City of Marina

City of Marina
211 HILLCREST AVENUE
MARINA, CA 93933
831- 884-1278; FAX 831- 384-9148
www.ci.marina.ca.us

AGENDA

Thursday, July 10, 2014 **6:30 P.M.**

REGULAR MEETING
PLANNING COMMISSION

Council Chambers
211 Hillcrest Avenue
Marina, California

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. **(Resolution No. 2006-112 - May 2, 2006)**

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. **(Resolution No. 2006-112 - May 2, 2006)**

1. CALL TO ORDER

2. ROLL CALL & ESTABLISHMENT OF QUORUM (Planning Commission Members)
   David Burnett, Margaret Davis, Eugene Doherty, Greg Furey, Tim Ledesma, Virgil Piper, Ken Turgen

3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Announcements of special events or meeting of interest as information to Board and Public. At this time any person may comment on any item, which is not on the agenda. Please state your name and address for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on the next agenda. Planning Commission members or City staff may briefly respond to statements made or questions posed*

as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of Four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the Planning Commission.

5. CONSENT AGENDA: *Background information has been provided to the Planning Commission on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. If discussion is requested by anyone on any item, that item will be removed from the Consent Agenda and placed at the end of Other Action Items if separate action is requested.*

   a. Minutes for the June 19, 2014 Special Planning Commission meeting

6. PUBLIC HEARINGS: *Time will be set aside during the Public Hearing to receive oral comments on all items listed as Public Hearings. Staff will present the project brought forth for Planning Commission consideration and possible action and answer questions from the Planning Commissioners. The applicant will then have the opportunity to raise any issues. The public will then be invited to approach the podium to provide up to four (4) minutes of public testimony.*

   It is requested that the Planning Commission:

   a. Open a public hearing, take any testimony from the public, and consider adopting Resolution No. 2014- : (1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program, and; (2) approving Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN 203-011-001 & 203-011-019).

7. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is brought forth for Planning Commission consideration and possible action. The Planning Commission may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

   a. None

8. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS:

   a. City Council, Design Review Board, Tree Committee and other meetings of note.
   b. Upcoming items scheduled for future meetings.
   c. Ad Hoc Committee

9. CORRESPONDENCE:

a. None

10. ADJOURNMENT

CERTIFICATION

I, Judy Paterson, Administrative Assistant for the City of Marina, do hereby certify that a copy of the foregoing agenda was posted at Marina City Council Chambers bulletin board, 211 Hillcrest Avenue; City Kiosk at the corner of Del Monte Boulevard and Reservation Road; and Monterey County Free Library Marina Branch at 190 Seaside Circle on or before 6:30 p.m. Monday, July 7, 2014.

Judy Paterson, Administrative Assistant II
Planning Services Division
Community Development Department

PLANNING COMMISSION NOTES:

1. The Marina Planning Commission regularly meets at 6:30 P.M. on the second and fourth Thursdays of each month.
2. The Planning Commission follows procedures intended to allow for project applicants and members of the public the fullest possible opportunity to be heard, while enabling the Commission to complete its meetings within a reasonable time.
3. Copies of staff reports are available to the public on the Friday afternoon, prior to the Thursday meetings at the Community Development Department office located at 209 Cypress Avenue.
4. Planning Commission subcommittees include the Marina Design Review Board (DRB) and Tree Committee. The DRB regularly meets at 6:30 P.M. on the third Wednesday of each mouth and the Tree Committee meets quarterly on the 2nd Wednesday of January, April, July and October... All meetings take place in the Council Chambers unless otherwise noticed... Public notices and agendas are posted at the following locations: Monterey County Library Marina Branch, Kiosk at the corner of Del Monte Blvd. and Reservation Rd., and Marina City Council Chambers Bulletin Board.
5. The public is invited and encouraged to participate in all meetings of the Planning Commission and its subcommittees.
6. ALL MEETINGS ARE OPEN TO THE PUBLIC. THE CITY OF MARINA DOES NOT DISCRIMINATE AGAINST PERSONS WITH DISABILITIES. Council Chambers are wheelchair accessible. Meetings are broadcast on cable channel 25 and recordings of meetings can be provided upon request. To request assistive listening devices, sign language interpreters, readers, large print agendas or other accommodations, please call (831) 884-1278 or e-mail: marina@ci.marina.ca.us. Requests must be made at least **48 hours** in advance of the meeting.

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MINUTES

Thursday, June 19, 2014 **6:30 P.M.**

SPECIAL MEETING
PLANNING COMMISSION

Council Chambers
211 Hillcrest Avenue
Marina, California

1. CALL TO ORDER

Vice-Chair Turgen called the meeting to order at 6:30 p.m.

2. ROLL CALL & ESTABLISHMENT OF QUORUM (Planning Commission Members)
Eugene Doherty, Greg Furey, Tim Ledesma, Virgil Piper, Vice-Chair Ken Turgen

Members absent: Chair David Burnett, Margaret Davis (both excused)

3. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

4. SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: None

5. CONSENT AGENDA:

a. Minutes for the May 22, 2014 Planning Commission meeting

Commissioner Doherty made a motion to approve the consent agenda. The motion was seconded by Commissioner Piper and passed by a 3-0-2(Burnett, Davis)-1(Furey) vote.

6. PUBLIC HEARINGS:

It is requested that the Planning Commission:

a. Consider adopting Resolution No. 2014- , approving Conditional Use Permit UP 2014-05, to allow a hotel use within the Retail Business (C-1) Zoning District, and approving Site and Architectural Design Review DR 2013-08 for the Site Plan, Building Elevations, Landscape Plan, Retaining Walls, and Colors and Materials for a 50' high, four story ±60,000 square foot hotel with 90 hotel units on a ±1.96 acre project site located at 120 Reservation Road (APN 033-111-033), subject to conditions.

Ms. Szymanis gave a staff report.

Tony Lombardo, representing the applicant, was available to answer commissioners' questions and indicated that the applicant accepted the conditions of approval.

Commissioners expressed concerns about emergency vehicle access, parking and ingress and egress from Beach Rd.

The public hearing was opened.

Patti Bradshaw, Marina resident, encouraged the applicant to provide a pet area within the landscaping as an amenity for people traveling with their pets.

The public hearing was closed.

Commissioner Ledesma made a motion to adopt the resolution approving Conditional Use Permit and Architectural Design Review for the Hampton Inn at 120 Reservation Road. The motion was seconded by Commissioner Furey and passed by a 5-0-2(Burnett, Davis)-0 vote.

b. Consider adopting Resolution No. 2014- , approving an amendment to Conditional Use Permit UP 2007-15, to allow for parking of motor vehicles over 20 feet in length associated with a service commercial use within the designated parking area on a ±1.85 acre project site at 742 Neeson Road (APN 031-112-034), subject to conditions.

Ms. Szymanis gave a staff report.

Mike Ross, project applicant, provided a history of the project site and was available to respond to commissioners' questions and concerns. In addition to the request before the commission, he indicated a desire for outside storage of roofing materials.

Staff indicated that there were issues of fire vehicle access and the possible loss of required parking if the outdoor storage were pursued without the benefit of a parking demand study provided by the applicant.

The public hearing was opened. Hearing no one, the public hearing was closed.

It was the commission's recommendation to the applicant that he meet with City Fire and Planning staff to work on possible solutions to the storage issues he is experiencing.

Commissioner Furey made a motion to approve the resolution was presented. The motion was seconded by Commissioner Ledesma and passed by a 5-0-2(Burnett, Davis)-0 vote.

7. OTHER ACTION ITEMS:

a. None

8. COMMISSIONERS AND STAFF INFORMATIONAL REPORTS:

Staff reported on:

a. City Council, Design Review Board, Tree Committee and other meetings of note.
b. Upcoming items scheduled for future meetings.
c. Ad Hoc Committee

9. CORRESPONDENCE:

a. None

10. ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

ATTEST:

_____
Kenneth Turgen, Vice-Chairman

_____ _____
Judy Paterson, Administrative Assistant II DATE

July 2, 2014

Item No: 6a

Honorable Chair and Members
of the Marina Planning Commission

Planning Commission Meeting
of July 10, 2014

REQUEST TO OPEN A PUBLIC HEARING, TAKE ANY TESTIMONY FROM THE PUBLIC, AND CONSIDER ADOPTING RESOLUTION NO. 2014- : (1) CERTIFYING A MITIGATED NEGATIVE DECLARATION AND ADOPTING A MITIGATION MONITORING AND REPORTING PLAN, AND; (2) APPROVING COASTAL DEVELOPMENT PERMIT CDP 2012-05, FOR THE CALIFORNIA AMERICAN WATER SLANT TEST WELL PROJECT LOCATED AT CEMEX's LAPIS ROAD PROPERTY (APN's 203-011-001 & 203-011-019)

REQUEST

It is requested that the Planning Commission;

1. Open a public hearing, take any testimony from the public, and;

2. Consider adopting Resolution No. 2014- : (1) certifying a Mitigated Negative Declaration and adopting a Mitigation Monitoring and Reporting Plan, and; (2) approving Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN's 203-011-001 & 203-011-019)

BACKGROUND

On August 23, 2012, California American Water submitted an application for a slant test well project located at the north-west corner of the Lonestar California, Inc. site, Marina (APN'S 203-011-001 & 203-011-019).

On December 7, 2012, the Marina City Council adopted Resolution No. 2012-168, approving a Fee Agreement between the City of Marina and California American Water for provision of planning and attorney services related to review and processing of a proposed slant test well project.

On August 1, 2013, an early project referral to gather preliminary comments regarding the proposed project was transmitted to 27 regulatory and permitting agencies resulting in comments and identification of issues to be addressed, and additional technical studies that would be required for the Initial Study.

On October 11, 2013, the City contracted with SWCA Consultants of San Luis Obispo California for environmental planning services for the project.

PROJECT DESCRIPTION

The proposed project is located on a 400 acre property, previously owned by RMC Lonestar and currently owned by CEMEX, a global building materials supplier. A sand mining operation has existed on the site since 1906, with an approximate 104 acres having experienced some disturbance

associated with mining activities. The slant test well would comprise an additional land use within the disturbed areas of the site.

The project proposes the construction, temporary operation and decommissioning of a slant test well, up to four monitoring well clusters and related infrastructure. The purpose of the proposed project is to gather technical data related to the potential hydro-geologic and water quality effects of the proposed Monterey Peninsula Water Supply Project (MPWSP). The slant test well project is estimated to occur over a period of 2 to 3 years. Once constructed the slant test well would operate for a maximum period of 24 months and is then proposed to be decommissioned in accordance with the regulations of the California Department of Water Resources.

Detail regarding the proposed project, including project components, site access and the three phases of project construction, operation and decommissioning are provided in Section 3.2 of the Draft Initial Study and Mitigated Negative Declaration (IS/MND) prepared for the project in May 2014 (**"EXHIBIT A"**). Data gathering to prepare technical studies for the environmental document included two exploratory borings to extract soil and water data. An amended Mitigation Monitoring and Reporting Plan (MMRP) is also attached **("EXHIBIT B")**, incorporating staff initiated amendments and edits resulting from the agency and public review. These amendments are noted on a separate 'Errata' sheet (**"EXHIBIT C"**) in ~~strikethrough~~/underline format.

ANALYSIS

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Through preparation of the IS/MND, it has been determined that the project's potentially significant environmental impacts specifically relate to impacts associated with aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, transportation and traffic, and utilities and service systems. Identified potentially significant impacts can all be mitigated to less than significant with the mitigations shown in the Mitigation Monitoring and Reporting Plan.

A 30-day public review period for the IS/MND was established beginning on May 19, 2014 and ending on June 17, 2014. Copies of the IS/MND were transmitted to the State Clearinghouse (SCH# 2014051060), and a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration was sent to responsible agencies and local agencies concerned with the project, and any other person, entity or organization requesting notice. The NOI was also posted with the Office of the Monterey County Clerk on May 19, 2014.

