Law Judges responding to comments received after the publication of the Final EIR/EIS. Also referenced is the Hydrogeologic Working Group Hydrologic Investigation Technical Report (October 2, 2017). The Hydrogeologic Working Group (HWG) is a team of hydrogeologists and groundwater modeling experts representing the diverse interests of rate payers, environmental groups, business groups, local governments, and government agencies, and key stakeholders on the Monterey Peninsula.

Staff conferred with Monterey County Water Resources Agency staff to discuss the appellant's contentions. MCWRA staff is intimately familiar with the MPWSP and has reviewed the FEIR, and the Hydrologic Working Group Investigation Technical Report and related documents in detail and has assisted RMA-Planning staff in providing responses based on available technical evidence. MCWRA agrees with the conclusions of the FEIR that the MPWSP does not pose a risk to the Seaside Groundwater Basin of exacerbating seawater intrusion. A letter from MCWRA explaining their position on the appellants' contentions is included as Attachment R.

Many of the appellants' contentions concern Cal Am's water rights. The County is only approving the desalination plant, not the proposed slant wells, and it is not within the County's purview to make a determination of water rights. Approval of the desalination plant only grants the applicant permission to build the desalination plant, not to extract water via the slant wells. As a precaution to prevent an undesirable condition on the project site in the event that a source of water is not secured or becomes unavailable in the future, staff is proposing a condition of approval (Condition 22) to require restoration or adaptive re-use of the site in the event the desalination plant is no longer a viable use.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- RMA-Public Works
- RMA-Environmental Services
- North County Fire Protection District
- Monterey County Water Resources Agency
- Office of County Counsel
- Monterey County Ag Advisory Committee

The proposed project was reviewed by the Agricultural Advisory Committee (AAC) on April 16, 2019, as the project is being built on agriculturally zoned land. The AAC recommended approval of the project by a unanimous vote, with the addition of two additional project considerations, which the applicant agreed to at the AAC meeting:

1. The applicant will record some sort of document that ensures that current and future property owners are aware of the Right to Farm given the proximity to ag operations

2. The project will include an ag-buffer on the south side of the project, as close to 200' as is practically possible.

Condition 21 has been added to require the applicant to record a deed notice explaining Right-to-Farm. On the proposed site plan, the closest building to the south property line, the Administration Building, is 277 feet from the neighboring agricultural parcel.

FINANCING:

Funding for staff time associated with processing this project is included in the FY2018-19 and FY2019-20 Adopted Budgets for RMA-Planning.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources.

Check the related Board of Supervisors Strategic Initiatives:

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

Prepared by: Cheryl Ku, Senior Planner, x6049
Reviewed by: Brandon Swanson, Interim RMA Chief of Planning
Approved by: John M. Dugan, FAICP, Deputy Director of Land Use and Community Development

The following attachments are on file with the Clerk of the Board:

Attachment A - Detailed Discussion

Attachment B - Draft Resolution including:

- Draft Conditions of Approval
- Plans
- Cal Am Monterey Peninsula Water Supply Project Mitigation Monitoring and Reporting Program

Attachment C - Draft Construction Management Plan

Attachment D - Overview of MPWSP Facilities in Unincorporated Monterey County

Attachment E - Vicinity Map

Attachment F - Visual Impact Assessment (LIB190166)

Attachment G - Appeal from Marina Coast Water District (Separated into three attachments)

Attachment H - Appeal from Public Water Now

Attachment I - Supplemental Document from Public Water Now

Attachment J - Board Report Regarding Recommendations for Amending Chapter 10.72 of the Monterey County Code

2. The project will include an ag-buffer on the south side of the project, as close to 200' as is practically possible.

Condition 21 has been added to require the applicant to record a deed notice explaining Right-to-Farm. On the proposed site plan, the closest building to the south property line, the Administration Building, is 277 feet from the neighboring agricultural parcel.

FINANCING:




Funding for staff time associated with processing this project is included in the FY2018-19 and FY2019-20 Adopted Budgets for RMA-Planning.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

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Attachment K - Planning Commission Resolution No. 19-008
Attachment L - June 14, 2019 Correspondence from Cal Am
Attachment M - July 28 2019 Correspondence from Public Water Now
Attachment N - Coastal Commission Consolidated Review Letter
Attachment O - Ordinance 5303 and 5302
Attachment P - Biological Survey
Attachment Q - NOP for Pure Water Monterey Expansion
Attachment R - Correspondence Received
Attachment S - Letter from Monterey County Water Resources
Attachment T - (Available Online): Environmental Impact Report/Environmental Impact Statement

cc: Front Counter Copy; Brandon Swanson, Chief of Planning; Christopher Cook, Applicant; Cal Am, Owner (Cal Am); Melody Chrislock, Public Water Now; Kathryn A, Ramirez, Remy Moose Manley; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director); John H. Farrow; Janet Brennan; Project File PLN150889