A total of eight comment letters were received: seven from regulatory and permitting agencies (Monterey County Environmental Health Bureau, Monterey County Water Resources Agency, California State Lands Commission, Monterey Bay Unified Air Pollution Control District, Marina Coast Water District, Monterey Regional Water Pollution Control Agency and the State Mining and Geology Board); and one letter from a non-agency organization (The Ag Land Trust). The comment letters are provided in chronological order with responses following the individual letters. Comment letters are reproduced in total, and numerical annotation has been added as appropriate to delineate and reference the responses to specific comments within each letter **("EXHIBIT D")**.

Correspondence relating to the proposed project received since June 17, 2014 is also attached **("EXHIBIT E")**.

GROUNDWATER RIGHTS

Comment letters received by the Marina Coast Water District and The Ag Land Trust raise issues relating to groundwater rights and contractual rights within the vicinity of the project area. These issues are legal issues between the Applicant and others who possess groundwater rights. These are not environmental issues and are not relevant to determinations made with regards to the environmental document or the CDP. The Applicant, California American Water has submitted a response to these issues for the record in a letter from Ian Crooks dated July 1, 2010.

CONSISTENCY WITH THE GENERAL PLAN

The project site is designated as 'Habitat Reserve and Other Open Space' on the General Plan Land Use Map. General Plan Policy 2.7.1 identifies 'Habitat Reserve and Other Open Space' as lands for the protection of important habitat areas, scenic areas, and other areas of natural open space.

Policy 2.10 describes lands designated as 'Habitat Reserve and Other Open Space' as intended for permanent retention in open space to protect significant plants and wildlife inhabiting these areas. Within the coastal strand and dunes the [former] RMC Lonestar property is described as appropriate for a State Park conditioned upon funding for habitat protection, with limited recreational uses.

LCP SHALL PREVAIL

General Plan Policy 1.6 incorporates by reference, the City's Local Coastal Program's Land Use Plan and the resource protection policies within the General Plan. General Plan Policy 2.55 clarifies that,

> "In the event of any apparent inconsistency between the LCP and General Plan, the LCP shall prevail for that portion of Marina within the Coastal Zone."

CONSISTENCY WITH THE LOCAL COASTAL LAND USE PLAN AND LOCAL COASTAL PLAN IMPLEMENTATION PLAN

Description

The City's Local Coastal Program (LCP) is comprised of the Local Coastal Land Use Plan (LCLUP) and Local Coastal Plan Implementation Plan (LCPIP).

Marina Zoning Ordinance Chapter 17.41, Coastal Zoning, codifies the LCPIP to implement the LCLUP land use policies, and has been certified by the California Coastal Commission as being consistent with the California Coastal Act and Regulations.

Analysis

The site is shown as Coastal Conservation and Development on the North of Reservation Road Planning Area Map. In the LCLUP, Coastal Conservation and Development land uses shall include such uses as are dependent upon salt water, the unique coastal-marine environment found in Marina, and/or on resources present only in this portion of Marina's Coastal Zone (Page 40 LCLUP). New coastal research and education uses and coastal dependent industrial uses are permitted (Page 28 LCLUP).

Policy 41 of the LCLUP states that the policy of the City of Marina shall be to give priority to coastal-dependent development on or near the shoreline and ensure that environmental effects are mitigated to the greatest extent possible (Page 14 LCLUP).

There is guidance in four thematic areas that thread through the text of the LCLUP. Each area has been carefully reviewed during development of the IS/MND, during technical study, resulting in inclusion of mitigations within the Mitigation Monitoring and Reporting Plan as necessary to reduce identified impacts to a level of less than significant. Each of the four thematic areas along with a reference to the relevant technical appendix, correlating section and page reference to the topic within the IS/MND are shown below:

1. Rare and Endangered Species: Habitat Protection
   - Appendix B: Biological Resources Background Information
   - See Section IV of IS/MND – Biological Resources (Pg. 43)
2. Wetlands Protection
   - Appendix B: Biological Resources Background Information
   - See Section IV of IS/MND – Biological Resources (Pg. 43)
3. Geotechnical and Physical Hazards (Wave Erosion, Wind Erosion, Tsunami Hazard, Ground Shaking and Liquefaction Hazard, and Geotechnical Risk Factor)
   - Appendix D: Geology and Soils Background Information
   - See Section VI of IS/MND – Geology and Soils (Page 82)
4. Preservation and Enhancement of Coastal Views
   - See Section I of IS/MND – Aesthetics (Page 30).

These references demonstrate consistency in the four thematic areas.

Findings Required by the Local Coastal Land Use Plan

Within the north of Reservation Road Planning Area, within the high Flandrian dune area, when considering approval of appropriate activities, eleven listed factors must be addressed (Page 37 LCLUP). Compliance with these factors is addressed as findings within the Draft Resolution.

ZONING ORDINANCE (CHAPTER 17.41)

The project site is zoned 'Coastal Conservation and Development' (C-D) on the Zoning District Map and is also located within the 'Coastal Development Permit' (CP) Combining District.

The slant test well is both a coastal research and educational use and a coastal-dependent industrial use and in accordance with Sections 17.41.160 C. and 17.41.200 C., is a permitted use subject to obtaining a CDP.

Findings Required by the Zoning Ordinance

Section 17.41.160 C.2 allows the permit-issuing body to approve permit applications in the 'CD' Zoning District if eight factors, where relevant, are found to apply. Compliance with these factors is incorporated as findings within the Draft Resolution.

Section 17.41.200 E. 3 allows the Planning Commission to approve permit applications in the 'CP' Combining District if the establishment, maintenance and operation of the use applied for will be consistent with the Marina General Plan and Local Coastal Land Use and Implementation Plans based upon twelve findings. These findings are incorporated within the Draft Resolution.

SUMMARY

The first of the two requested actions is certification of the IS/MND and adoption of the MMRP. An MND can be adopted when the initial study has identified potentially significant effects on the environment, but: (1) revisions in the project plans would avoid or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Following action on the environmental document, the Planning Commission may, after review and consideration: approve, approve with conditions or deny the requested Coastal Development Permit. This decision is to be based on the analysis within this report and the ability to make the Findings within the draft Resolution and thus determine that the proposed project is consistent with the General Plan, the Local Coastal Land Use Plan, the Local Coastal Plan Implementation Plan and the Zoning Ordinance.

APPEAL

In accordance with Zoning Ordinance Section 17.41.270 D, Appeal, the decision of the Planning Commission may be appealed within ten days to the City Council.

CONCLUSION

This request is submitted for Planning Commission consideration and possible action.

Respectfully submitted,

Theresa Szymanis, AICP
Planning Services Manager
City of Marina

REVIEWED/CONCUR

Christine di Iorio, AICP
Community Development Director
City of Marina

RESOLUTION NO. 2014-

A RESOLUTION OF THE CITY OF MARINA PLANNING COMMISSION (1) CERTIFYING A MITIGATED NEGATIVE DECLARATION AND ADOPTING A MITIGATION MONITORING AND REPORTING PLAN, AND; (2) APPROVING COASTAL DEVELOPMENT PERMIT CDP 2012-05, FOR THE CALIFORNIA AMERICAN WATER SLANT TEST WELL PROJECT LOCATED AT CEMEX's LAPIS ROAD PROPERTY (APN's 203-011-001 & 203-011-019)

WHEREAS, on August 23, 2012, California American Water submitted an application for a slant test well project located at the north-west corner of the Lonestar California, Inc. site, Marina (APN'S 203-011-001 & 203-011-019), and;

WHEREAS, on August 1, 2013, an early project referral to gather preliminary comments regarding the proposed project was transmitted to 27 regulatory and permitting agencies resulting in comments and identification of issues to be addressed, and additional technical studies that would be required for the Initial Study, and;

WHEREAS, the project proposes the construction, temporary operation and decommissioning of a slant test well, up to four monitoring well clusters and related infrastructure. The purpose of the proposed project is to gather technical date related to the potential hydro-geologic and water quality effects of the proposed Monterey Peninsula Water Supply Project (MPWSP). The proposed project is estimated to occur over a period of 2 to 3 years. Once constructed the slant test well would operate for a maximum period of 24 months and is then proposed to be decommissioned in accordance with the regulations of the California Department of Water Resources, and;

WHEREAS, details regarding the proposed project, including project components, site access and the three phases of project construction, operation and decommissioning are provided in Section 3.2 of the Draft Initial Study and Mitigated Negative Declaration (IS/MND) prepared for the project in May 2014, and;

WHEREAS, through preparation of the IS/MND, it has been determined that the project's potentially significant environmental impacts specifically relate to impacts associated with aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, transportation and traffic, and utilities and service systems and these potentially significant impacts can all be mitigated to less than significant with mitigations incorporated. Mitigation measures are shown in the Mitigation Monitoring and Reporting Plan, and;

WHEREAS, a 30-day public review period for the IS/MND was established beginning on May 19, 2014 and ending on June 17, 2014 and copies of the IS/MND were transmitted to the State Clearinghouse (SCH# 2014051060), and a Notice of Intent (NOI) to Adopt a Mitigated Negative Declaration was sent to responsible agencies and local agencies concerned with the project, and any other person, entity or organization requesting notice, and the NOI was also posted with the Office of the Monterey County Clerk on May 19, 2014, and;

WHEREAS, a total of eight comment letters were received: seven from regulatory and permitting agencies (Monterey County Environmental Health Bureau, Monterey County Water Resources Agency, California State Lands Commission, Monterey Bay Unified Air Pollution Control District, Marina Coast Water District, Monterey Regional Water Pollution Control Agency and the State Mining and Geology Board); and one letter from a non-agency organization (The Ag Land Trust), and;

WHEREAS, on July 10, 2014 the City of Marina Planning Commission conducted a duly noticed public hearing to consider adopting Resolution No. 2014- : (1) certifying a Mitigated Negative Declaration and adopting a Mitigation Monitoring and Reporting Plan, and; (2) approving Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN's 203-011-001 & 203-011-019).

WHEREAS, prior to and during the hearing the City of Marina Planning Commission considered the information presented in the staff report for the July 10, 2014 meeting, the Draft Initial Study and Mitigated Negative Declaration (IS/MND) (SCH#2014051060) prepared for the project in May 2014, comment letters received during the public comment period and responses to the comments, the proposed staff initiated amendments and edits to these documents included as 'Errata', an amended Monitoring and Reporting Plan (MMRP), and testimony and documents submitted during the public hearing.

NOW, THEREFORE BE IT RESOLVED by the City of Marina Planning Commission that it hereby (1) certifies a Mitigated Negative Declaration and adopts a Mitigation Monitoring and Reporting Plan, and; (2) approves Cosstal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN's 203-011-001 & 203-011-019), making the following findings and subject to the following conditions of approval:

FINDINGS

1. CEQA Findings

   a) The Initial Study and corresponding Mitigated Negative Declaration of environmental impact were released for public review and said mitigation measures within the Mitigation Monitoring and Reporting Plan would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and;

   b) There is no substantial evidence in light of the whole record before the City of Marina that the project may have a significant effect on the environment.

   c) The Planning Commission has read and considered the Initial Study and the Mitigated Negative Declaration, and the comments thereon, and has determined the Initial Study and the Mitigated Negative Declaration reflect the independent judgment of the City and were prepared in accordance with CEQA.

d) The documents comprising the record of proceeding can be located at the Planning Services Division of the Community Development Department at 209 Cypress Avenue, Marina, California, 93950.

2. Implementation of the Marina General Plan (2000)
The proposed project is consistent with the Marina General (GP) Plan in that GP Policy 1.6 incorporates by reference the City's Local Coastal Program's Land Use Plan and the resource protection policies within the GP; and GP Policy 2.55 clarifies that, "In the event of any apparent inconsistency between the LCP and General Plan, the LCP shall prevail for that portion of Marina within the Coastal Zone", and the proposed project can be found to be implement the policies and meet the criteria spelled out within the Local Coastal Program documents and thus is consistent with the General Plan.

3. Consistency with the Local Coastal Land Use Plan
The establishment, maintenance and operation of the use applied for will, under the circumstances of the particular case, be consistent with the Local Coastal Land Use Plan, in that the site is shown as Coastal Conservation and Development on the North of Reservation Road Planning Area Map, and in the LCLUP, Coastal Conservation and Development land uses shall include such uses as are dependent upon salt water, the unique coastal-marine environment found in Marina, and/or on resources present only in this portion of Marina's Coastal Zone including new coastal research and education uses and coastal dependent industrial uses. Further, Policy 41 of the LCLUP states that the policy of the City of Marina shall be to give priority to coastal-dependent development on or near the shoreline and no development shall be allowed in this area without proper environmental assessment by qualified professionals, to ensure that environmental effects are mitigated to the greatest extent possible and an Initial Study, Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan have been prepared to address the four thematic areas of: rare and endangered species habitat protection, wetlands protection, geotechnical and physical hazards (wave erosion, wind erosion, tsunami hazard, ground shaking and liquefaction hazard, and geotechnical risk factor) and preservation and enhancement of coastal views.

More specifically the proposed project is located within the north of Reservation Road Planning Area and the high Flandrian dunes and meets all of the following criteria:

a) Retains uninterrupted lateral access along the sandy beach frontage.
The proposed project will be located on private property. No activity will take place on the beach and lateral beach access will not be restricted. The slant test well insertion point and wellhead vault would be situated approximately 450 feet inland of mean sea level. During construction and decommissioning of the project there will be 7 to 15 construction crew onsite with drilling rigs, trucks, cranes, forklift, excavators and other equipment. During the operational testing phase of the project the slant test well, wellhead vault and almost all other project infrastructure would be located below surface, with disturbed surface areas re-contoured and restored to as close to their original condition as possible.

b) Restricts new uses to areas already disturbed by sand mining operations.
The proposed project is located on a 400 acre property, previously owned by RMC Lonestar and currently owned by CEMEX, a global building materials supplier. A sand mining operation has existed on the site since 1906, with an approximate 104 acres having experienced some disturbance associated with sand mining activities and approximately 50 acres experiencing heavy levels of disturbance associated with ongoing mining activities. The slant test well would comprise an additional land use within the already disturbed areas of the site. To the degree feasible, the proposed .75 areas of ground disturbance is within and immediately adjacent to an existing access road through the CEMEX facility currently use by heavy equipment and trucks on a daily basis to access various areas on the site.

c) Retains parcel sizes adequate in size, location and accessibility for uses defined in the Coastal Conservation and Development designation or where none of these uses are feasible, viable visitor-oriented uses.
This criterion is not applicable as there is no proposed subdivision of property. Approximately .75 acres of the existing 400 acre property will be utilized for the proposed Coastal Conservation and Development use.

d) All parcels must contain adequate shoreline frontage.
This criterion is not applicable as there is no proposed subdivision of property.

e) Identifies and protects rare and endangered plants and animals and their habitats found on the site at the time of reuse.
Based on information within four technical studies within the Biological Resources Background Information (Appendix B), Pages 45 through 75 of the IS/MND address the potential for significant impact to biological resources on the project site and offer 18 mitigation measures to reduce impacts to a less than significant level.

f) Visibility of new uses from Highway 1 and from the water's edge.
Pages 30 through 34 of the IS/MND address the potential for significant impact to aesthetic resources on the project site, including the visibility of the proposed use from both SR 1 and from the beach, and offer one mitigation measure to reduce impacts associated with potential nighttime lighting during construction and decommissioning to a less than significant level.

g) Public safety and vulnerability to wave erosion.
Based on information within technical studies within the Hydrology and Water Quality Background Information (Appendix E), Pages 102 through 120 of the IS/MND address the issue of vulnerability to wave erosion for the slant test well facility. As the project does not propose development of habitable structures, the risk of injury or death in the event of flooding is substantially reduced. To protect the slant test well and wellhead vault from vulnerability to wave erosion, in accordance with mitigation measure HYD/mm-3, the slant test well and wellhead vaults shall be sited to avoid areas identified in the coastal erosion memorandum

prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project.

h) Tsunami and other Coastal hazards.
Based on information within technical studies within the Hydrology and Water Quality Background Information (Appendix E), Pages 102 through 120 of the IS/MND address the issues of tsunami and other coastal hazards. To protect the slant test well and wellhead vault from vulnerability to inundation during a tsunami, seiche or storm surge event, in accordance with mitigation measure HYD/mm-3, the slant test well and wellhead vaults shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal hazards during the duration of the project.

i) Protects and continues to provide public access from the nearest public roadway to the ocean.
The subject property is private property and there is no public access to the site. Access to the site industrial site is strictly controlled. As noted in (a) above, no activity will take place on the beach and lateral beach access will not be restricted.

j) Structures necessary for the functioning of any Coastal Conservation and Development use (e.g. dredgelines, sewer outfall lines) may cross the sandy beach designated Park and Open Space provided lateral beach access is not significantly blocked.
No activity will take place on the beach and lateral beach access will not be restricted. The slant test well insertion point and wellhead vault would be situated approximately 450 feet inland of mean sea level and project construction and decommissioning will take place at that location. During the operational testing phase of the project the slant test well, wellhead vault and almost all other project infrastructure would be located below surface, with disturbed surface areas re-contoured and restored to as close to their original condition as possible.

k) At the same time development is proposed, site-specific Coastal planning factors as described above shall be identified and mitigated if necessary, as required in any environmental review.
An Initial Study and Mitigated Negative Declaration (IS/MND) was prepared for the proposed project. Through preparation of the IS/MND, it has been determined that the project's potentially significant environmental impacts specifically relate to impacts associated with aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, transportation and traffic, and utilities and service systems. These potentially significant impacts can all be mitigated to less than significant with the mitigations shown in the proposed Mitigation Monitoring and Reporting Plan.

4. Consistency with Marina Municipal Code Section 17.41.160
The Planning Commission finds that, in accordance with Marina Municipal Code Section 17.41.160, the establishment, maintenance and operation of the use applied for will, under the circumstances of the particular case, be compliant with the following factors allowing for approval of the project and issuance of a Coastal Development Permit in the Coastal Conservation and Development ('CD') Zoning District if the following factors, where relevant are found to apply:

a) There is adequate protection and/or provision of public access from the nearest roadway to the ocean, and uninterrupted lateral access.
See 3(a), 3(i) and 3 (j), above.

b) Development is limited to already disturbed areas.
See 3(b), above.

c) Rare and endangered plant and animal habitats are adequately protected.
See 3(e), above.

d) Grading and roadway construction are the minimum necessary for the development.
There is no new roadway construction required to accommodate the proposed project. To the degree feasible, the proposed .75 areas of ground disturbance within the 400 acre property is within and immediately adjacent to an existing access road. The project would result in the total excavation of approximately 650 cubic yards of material for the slant test well, wellhead vault, outfall connection, electrical conduit, of which 425 cubic years would be used to backfill previously excavated area and 225 cubic yards would be disposed of at an approved landfill site.

e) Views from the State Highway and from the ocean edge are protected.
See 3(f), above.

f) There are sufficient provisions for public safety.
The subject property is private property and there is no public access to the site. Access to the industrial site is strictly controlled. Pages 95 through 101 of the IS/MND address the issue of hazards and hazardous materials and offer two mitigation measures to reduce impacts to a less than significant level.

g) All significant adverse environmental effects are either avoided or adequately mitigated.
See 3(k), above.

h) All major and minor subdivisions of land shall provide for sufficient size and configuration to allow for coastally dependent uses or where none are feasible visitor-serving commercial uses consistent with the local coastal land use plan. All parcels must contain sufficient shoreline frontage.
See 3(d), above.

5. Consistency with Marina Municipal Code Section 17.41.200
Section 17.41.200 E. 3 allows the Planning Commission to approve permit applications in the 'CP' Combining District if the establishment, maintenance and operation of the use applied for will be consistent with the Marina General Plan and Local Coastal Land Use and Implementation Plans based upon the following twelve findings that the project will:

a) Not impair major view corridors towards the sea from Highway 1 parallel to the sea, including the planning guidelines listed in the LCLUP.
See 3(f), above.

b) Be subject to approval of the Site and Architectural Design Review Board, including the planning guidelines listed in the LCLUP.
In accordance with Zoning Ordinance Section 17.50.010, the proposed project does not require Site and Architectural Design Review.

c) Guarantee that appropriate legal action is taken to insure vertical and lateral coastal access or fees paid in-lieu thereof as required in the LCLUP and coastal zoning ordinance access components. Required improvements shall be completed, or a bond adequate to guarantee their completion shall be posted with the city, prior to issuance of a certificate of occupancy.
Page 51 of the LCLUP requires that all beachfront parcels, including those currently used for sand extraction be required to dedicate a defined easement in areas that they are actively mining at such time as their property is proposed for some alternative use. Therefore this requirement is not triggered at time.

d) Be adequately set back from the shoreline to withstand erosion to the extent that the reasonable economic life of the use would be guaranteed without need for shoreline protection structures.
See 3(g) and 3(h), above.

e) Protect least disturbed dune habitat areas, primary habitat areas and provide protection measures for secondary habitat areas consistent with the LCLUP and coastal zoning ordinance.
Based on information within four technical studies within the Biological Resources Background Information (Appendix B), Pages 45 through 75 of the IS/MND address the potential for significant impact to dune, primary and secondary habitat areas on the project site and offer 18 mitigation measures to reduce impacts to a less than significant level.

f) Be consistent with beach parking standards, as established in the LCLUP access component.
The access component of the LCLUP does not identify this site as requiring parking or access enhancements for public use. No activity will take place on the beach and lateral beach access will not be restricted.

g) Included feasible mitigating measures which substantially reduce significant impacts of the project as prescribed in any applicable EIR.
An EIR was not required for the proposed project. See 3(k), above.

h) Not interfere with public access along the beach.
See 3(a), above.

i) Comply with the access, shoreline structure and habitat protection standards included in the local coastal land use and implementation plans.
See 3(a), 3(i) and 5(e), above. There is no shoreline structures proposed as part of the project.

j) Comply with the housing element and housing recommendations of the local coastal land use and implementation plans.
The proposed project does not include any habitable structures and thus the Housing Element is non-applicable.

k) In the case of demolition of a residential structure, except to abate a nuisance, not detrimentally alter the character or housing mix of the neighborhood. The structure shall be moved, if capable of providing comparable housing opportunities at another location. The demolition and replacement structure shall comply with applicable local coastal land use plan policies.
The proposed project does not include any habitable structures and thus this criterion is non-applicable.

l) In the case of new surf zone or beach sand mining operations, comply with all standards regarding such operations specified in the LCLUP including standards for significant adverse impacts on shoreline erosion, either individually or cumulatively.
This is not a proposal for a new sand mining operation and thus this criterion is non-applicable.

CONDITIONS OF APPROVAL CDP 2012-05

1. Substantial Compliance - The project shall be accomplished in substantial accordance with the project description as shown as described within Section 3.2 of the Draft Initial Study and Mitigated Negative Declaration (IS/MND) prepared for the project in May 2014 (SCH#2014051060) (**"EXHIBIT A"**); and in full compliance with all mitigation measures within the amended Mitigation Monitoring and Reporting Plan (MMRP) (**"EXHIBIT B"**).

2. Indemnification - The Applicant shall agree as a condition of approval of this project to defend, at its sole expense, indemnify and hold harmless from any liability the City and reimburse the City for any expenses incurred resulting from, or in connection with, the approval of the project, including any appeal, claim, suit or legal proceeding. The City may, at its sole discretion, participate in the defense of any such action, and such participation shall be at the expense of Applicant. Such participation shall not relieve the Applicant of its obligations under this condition.

PASSED AND ADOPTED by the Planning Commission of the City of Marina at a regular meeting duly held on the 10th day of July 2014, by the following vote:

AYES: COMMISSION MEMBERS:
NOES: COMMISSION MEMBERS:
ABSENT: COMMISSION MEMBERS:
ABSTAIN: COMMISSION MEMBERS:

_____
David Burnett, Chairperson

ATTEST:

_____
Christine di Iorio, AICP
Director, Community Development Department
City of Marina

"EXHIBIT A"

UNDER SEPARATE COVER

Draft Initial Study and Mitigated Negative Declaration
for the California American Water Slant Test Well Project
& Appendices

May 2014

EXHIBIT B

CALIFORNIA AMERICAN WATER SLANT TEST WELL PROJECT
MITIGATION MONITORING AND REPORTING PLAN

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
Aesthetic Resources				
AES/mm-1	Prior to issuance of a grading permit, a lighting plan shall be submitted to the City of Marina Planning Services Division for review and approval. The lighting plan shall be prepared by a qualified engineer acceptable to the City and shall address any lighting proposed for the slant test well project. The lighting plan shall be prepared using guidance and best practices endorsed by the International Dark Sky Association, as applicable. The lighting plan shall address all aspects of any new sources of lighting associated with the slant test well project, including but not limited to light towers, parking lots and pathway lighting, construction equipment, and safety lighting. The lighting plan shall also consider effects on wildlife in the surrounding area. The lighting plan shall include the following in conjunction with other measures as determined by the illumination engineer: a. The point source of all exterior lighting shall be shielded from off-site views. b. Light trespass from exterior lights shall be minimized by directing light downward and utilizing cut-off fixtures or shields. c. Lumination from exterior lights shall be the lowest level allowed by public safety standards. d. Any required lighting poles shall be colored dark to reduce reflectivity. The requirements of the lighting plan are not applicable to existing light sources at the project site associated with ongoing CEMEX mining activities and facilities.	Approval of Plan Periodic Site Inspections	Prior to Issuance of Permits Throughout Construction and Decommissioning Activities	City City
Air Quality				
AQ/mm-1	Prior to issuance of a grading permit, the following Best Management Practices and standard mitigation measures for reducing fugitive dust emissions shall be noted on project grading plans. All measures shall be adhered to during all project construction and decommissioning activities.	Review of Project Plans Periodic Site	Prior to Issuance of Permits Throughout	City City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	a. Reduce the amount of disturbed area where possible. b. Water all sand/dirt stockpiles at least twice daily. Increased watering frequency may be required when wind speeds exceed 15 mph. c. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site. d. All trucks hauling dirt, sand, soil, or other loose materials shall be covered or shall maintain at least 2 feet of freeboard (minimum vertical distance between top of load and top of trailer). e. Plant appropriate vegetative ground cover in disturbed areas that are planned for habitat restoration as soon as possible. f. Cover inactive storage piles with methods approved in advance by U.S. Fish and Wildlife Service and California Department of Fish and Wildlife. g. Install wheel washers at the entrance to the construction site for all exiting trucks. h. Sweep streets if visible soil material is carried out from the construction site. i. Post a publicly visible sign which specifies the telephone number and person to contact regarding dust complaints. This person shall respond to complaints and take corrective action within 48 hours. The phone number of the Monterey Bay Unified Air Pollution Control District shall be visible to ensure compliance with Rule 402 (Nuisance).	Inspections	Construction and Decommissioning Activities	
AQ/mm-2	Prior to issuance of a grading permit, the following Best Management Practices and standard mitigation measures for reducing nitrogen oxides (NO_x), reactive organic gases (ROG) and diesel particulate matter (DPM) emissions from construction equipment shall be noted on project grading plans. All measures shall be adhered to during all project construction and decommissioning activities. a. Maintain all construction equipment in proper tune according to manufacturer's specifications. b. Diesel powered equipment shall be replaced by electric equipment whenever feasible to reduce NO_x emissions. c. Diesel-powered equipment shall be replaced by gasoline-powered equipment whenever feasible. d. Diesel construction equipment meeting the California Air Resources	Review of Project Plans Periodic Site Inspections	Prior to Issuance of Permits Throughout Construction and Decommissioning Activities	City City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	Board (CARB) Tier 1 emission standards for off-road heavy-duty diesel engines shall be used. Equipment meeting CARB Tier 2 or higher emission standards shall be used to the maximum extent feasible. e. Catalytic converters shall be installed on gasoline-powered equipment, if feasible. f. All on- and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job site to remind drivers and operators of the 5-minute idling limit. g. Diesel equipment idling shall not be permitted within 1,000 feet of sensitive receptors. h. The engine size of construction equipment shall be the minimum practical size. i. The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time. j. Construction worker trips shall be minimized by providing options for carpooling and by providing for lunch onsite.			
Biological Resources				
BIO/mm-1	Prior to construction, the applicant shall retain a qualified biological monitor(s), approved by the City, to ensure compliance with all measures identified in the project environmental documents and permits. Monitoring shall occur throughout the duration of construction and decommissioning activities, or as directed by relevant regulatory agencies. Monitoring may be reduced during project operation, as determined through consultation with the City, USFWS, and CDFW.	Approval of Biological Monitor	Prior to Construction Activities	City
BIO/mm-2	A qualified biologist(s) shall conduct preconstruction surveys for special-status species as described below. a. Because of the dynamic nature of sand dunes and the tendency for Monterey spineflower to establish in recently-disturbed areas, surveys for Monterey spineflower and buckwheat (host plant for Smith's blue butterfly) shall be conducted within all project disturbance areas and within 20 feet of project boundaries during the blooming period for the spineflower (April-June) in the year prior to construction to identify and	Documentation by Biological Monitor	Prior to Construction and Decommissioning Activities	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	record the most current known locations of these species in the project vicinity. Surveys shall be conducted by a qualified botanist, and shall include collection of Global Positioning System (GPS) data points for use during flagging of sensitive plant species locations and avoidance buffers prior to construction. b. A preconstruction survey shall be conducted for special-status species no more than 14 days prior to construction. If project construction takes place during the avian nesting season (February 15th through September 1st), the survey shall encompass all suitable nesting habitat within 500 feet of the project. Should active nests be identified, avoidance buffers shall be established (250 feet for passerines and up to 500 feet for raptors) until a qualified biologist can confirm that nesting activities are complete. Variance from the no disturbance buffers may be implemented when there is compelling biological or ecological reason to do so. Any variance requested by the applicant shall be supported with a written statement by a qualified biologist and subject to City and CDFW approval. c. One to two weeks prior to initiation of construction and decommissioning activities, a qualified biologist, in consultation with Point Blue, shall field evaluate the nature and extent of wintering snowy plover activity in the project area and shall make avoidance recommendations regarding construction activities to minimize disturbance to plovers. The applicant shall comply with all Point Blue avoidance recommendations. d. Preconstruction surveys shall be conducted by a qualified biologist(s) for California legless lizard and coast horned lizard prior to disturbance of any suitable habitat. Surveys shall utilize hand search methods in areas of disturbance where these species are expected to be found (i.e., under shrubs, other vegetation, or debris on sandy soils). Any individuals located during the survey shall be safely removed and relocated in suitable habitat outside of the proposed disturbance area.			
BIO/mm-3	Prior to construction and decommissioning activities, a qualified biologist shall conduct an environmental awareness training for all construction personnel, which at a minimum shall include: descriptions of the special-status species that have potential to occur in the project area; their habitat requirements and life histories as they relate to the project; the avoidance, minimization, and mitigation measures	Documentation by Biological Monitor	Prior to Construction and Decommissioning Activities	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	that will be implemented to avoid impacts to the species and their habitats; the regulatory agencies and regulations that manage their protection; and, consequences that may result from unauthorized impacts or take of special-status species and their habitats. The training shall include distribution of an environmental training brochure, and collection of signatures from all attendees acknowledging their participation in the training. Subsequent trainings shall be provided by the qualified biologist as needed for additional construction or operations workers through the life of the project.			
BIO/mm-4	Prior to construction, a qualified biologist shall coordinate with construction crews to identify and mark the boundaries of project disturbance, locations of special-status species and suitable habitat, avoidance areas, and access routes. GPS data collected during preconstruction surveys completed in 2012, 2013, and 2014 shall be used to flag the known locations of Monterey spineflower and buckwheat for avoidance during construction. Avoidance buffers shall be established and flagged or fenced as necessary to avoid surface disturbance or vegetation removal. The monitoring biologist shall fit the placement of flags and fencing to minimize impacts to any sensitive resources. At a minimum, the biologist shall direct the placement of highly visible exclusion fencing (snow fence or similar) at the following locations: a. Around sensitive snowy plover habitat areas that do not require regular access; b. Areas along the northern edge of the CEMEX access road in the vicinity of the settling ponds; and c. In between the work area and any identified occurrence of Monterey spineflower or buckwheat within 10 feet of the existing access road or work area. All delineated areas of temporary fencing shall be shown on grading plans and shall remain in place and functional throughout the duration of construction and decommissioning activities.	Field Verification	Prior to Construction and Decommissioning Activities	Biological Monitor
BIO/mm-5	A qualified biologist(s) shall be present during all project construction and decommissioning activities, and as needed during operational activities as determined in accordance with BIO/mm-1, to monitor for special-status species and to limit potential impacts to suitable habitat. The biologist(s) shall monitor construction equipment access and shall have authority to halt work activities, if the	Documentation by Biological Monitor	Throughout the Duration of the Project	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	potential for impacts to special-status species or habitat is identified, until the issue can be resolved. The qualified biologist(s) shall immediately report any observations of special-status species to the project applicant, the City and any additional relevant regulatory agencies (CDFW, USFWS), as necessary.			
BIO/mm-6	During the operational phase, a qualified biologist shall consult with Point Blue monitors on a weekly basis during the plover nesting season to stay current with nesting activity in the vicinity of the slant test well. If active plover nests are located within 250 feet of the project or access routes, avoidance buffers shall be established to minimize potential disturbance of nesting activity, and the biologist shall coordinate with and accompany Cal Am operational staff as necessary during the nesting season to guide access and activities to avoid impacts to nesting plovers. The biologist shall contact the City and USFWS immediately if a nest is found in areas near the wellhead that could be affected by project operations. Operations shall be immediately suspended until written authorization to proceed is provided by USFWS.	Documentation by Biological Monitor	Throughout Operational Testing Phase	Biological Monitor
BIO/mm-7	To ensure Point Blue has adequate staff and funding to complete necessary monitoring and coordination throughout development and operation of the slant test well project, Cal Am shall provide any necessary funding to Point Blue in an amount agreed upon by Point Blue and the applicant.	Documentation by Point Blue	Prior to Construction	City
BIO/mm-8	All construction and decommissioning activities shall be conducted between October 1st and February 28th, outside of the blooming period for Monterey spineflower, the active flight season for adult Smith's blue butterflies and active larval stage of the species, and the nesting season for western snowy plover and other avian species protected by the Migratory Bird Treaty Act. Construction activities shall be restricted to the designated construction areas and CEMEX access road. No construction equipment, materials, or activity shall occur outside of the specified areas. This measure shall be included on all construction and grading plan sets.	Field Verification	Throughout Construction and Decommissioning Activities	Biological Monitor
BIO/mm-9	In order to minimize potential for vehicular collision with special-status species, all construction, decommissioning, and operational traffic shall maintain speeds of 10 miles per hour or less on access roads within the CEMEX parcel. All personnel shall conduct a visual inspection for special-status species around and under all vehicles prior to moving them. This measure shall be included on all construction	Field Verification	Throughout Construction and Decommissioning Activities	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	and grading plan sets.			
BIO/mm-10	Noise blankets shall be installed to provide visual and sound attenuation during all drilling operations to minimize potential disturbance of wintering western snowy plover. This measure shall be included on all construction and grading plan sets.	Field Verification	Prior to Construction	Biological Monitor
BIO/mm-11	Wire excluders or similar anti-perching devices shall be incorporated into the top of all aboveground structures (e.g., electrical panel) to deter perching by avian predators. This measure shall be included on all construction and grading plan sets.	Field Verification	Prior to Construction	Biological Monitor
BIO/mm-12	Construction personnel shall be required to keep all food-related trash items in sealed containers and remove them daily to discourage the concentration of potential predators in snowy plover habitat. Following construction, all trash and construction debris shall be removed from work areas and properly disposed of at a certified landfill. All vegetation removed from the construction site shall be taken to a certified landfill to prevent the spread of invasive species. This measure shall be included on all construction and grading plan sets.	Field Verification	Throughout Construction and Decommissioning Activities	Biological Monitor
BIO/mm-13	Prior to issuance of grading permits, the applicant shall develop a Restoration Management Plan (Plan) consistent with the requirements of the City of Marina LCP. At a minimum, the Plan shall include a description of the following methods and metrics: ratios of plants to be replaced based on a minimum replacement of 3:1, or as otherwise directed by regulatory agencies; areas of habitat to be restored, which shall at minimum include all areas of temporary disturbance in identified Primary or Secondary Habitat, except for areas actively used by CEMEX for mining purposes; timing of restoration activities; monitoring of restoration success; and any required reporting to relevant agencies. The Plan shall also include all relevant conditions of approval or requirements related to site restoration from permits issued by regulatory agencies for the project. The applicant shall seek input and/or review of the Plan from relevant regulatory agencies prior to finalization, including at a minimum the City, USFWS, CDFW, and CCC. The Plan shall be implemented: 1) during and immediately following construction and prior to operation of the test well, and 2) during and immediately following decommissioning activities.	Approval of Plan	Prior to Issuance of Permits	City and Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
BIO/mm-14	After construction, all disturbed areas shall be restored and revegetated to preconstruction contours and conditions to the extent feasible, in accordance with the Restoration Management Plan. Following decommissioning of the test well, all disturbed areas shall be re-contoured and revegetated as determined necessary and in coordination with applicable agencies and representatives of Point Blue to ensure that the optimum ground configuration is obtained for potential nesting plovers and other special-status species that may occur in the area.	Field Verification and Documentation by Biological Monitor	After Construction and Decommissioning Activities	Biological Monitor
BIO/mm-15	To ensure that restoration efforts are successful and unanticipated events are expeditiously managed, restored areas shall be monitored following planting and during operation of the test well and for 5 years following planting and decommissioning of the test well. Success criteria will include plant cover and species composition/diversity, which shall meet or exceed adjacent undisturbed dune habitat on the CEMEX parcel as determined by the biological monitor. Success criteria shall, at a minimum, be consistent with the requirements of the existing Lapis Revegetation Plan prepared for the RMC Lonestar Lapis Sand Plant (25 percent average vegetative cover and species diversity of all species listed in Group A of the Plan present and providing at least 1 percent cover).	Field Verification and Documentation by Biological Monitor	After Decommissioning Activities	Biological Monitor
BIO/mm-16	During construction and decommissioning activities, the biological monitor(s) shall ensure that the spread or introduction of invasive plant species is avoided to the maximum extent possible through the following measures, which shall be included in all construction and grading plan sets: a. When practicable, invasive exotic plants in the project area shall be removed and properly disposed of at a certified landfill. b. The use of imported soils for fill shall be limited to the greatest extent feasible. Soils currently existing on-site shall be used for fill material to the extent feasible. If the use of imported fill material is necessary, the imported material must be obtained from a source that is known to be free of invasive plant species, or the material must consist of purchased clean material. c. The Restoration Management Plan shall include an invasive species control program to be implemented throughout the duration of the project and shall emphasize the use of native species expected to occur in the area.	Field Verification	Throughout Duration of the Project	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
BIO/mm-17	Prior to operation of the test well and any discharge of pumped test water into the Pacific Ocean, the project applicant shall provide the City with a valid NPDES permit or other RWQCB approval for the proposed slant test well discharge. The NPDES permit or approval shall incorporate all relevant standards of the California Ocean Plan.	Review of RWQCB Permit or Approval	Prior to Operation of Project	City
BIO/mm-18	Prior to issuance of grading permits, the applicant shall submit a grading plan identifying all stockpile and staging areas. Stockpiles and staging areas shall not be placed in areas that have potential to experience significant runoff during the rainy season. All project-related spills of hazardous materials within or adjacent to project sites shall be cleaned up immediately. Spill prevention and cleanup materials shall be on-site at all times during construction. Cleaning and refueling of equipment and vehicles shall occur only within designated staging areas. The staging areas shall conform to standard Best Management Practices (BMPs) applicable to attaining zero discharge of storm water runoff. No maintenance, cleaning or fueling of equipment shall occur within Primary or Secondary Habitat areas, or within 50 feet of such areas. At a minimum, all equipment and vehicles shall be checked and maintained on a daily basis to ensure proper operation and to avoid potential leaks or spills. The grading plan shall be subject to review and approval by the City of Marina.	Approval of Plan	Prior to Issuance of Permits	City
Cultural Resources				
CR/mm-1	The project shall be redesigned to avoid significant adverse effects to historic resources; in particular, direct impacts to the Lapis Siding that is identified as a contributor to the Lapis Sand Mining Plant Historic District shall be avoided. Because the Siding extends through the eastern portion of the construction footprint, the construction plans shall be redesigned to locate all project components and construction activities in adjacent areas that do not contain structures associated with the Lapis Sand Mining Plant historic district. Avoidance of impacts to historic district contributors in close proximity to construction activities shall be accomplished by installing flagging or safety fencing around, or covering with plywood, any adjacent buildings or structures that are within 5 feet of mechanized equipment.	Review of Revised Development Plans	Prior to Issuance of Permits	City and Qualified Archaeologist

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
CR/mm-2	A qualified archaeologist that meets the Secretary of the Interior's professional qualifications standards in archaeology (National Park Service 1983) shall be retained to provide archaeological services for the project. Archaeological services for the project shall at minimum include the following: a. Prior to initiation of ground-disturbing activities, an archaeological monitor working under the direction of the qualified archaeologist shall conduct a brief awareness training session for all construction workers and supervisory personnel. The training shall explain the importance of and legal basis for the protection of significant archaeological resources. Each worker should learn the proper procedures to follow in the event that cultural resources or human remains/burials are uncovered during ground-disturbing activities, including those that occur when an archaeological monitor is not present. These procedures include work curtailment or redirection and the immediate contact of the site supervisor and the archaeological monitor. It is recommended that this worker education session include visual images or samples of artifacts that might be found in the project vicinity, and that the session take place on-site immediately prior to the start of ground-disturbing activities. b. An archaeological monitor working under the direction of the qualified archaeologist shall monitor all ground disturbance in areas within 100 feet of the historic buildings within the eastern portion of the project area. These include the Superintendent's Residence, Bunkhouse, Garage/Office, Maintenance Shop, and Scale House. The timing and duration of the monitoring may be adjusted during project implementation by the qualified archaeologist, in consultation with the City, whose decision shall be informed by the apparent sensitivity of the sediments in the project area once they are exposed.	Approval of Qualified Archaeologist and Documentation by Qualified Archaeologist	Prior to and Throughout Construction and Decommissioning Activities	City and Qualified Archaeologist
CR/mm-3	In the event that archaeological resources (artifacts or features) are exposed during ground-disturbing activities, construction activities in the immediate vicinity (25 feet) of the discovery shall be halted while the resources are evaluated for significance by the qualified archaeologist. Construction activities could continue in other areas. If the discovery proves to be significant, additional work, such as archaeological data recovery or project redesign, may be warranted and would be discussed in consultation with the City.	Documentation by Qualified Archaeologist	Throughout Construction and Decommissioning Activities	Qualified Archaeologist

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
CR-mm-4	In the event of inadvertent discovery of human remains, no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner shall be notified of the find immediately. If the human remains are determined to be prehistoric, the coroner will notify the Native American Heritage Commission, which will determine and notify a most likely descendant (MLD). The MLD shall complete the inspection of the site within 48 hours of notification, and may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials. The California Health and Safety Code Section 7050.5 process shall be noted on project grading and construction plans and reviewed during the construction worker awareness training session.	Documentation by Qualified Archaeologist	Throughout Construction and Decommissioning Activities	Qualified Archaeologist
Geology and Soils				
GEO/mm-1	The project shall be designed to meet or exceed all applicable requirements of the CBC. Design and construction of the project shall meet or exceed all applicable conclusions and recommendations in the Geotechnical Investigation for the California American Water Temporary Slant Test Well Project, Marina, Monterey County, California, dated April 3, 2014 (GeoSoils 2014), including the following: a. Concrete mixes for structural members shall conform to Exposure Class C2 in Table 4.3.1 of ACI 318. b. An allowable vertical bearing value of 2,000 pounds per square foot (psf) shall be used in the design of a wellhead vault, which shall be supported on engineered fill materials prepared and compacted in accordance with the recommendations in the Geotechnical Investigation. The bearing value shall be increased by 20 percent for each additional 12 inches in wellhead vault depth to a maximum vertical allowable bearing capacity of 2,500 psf. c. For lateral sliding resistance, a 0.25 coefficient of friction shall be utilized for a concrete to soil contact when multiplied by the dead load. d. Passive earth pressure shall be computed as an equivalent fluid having a density of 150 pounds per cubic foot (pcf) with a maximum earth pressure of 1,500 psf. e. When combining passive pressure and frictional resistance, the passive	Review of Grading and Engineering Documents and Construction Inspections and Testing As Required	Prior to and Throughout Construction	City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party

pressure component shall be reduced by one-third.

f. The upper 6 inches of passive pressure shall not be utilized in the foundation design if footings are not confined by slabs or pavement.

g. Structures shall be engineered to withstand preliminary settlements under the design-level earthquake of 1.5 to 3 inches with a potential differential settlement of 0.75 inch to 2 inches over a 50-foot horizontal span (i.e., angular distortions of approximately 1/800 to 1/300).

h. Lateral earth pressures shall be consistent with the following.

LATERAL EARTH PRESSURES		
BACKFILL TYPE	ACTIVE PRESSURE	AT-REST PRESSURE
Select Backfill[1]	35	65
Native Backfill[2]	45	75
[1] Sand Equivalent (SE) ≥ 30, Plasticity Index (PI) < 15, Expansion Index (EI) < 21, and ≤ 10% passing No. 200 sieve. [2] EI = 0 to 20, SE ≥ 25, PI < 15, and ≤ 15% passing No. 200 sieve; confirmation testing required.		

If wellhead vault walls are designed for select backfill conditions, native soils shall be kept below a 1:1 (h:v) projection up from the heel of the wall footing.

i. Subdrains for wellhead vault walls shall minimally consist of a 4-inch perforated, Schedule 40 or SDR 35 drain pipe (with perforations oriented down), encased in 1 cubic foot of clean, crushed 0.75-inch to 1.5-inch gravel and wrapped in filter fabric (Mirafi 140N or approved equivalent). The subdrain shall flow via gravity (minimum 1 percent fall) to an approved drainage facility as evaluated by the project civil engineer.

j. Should wellhead vault walls retain more than 6 feet of earth materials, as measured vertically from the bottom of the wall footing at the heel to daylight , the walls shall be evaluated for a seismic surcharge (in general accordance with 2013 CBC requirements). Walls in this category shall maintain an overturning Factor-of-Safety (FOS) of approximately 1.25 when the seismic surcharge (increment) is applied. For restrained walls, the seismic surcharge shall be applied as a rectangular load distribution from the bottom of the footing (excluding shear keys) to the top of the backfill at the heel of the wall footing. For cantilevered walls, the pressure shall be applied as an inverted triangular distribution. This seismic surcharge pressure (seismic increment) may be taken as 12H where "H" for walls is the dimension previously noted as the height of the backfill to

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	the bottom of the footing. The resultant force shall be applied at a distance 0.6 H up from the bottom of the footing. For the evaluation of the seismic surcharge, the bearing pressure may exceed the static value by one-third, considering the transient nature of this surcharge. k. Actual slab thickness and steel reinforcement shall be provided by the project structural engineering based on use and project loading requirements. From a geotechnical standpoint, the concrete slab-on-grade floor for the wellhead vault shall be a minimum of 4.5 inches thick and be minimally reinforced with No. 3 steel reinforcement bars placed at 18 inches on center in two perpendicular directions. The steel reinforcement shall be placed in the middle of the slab and supported on chairs. Hooking of steel reinforcement shall not be permitted. Concrete slab-on-grade floors shall be constructed on very low expansive (E.I. < 21 and PI < 15) subgrade materials that have been prepared in accordance with the recommendations in the Geotechnical Investigation. l. All grading shall conform to the guidelines presented in the 2013 CBC (CBSC 2013) and the City of Marina, except where specifically superseded herein. When code references are not equivalent, the more stringent code shall be followed. m. During earthwork construction, all site preparation and the general grading procedures of the contractor shall be observed and the fill selectively tested by the geotechnical consultant. If unusual or unexpected conditions are exposed in the field, they shall be reviewed by the geotechnical consultant. All applicable requirements of local and national construction and general industry safety orders, the Occupational Safety and Health Act (OSHA), and the Construction Safety Act shall be met. n. Prior to grading, a meeting shall be held between the applicant, the project civil and geotechnical consultants, and the grading contractor so that clarifications or amendments to earthwork recommendations can be provided (if necessary) and to review the earthwork schedule. o. The contractor shall take precautionary measures to protect work, especially during the rainy season. Failure to do so may result in additional remedial earthwork. p. Organic material and/or miscellaneous debris shall be removed from the areas of proposed grading prior to the start of work.			

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	q. Any previous foundations, existing underground utilities, or other subsurface structures uncovered during the recommended remedial excavations shall be observed by the applicant's geotechnical consultant so that appropriate recommendations can be provided (if necessary). r. Cavities or loose soils remaining after demolition and site clearance shall be cleaned out and observed by the geotechnical consultant. The cavities shall be replaced with fill materials that have been moisture conditioned to at least optimum moisture content and compacted to at least 90 percent of the laboratory standard (ASTM D 1557). s. Due to the susceptibility of the site to undergo seismic (dynamic) settlement during the design earthquake and to mitigate compression of low-density, near-surface dune deposits, the upper 10 feet of the surficial earth materials shall be removed where settlement-sensitive improvements are proposed. The removed soils may be reused as engineered fill provided the major concentrations of organic and deleterious material have been removed prior to placement. Remedial grading excavations shall be completed below a 1:1 (h:v) projection down from the bottom, outboard edge of the wellhead vault and the spring line of any underground utilities. Remedial grading excavations shall be evaluated by the geotechnical consultant. If significantly loose/compressible soils are exposed at the bottom of remedial grading excavations, deeper removals may be necessary. Once approved by the geotechnical consultant, the bottom of the remedial grading excavations shall be scarified, thoroughly wetted, and recompacted with vibratory compaction equipment. t. Fill materials shall be cleansed of major vegetation and debris prior to placement. u. At a minimum, fill materials located below a 1:1 (h:v) projection down from the bottom, outboard edge of the wellhead vault or spring line of underground utilities that intersects with the bottom of the remedial grading excavation shall be moisture conditioned and mixed to achieve the soil's optimum moisture content, placed in relatively thin (i.e., 6- to 8-inch) lifts, and then recompacted to at least 90 percent of the laboratory standard (ASTM D 1557). Wellhead vault wall and underground utility trench backfills shall be placed under similar methods. In order to enhance performance under the design-level earthquake, the compaction of the fill			

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	materials supporting the wellhead vault and underground utilities, as well as wellhead vault wall backfill may be increased to 95 percent of the laboratory standard (ASTM D 1557). Additional increased performance of the wellhead vault, underground utilities, and wellhead vault walls under the design earthquake may include the use of soil cement. This would involve mixing fill soils supporting the wellhead vault and underground utilities as well as wellhead vault wall backfill with cement introduced at 6 percent by weight. v. The maximum to minimum fill thickness beneath the wellhead vault shall not exceed a ratio of 3:1 (maximum:minimum). Based on the conditions exposed during construction, this may require some over-excavation of the underlying earth materials. w. Any oversized rock materials or concrete debris greater than 4 inches in any dimension shall not be placed in engineered fills. Oversize constituents shall be removed and replaced with acceptable-sized materials or be reduced to acceptable size and re-used in the fill. x. If necessary, any import materials shall be observed and evaluated for suitability by the geotechnical consultant prior to placement on the site. At least 3 business days of lead time shall be allowed by builders or contractors for proposed import submittals. This lead time will allow for particle size analysis, specific gravity, relative compaction, expansion testing, and blended import/native characteristics as deemed necessary. Import soils for a fill cap shall be very low expansive (E.I. < 21 and PI < 15). y. Temporary slopes for excavations greater than 4 feet, but less than 20 feet in overall height shall conform to CAL-OSHA and/or OSHA requirements for Type "C" soils. Temporary slopes, up to a maximum height of ±20 feet, may be excavated at a 1.5:1 (h:v) gradient, or flatter, provided groundwater and/or running sands are not exposed. Building materials, soil stockpiles, and/or heavy equipment shall not be stored/operated within 1.5(H) of the tops of any temporary slope where 'H' equals the height of the temporary slope. All temporary slopes shall be observed by a licensed engineering geologist and/or geotechnical engineer prior to worker entry into the excavation. z. Debris impact structures may be used to protect critical project			

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	infrastructure where located within a horizontal distance of H/2 from the base (toe) of any ascending dune slope (where "H" equals the height of the ascending slope). The debris impact structure shall be at least 4 feet high and capable of retaining a single-event active pressure of 125 pcf. Debris impact structures shall be periodically maintained. Any accumulated materials shall be removed as quickly as possible.			
Hazards and Hazardous Materials				
HAZ/mm-1	Prior to construction, the applicant shall prepare a Hazardous Material Spill Prevention, Control and Countermeasure Plan to minimize the potential for, and effects of, spills of hazardous or toxic substances or the inadvertent discovery of buried hazardous materials during construction or decommissioning of the project. The plan shall be submitted for review and approval by the City, and shall include, at minimum, the following: a. A description of hazardous materials to be used, storage procedures and construction and decommissioning site maintenance and upkeep practices; b. Identification of a person or persons responsible for monitoring implementation of the plan and spill response; c. Identification of BMPs to be implemented to ensure minimal impacts to the environment occur, including but not limited to the use of containment devices for hazardous materials, training of construction staff regarding safety practices to reduce the chance for spills or accidents, and use of non-toxic substances where feasible; d. A description of proper procedures for containing, diverting, isolating, and cleaning up spills, hazardous substances and/or soils, in a manner that minimizes impacts on sensitive biological resources; e. A description of the actions required if a spill or inadvertent discovery occurs, including which authorities to contact and proper clean-up procedures; and f. A requirement that all construction personnel participate in an awareness training program conducted by qualified personnel approved by the City. The training must include a description of the Hazardous Materials Spill Prevention, Control and Countermeasure Plan, the plan's requirements for spill prevention, information regarding the importance of preventing	Approval of Plan	Prior to Construction	City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	spills, the appropriate measures to take should a spill or inadvertent discovery occur, and identification of the location of all clean-up materials and equipment.			
HAZ/mm-2	Prior to commencement of construction or decommissioning activities, the applicant shall consult with the property owner (CEMEX) regarding construction/ decommissioning operations and schedule. The project applicant shall provide advance notice of construction activities and construction shall be scheduled during non-peak hours to avoid disruption of existing mining activities to the extent feasible. Coordination shall include construction and decommissioning phase parking needs and the number of on-site construction crewmember vehicles shall not be more than can be accommodated within the CEMEX parking area, as determined by the property owner. If the on-site parking area is insufficient to accommodate project crewmembers, the applicant shall implement carpooling, off-site parking, shuttle service to the site, or other similar measures to reduce the number of vehicles at the site consistent with property owner approval. If construction activities within the CEMEX access road would conflict with CEMEX operations, such construction shall be conducted during non-operational mining periods (i.e., nighttime or weekends). Construction activities shall be conducted to avoid any need for the grading of any new access roads for use by CEMEX.	Documentation by Applicant	Prior to Construction and Decommissioning Activities	City
Hydrology and Water Quality				
HYD/mm-1	Prior to construction, the applicant shall prepare a groundwater monitoring plan for City review and approval. The plan shall determine, through preliminary monitoring and sampling prior to pumping activities, a baseline condition of groundwater levels and quality, including the reasonable range of natural fluctuations, in the Dune Sand, 180-FTE, and 400-Foot Aquifers. The effects of pumping activities on groundwater levels and quality in the Dune Sand, 180-FTE, and 400-Foot Aquifers shall be monitored throughout the duration of pumping activities. Monitoring activities shall be conducted through regular assessment of the proposed on-site monitoring wells, as well as through additional coordination with surrounding well owners, including CEMEX and adjacent agricultural water users, to identify changes in off-site water levels to the maximum extent feasible. A drawdown of 1 foot above natural fluctuations on groundwater levels shall be considered a significant adverse effect on water supply. If pumping	Approval of Plan	Prior to Construction	City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	activities reflect a drawdown of 1 foot or greater on any adjacent well, compensatory mitigation shall be required. Feasible mitigation shall include consultation with the affected water user and implementation of compensatory mitigation measures, including monetary compensation (i.e., for increased pumping costs or for upgraded wells), or provision of replacement water from alternative sources. If compensation or other remediation is found to be unfeasible, pumping activities shall be adjusted so that no more than 1 foot of drawdown on usable water sources would result. The plan shall designate a person or persons to monitor implementation of the monitoring plan and to order implementation of mitigation if necessary. The name and telephone number of the person(s) shall be listed in the monitoring plan and provided to the City prior to the start of construction. The plan shall include a requirement for regular reporting (no less than annually) on the results of the monitoring activities, and the reports shall be submitted to the City and other relevant regulatory agencies.			
HYD/mm-2	Prior to issuance of grading permits, the applicant shall submit an erosion control plan for approval by the City Public Works Director. The plan shall be prepared by an appropriately certified professional and shall include a schedule for the completion of erosion- and sediment-control structures, which ensures that all such erosion-control structures are in place by mid-November of the year that construction begins. The plan shall identify standard Best Management Practices to be implemented to address both temporary and permanent measures to control erosion and reduce sedimentation. Site monitoring by the applicant's erosion-control specialist shall be undertaken and a follow-up report shall be prepared that documents the progress and/or completion of required erosion-control measures both during and after construction and decommissioning activities. No synthetic plastic mesh products shall be used in any erosion control materials. All plans shall show that sedimentation and erosion control measures are installed prior to any other ground disturbing work.	Approval of Plan	Prior to Construction	City
HYD/mm-3	The slant test well and wellhead vault shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project. The alternative slant test well location shall avoid all identified sensitive plant species and shall be limited to the graded area of the CEMEX access road to the maximum extent feasible. The slant	Review of Revised Development Plans and Field Verification	Prior to Issuance of Permits and After Decommissioning	City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	test well location shall not encroach north of the graded roadway in closer proximity to the CEMEX settling ponds or Canal Flume. At project decommissioning, the slant test well and all related infrastructure shall be removed to a depth of no less than 40 feet below ground surface to eliminate the possibility for future re-surfacing and exposure of submerged well casing or related project components as a result of coastal erosion and shoreline retreat. Removal of the well would take place upon completion of the test pumping and/or in segments over time as mutually agreed upon by the City, MRWPCA, Cal Am, the California State Lands Commission, and other identified regulatory agencies. If removal to the total required depth of 40 feet below ground surface is not completed within 5 years following completion of the test pumping, the applicant shall post a bond with the City to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.			
Utilities and Service Systems				
UTIL/mm-1	Prior to commencement of construction activities, the applicant shall provide the City with a copy of a negotiated agreement or memorandum of understanding between the applicant and the Monterey Regional Water Pollution Control Agency regarding connection and use of the ocean outfall. At minimum, the agreement shall include MRWPCA engineering design review, USA North 811 positive location of the outfall, construction trestle, and any related infrastructure, RWQCB approval or permits for discharge of seawater through the MRWPCA outfall, and access to flow meter data and alarm system triggers and signals.	Review of Agreement or Memorandum	Prior to Issuance of Permits	City

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EXHIBIT C

CALIFORNIA AMERICAN WATER SLANT TEST WELL PROJECT ERRATA

The following is a compilation of amendments and edits to the California American Water Slant Test Well Project Mitigation Monitoring and Reporting Plan for incorporation into the final document.

Measure	Detail
Aesthetic Resources	
AES/mm-1	The measure was clarified as follows to reflect preparation of a lighting plan by any qualified engineer acceptable to the City, who does not need to be a member of the Illuminating Engineering Society of North America. ***AES/mm-1*** *Prior to issuance of a grading permit, a lighting plan shall be submitted to the City of Marina Planning Services Division for review and approval. The lighting plan shall be prepared by a qualified engineer acceptable to the City ~~who is an active member of the Illuminating Engineering Society of North America~~ and shall address any lighting proposed for the slant test well project. The lighting plan shall be prepared using guidance and best practices endorsed by the International Dark Sky Association, as applicable. The lighting plan shall address all aspects of any new sources of lighting associated with the slant test well project, including but not limited to light towers, parking lots and pathway lighting, construction equipment, and safety lighting. The lighting plan shall also consider effects on wildlife in the surrounding area. The lighting plan shall include the following in conjunction with other measures as determined by the illumination engineer:* *a. The point source of all exterior lighting shall be shielded from off-site views.* *b. Light trespass from exterior lights shall be minimized by directing light downward and utilizing cut-off fixtures or shields.* *c. Lumination from exterior lights shall be the lowest level allowed by public safety standards.* *d. Any required lighting poles shall be colored dark to reduce reflectivity.* *The requirements of the lighting plan are not applicable to existing light sources at the project site associated with ongoing CEMEX mining activities and facilities.* ***Compliance Method:*** Approval of Plan Periodic Site Inspections ***Verification Timing:*** Prior to Issuance of Permits, Throughout Construction and Decommissioning Activities ***Responsible Party:*** City
Geology and Soils	
GEO/mm-1	The measure was clarified as follows to reflect design of the project to meet or exceed all applicable geotechnical standards and recommendations based on the final design plans of the wellhead vault structure and other components. ***GEO/mm-1*** *The project shall be designed to meet or exceed all applicable requirements of the CBC. Design and construction of the project shall meet or exceed all applicable*

Measure	Detail

conclusions and recommendations in the Geotechnical Investigation for the California American Water Temporary Slant Test Well Project, Marina, Monterey County, California, dated April 3, 2014 (GeoSoils 2014), including the following:

a. *Concrete mixes for structural members shall conform to Exposure Class C2 in Table 4.3.1 of ACI 318.*
b. *An allowable vertical bearing value of 2,000 pounds per square foot (psf) shall be used in the design of a wellhead vault, which shall be supported on engineered fill materials prepared and compacted in accordance with the recommendations in the Geotechnical Investigation. The bearing value shall be increased by 20 percent for each additional 12 inches in wellhead vault depth to a maximum vertical allowable bearing capacity of 2,500 psf.*
c. *For lateral sliding resistance, a 0.25 coefficient of friction shall be utilized for a concrete to soil contact when multiplied by the dead load.*
d. *Passive earth pressure shall be computed as an equivalent fluid having a density of 150 pounds per cubic foot (pcf) with a maximum earth pressure of 1,500 psf.*
e. *When combining passive pressure and frictional resistance, the passive pressure component shall be reduced by one-third.*
f. *The upper 6 inches of passive pressure shall not be utilized in the foundation design if footings are not confined by slabs or pavement.*
g. *Structures shall be engineered to withstand preliminary settlements under the design-level earthquake of 1.5 to 3 inches with a potential differential settlement of 0.75 inch to 2 inches over a 50-foot horizontal span (i.e., angular distortions of approximately 1/800 to 1/300).*
h. *Lateral earth pressures shall be consistent with the following.*

LATERAL EARTH PRESSURES		
BACKFILL TYPE	ACTIVE PRESSURE	AT-REST PRESSURE
Select Backfill[1]	35	55
Native Backfill[2]	45	75

[1] Sand Equivalent (SE) ≥ 30, Plasticity Index (PI) < 15, Expansion Index (EI) < 21, and ≤ 10% passing No. 200 sieve.
[2] EI = 0 to 20, SE ≥ 25, PI < 15, and < 15% passing No. 200 sieve; confirmation testing required.

If wellhead vault walls are designed for select backfill conditions, native soils shall be kept below a 1:1 (h:v) projection up from the heel of the wall footing.

i. *Subdrains for wellhead vault walls shall minimally consist of a 4-inch perforated, Schedule 40 or SDR 35 drain pipe (with perforations oriented down), encased in 1 cubic foot of clean, crushed 0.75-inch to 1.5-inch gravel and wrapped in filter fabric (Mirafi 140N or approved equivalent). The subdrain shall flow via gravity (minimum 1 percent fall) to an approved drainage facility as evaluated by the project civil engineer.*
j. *Should wellhead vault walls retain more than 6 feet of earth materials, as measured vertically from the bottom of the wall footing at the heel to daylight , the walls shall be evaluated for a seismic surcharge (in general accordance with 2013 CBC requirements). Walls in this category shall maintain an overturning Factor-of-Safety (FOS) of approximately 1.25 when the seismic surcharge (increment) is applied. For restrained walls, the seismic surcharge shall be applied as a rectangular load distribution from the bottom of the footing (excluding shear keys) to the top of the backfill at the heel of the wall footing. For cantilevered walls, the pressure shall be applied as an inverted triangular distribution. This seismic surcharge pressure (seismic increment) may be taken as 12H where "H" for walls is the dimension previously noted as the height of the backfill to the bottom of the footing. The resultant force shall be applied at a distance 0.6 H up from the bottom of the footing. For the evaluation of the seismic surcharge, the bearing pressure may exceed the*

Measure	Detail

static value by one-third, considering the transient nature of this surcharge.

k. *Actual slab thickness and steel reinforcement shall be provided by the project structural engineering based on use and project loading requirements. From a geotechnical standpoint, the concrete slab-on-grade floor for the wellhead vault shall be a minimum of 4.5 inches thick and be minimally reinforced with No. 3 steel reinforcement bars placed at 18 inches on center in two perpendicular directions. The steel reinforcement shall be placed in the middle of the slab and supported on chairs. Hooking of steel reinforcement shall not be permitted. Concrete slab-on-grade floors shall be constructed on very low expansive (E.I. < 21 and PI < 15) subgrade materials that have been prepared in accordance with the recommendations in the Geotechnical Investigation.*

l. *All grading shall conform to the guidelines presented in the 2013 CBC (CBSC 2013) and the City of Marina, except where specifically superseded herein. When code references are not equivalent, the more stringent code shall be followed.*

m. *During earthwork construction, all site preparation and the general grading procedures of the contractor shall be observed and the fill selectively tested by the geotechnical consultant. If unusual or unexpected conditions are exposed in the field, they shall be reviewed by the geotechnical consultant. All applicable requirements of local and national construction and general industry safety orders, the Occupational Safety and Health Act (OSHA), and the Construction Safety Act shall be met.*

n. *Prior to grading, a meeting shall be held between the applicant, the project civil and geotechnical consultants, and the grading contractor so that clarifications or amendments to earthwork recommendations can be provided (if necessary) and to review the earthwork schedule.*

o. *The contractor shall take precautionary measures to protect work, especially during the rainy season. Failure to do so may result in additional remedial earthwork.*

p. *Organic material and/or miscellaneous debris shall be removed from the areas of proposed grading prior to the start of work.*

q. *Any previous foundations, existing underground utilities, or other subsurface structures uncovered during the recommended remedial excavations shall be observed by the applicant's geotechnical consultant so that appropriate recommendations can be provided (if necessary).*

r. *Cavities or loose soils remaining after demolition and site clearance shall be cleaned out and observed by the geotechnical consultant. The cavities shall be replaced with fill materials that have been moisture conditioned to at least optimum moisture content and compacted to at least 90 percent of the laboratory standard (ASTM D 1557).*

s. *Due to the susceptibility of the site to undergo seismic (dynamic) settlement during the design earthquake and to mitigate compression of low-density, near-surface dune deposits, the upper 10 feet of the surficial earth materials shall be removed where settlement-sensitive improvements are proposed. The removed soils may be reused as engineered fill provided the major concentrations of organic and deleterious material have been removed prior to placement. Remedial grading excavations shall be completed below a 1:1 (h:v) projection down from the bottom, outboard edge of the wellhead vault and the spring line of any underground utilities. Remedial grading excavations shall be evaluated by the geotechnical consultant. If significantly loose/compressible soils are exposed at the bottom of remedial grading excavations, deeper removals may be necessary. Once approved by the geotechnical consultant, the bottom of the remedial grading excavations shall be scarified, thoroughly wetted, and recompacted with vibratory compaction equipment.*

t. *Fill materials shall be cleansed of major vegetation and debris prior to placement.*

u. *At a minimum, fill materials located below a 1:1 (h:v) projection down from the*

Measure	Detail

bottom, outboard edge of the wellhead vault or spring line of underground utilities that intersects with the bottom of the remedial grading excavation shall be moisture conditioned and mixed to achieve the soil's optimum moisture content, placed in relatively thin (i.e., 6- to 8-inch) lifts, and then recompacted to at least 90 percent of the laboratory standard (ASTM D 1557). Wellhead vault wall and underground utility trench backfills shall be placed under similar methods. In order to enhance performance under the design-level earthquake, the compaction of the fill materials supporting the wellhead vault and underground utilities, as well as wellhead vault wall backfill may be increased to 95 percent of the laboratory standard (ASTM D 1557). Additional increased performance of the wellhead vault, underground utilities, and wellhead vault walls under the design earthquake may include the use of soil cement. This would involve mixing fill soils supporting the wellhead vault and underground utilities as well as wellhead vault wall backfill with cement introduced at 6 percent by weight.

v. *The maximum to minimum fill thickness beneath the wellhead vault shall not exceed a ratio of 3:1 (maximum:minimum). Based on the conditions exposed during construction, this may require some over-excavation of the underlying earth materials.*

w. *Any oversized rock materials or concrete debris greater than 4 inches in any dimension shall not be placed in engineered fills. Oversize constituents shall be removed and replaced with acceptable-sized materials or be reduced to acceptable size and re-used in the fill.*

x. *If necessary, any import materials shall be observed and evaluated for suitability by the geotechnical consultant prior to placement on the site. At least 3 business days of lead time shall be allowed by builders or contractors for proposed import submittals. This lead time will allow for particle size analysis, specific gravity, relative compaction, expansion testing, and blended import/native characteristics as deemed necessary. Import soils for a fill cap shall be very low expansive (E.I. < 21 and PI < 15).*

y. *Temporary slopes for excavations greater than 4 feet, but less than 20 feet in overall height shall conform to CAL-OSHA and/or OSHA requirements for Type "C" soils. Temporary slopes, up to a maximum height of ±20 feet, may be excavated at a 1.5:1 (h:v) gradient, or flatter, provided groundwater and/or running sands are not exposed. Building materials, soil stockpiles, and/or heavy equipment shall not be stored/operated within 1.5(H) of the tops of any temporary slope where 'H' equals the height of the temporary slope. All temporary slopes shall be observed by a licensed engineering geologist and/or geotechnical engineer prior to worker entry into the excavation.*

z. *Debris impact structures may be used to protect critical project infrastructure where located within a horizontal distance of H/2 from the base (toe) of any ascending dune slope (where "H" equals the height of the ascending slope). The debris impact structure shall be at least 4 feet high and capable of retaining a single-event active pressure of 125 pcf. Debris impact structures shall be periodically maintained. Any accumulated materials shall be removed as quickly as possible.*

Compliance Method: Review of Grading and Engineering Documents and Construction Inspections and Testing As Required

Verification Timing: Prior to and Throughout Construction

Responsible Party: City

Measure	Detail
Hydrology and Water Quality	
HYD/mm-3	Timing for completion of the mitigation requirement was clarified as follows to reflect the potential for removal of the slant test well casing to the ultimate depth of 40 feet below ground surface at a date several years after project completion. ***HYD/mm-3*** *The slant test well and wellhead vault shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project. The alternative slant test well location shall avoid all identified sensitive plant species and shall be limited to the graded area of the CEMEX access road to the maximum extent feasible. The slant test well location shall not encroach north of the graded roadway in closer proximity to the CEMEX settling ponds or Canal Flume. At project decommissioning, the slant test well and all related infrastructure shall be removed to a depth of no less than 40 feet below ground surface to eliminate the possibility for future re-surfacing and exposure of submerged well casing or related project components as a result of coastal erosion and shoreline retreat. Removal of the well would take place upon completion of the test pumping and/or in segments over time as mutually agreed upon by the City, MRWPCA, Cal Am, the California State Lands Commission, and other identified regulatory agencies. If removal to the total required depth of 40 feet below ground surface is not completed within 5 years following completion of the test pumping, the applicant shall post a bond with the City to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.* **Compliance Method:** Review of Revised Development Plans and Field Verification **Verification Timing:** Prior to Issuance of Permits and After Decommissioning **Responsible Party:** City
Utilities and Service Systems	
UTIL/mm-1	Timing for completion of the measure was adjusted as follows to allow the project applicant the appropriate time needed to complete the measure. ***UTIL/mm-1*** *Prior to commencement of construction activities ~~issuance of a coastal development permit~~, the applicant shall provide the City with a copy of a negotiated agreement or memorandum of understanding between the applicant and the Monterey Regional Water Pollution Control Agency regarding connection and use of the ocean outfall. At minimum, the agreement shall include MRWPCA engineering design review, USA North 811 positive location of the outfall, construction trestle, and any related infrastructure, RWQCB approval or permits for discharge of seawater through the MRWPCA outfall, and access to flow meter data and alarm system triggers and signals.* **Compliance Method:** Review of Agreement or Memorandum **Verification Timing:** Prior to Construction~~Issuance of Permits~~ **Responsible Party:** City

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EXHIBIT D

CALIFORNIA AMERICAN WATER SLANT TEST WELL PROJECT RESPONSE TO COMMENTS

The following tables present responses to comment letters that were received on the public review draft IS/MND for the Cal Am Slant Test Well Project. These comment letters were received from various state and local agencies and one non-agency organization.

The comment letters are provided below in chronological order with the responses following the individual letters. Comment letters are reproduced in total, and numerical annotation has been added as appropriate to delineate and reference the responses to specific comments within each letter.

1.1 Agency Comment Letters and Responses

The following agencies have submitted comments on the draft IS/MND.

Respondent	Code	Contact Information	Page
County of Monterey Environmental Health Bureau Letter dated: June 12, 2014	EHB	1270 Natividad Road Salinas, CA 93906 *Contact: Nicki Fowler, Supervising REHS*	2
Monterey County Water Resources Agency Letter dated: June 13, 2014	MCWRA	893 Blanco Circle Salinas, CA 93901 *Contact: Robert Johnson, Assistant General Manager*	7
California State Lands Commission Letter dated: June 17, 2014	CSLC	100 Howe Avenue, Suite 100-South Sacramento, CA 95825 *Contact: Cy R. Oggins, Chief, Division of Environmental Planning and Management*	9
Monterey Bay Unified Air Pollution Control District Letter dated: June 17, 2014	MBUAPCD	24580 Silver Cloud Court Monterey, CA 93940 *Contact: Amy Clymo, Supervising Air Quality Planner*	20
Marina Coast Water District Letter dated: June 17, 2014	MCWD	11 Reservation Road Marina, CA 93933-2099 *Contact: Brian Lee, Interim General Manager*	22
Monterey Regional Water Pollution Control Agency Letter dated: June 17, 2014	MRWPCA	5 Harris Court, Building D Monterey, CA 93940 *Contact: Garrett Haertel, Compliance Engineer*	36
State Mining and Geology Board Letter dated: June 17, 2014	SMGB	801 K Street, Suite 2015 Sacramento, California 95814 *Contact: Stephen M. Testa, Executive Officer*	40

COUNTY OF MONTEREY
HEALTH DEPARTMENT
ENVIRONMENTAL HEALTH BUREAU

MEMORANDUM

Date: **June 12, 2014**

To: **Luke Connelly, Project Planner**

From: **Nicki Fowler, Supervising REHS**

Subject: **Cal-Am Water Temporary Slant Test Well Project Initial Study / Mitigated Negative Declaration (dated May 2014), REF140031**

Thank you for the opportunity to review the referenced environmental document. The Environmental Health Bureau (EHB) is pleased to provide the following comments:

- The California Well Standards, Bulletin 74-90 requires a minimum horizontal separation distance of 50 feet between the well and any sewer line. Figure 3a indicates the proposed location of the slant well and a set of monitoring wells is within 50' of the wastewater outfall discharge line, which will not meet the well standards. Provide a discussion to support why a variance to reduce to the minimum setback distance between the discharge line and the various wells should be considered if the locations of the wells are critical. **EHB-1**

- Section IX, item (a), needs be expanded to consider potential impacts of the wastewater outfall to groundwater quality (i.e. could pumping of the slant well draw wastewater into the groundwater aquifer). Indicate how much smaller the slant test well proposal is than then full scale project, i.e. pumping volume, to support that the impacts will be negligible using the model produced for the full-scale project. This information is necessary to support the conclusion that of wastewater from the outfall will not be pulled into the aquifer. **EHB-2**

- Section IX, item (b), indicates the project would not significantly reduce available freshwater supplies for existing land or planned land uses. It also indicates the effect of the proposed pumping activities would be closely monitored through inspection of water level and quality at the monitoring wells and through additional coordination with surrounding well owners. EHB supports implementation of mitigation measure HYD/mm-1 to require a groundwater monitoring plan. **EHB-3**

- Section IX, Setting: Subsurface Hydrogeology, states it is anticipated that some level of hydraulic conductivity and communication currently exists between the Dune Sand and 180-FTE Aquifers. To minimize intermingling, EHB will require that the well be constructed as designed to pump water from each aquifer independently and to preserve any aquitard, if one is encountered. **EHB-4**

- The project description indicates that a pipe will be installed to convey pumped groundwater from the slant test well to the existing wastewater ocean outfall. This would constitute a direct connection between a wastewater pipe and a water well. The response to Section IX should be **EHB-5**

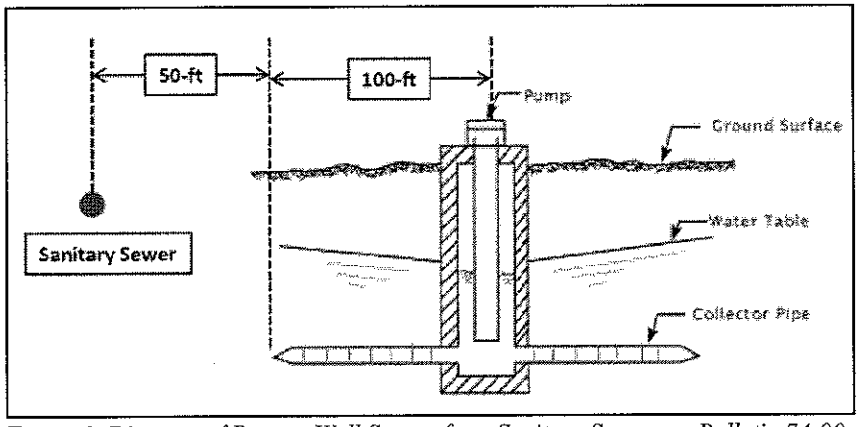
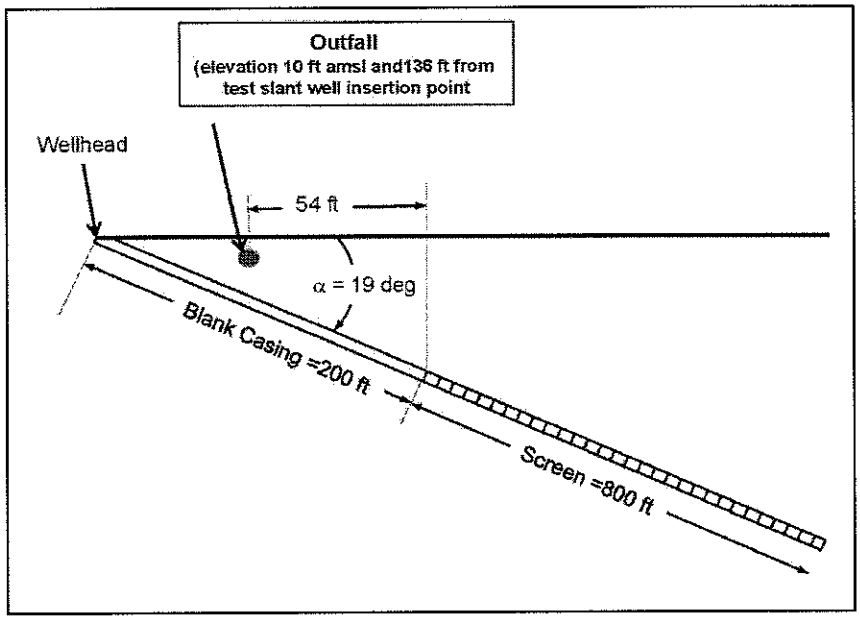
expanded to include a discussion of how the cross connection will be mitigated, such as a backflow device to prevent sewage from entering into the groundwater aquifer via backflow through the slant test well and pipeline or other mitigation measures.

EHB-5 (continued)

If you have any questions regarding these comments, please contact me directly at (831) 755-4584.

1.1.1 Response to Letter from County of Monterey Environmental Health Bureau

Comment No.	Response
EHB-1	The comment references a California Well Standard, Bulletin 74-90. In that Bulletin, it is suggested that monitoring wells shall be located an adequate distance from known or potential sources of pollution and contamination unless regulatory or legitimate data requirements necessitate they be located closer. The Bulletin also indicates that for water wells, a 50-foot minimum horizontal separation between a well and any sewer line is recommended unless a lesser separation is approved by the enforcing agency. The comment does not directly identify a potential environmental impact; however, the standard is intended to eliminate the possibility of leakage from sewers entering the well. Because any water pumped into the slant test well would be placed back into the sewer line through connection to the outfall junction structure, and both the treated wastewater and pumped test water would be disposed of via the outfall pipeline, there is no risk associated with leakage from the sewer line entering the well. The applicant has indicated that it intends to seek a variance from the standard, as placement of the slant test well in previously-disturbed areas is critical. Cal Am has provided the following additional information in support of the requested variance: "The requirement of a 50 foot set-back from any sewer line required by Section 8 of Bulletin 74-90 is intended to eliminate the possibility of leakage from sewers entering the well screen. The standard is written primarily for vertical wells. For vertical wells, typically a larger diameter casing (conductor casing) is placed in the ground to a minimum depth of 50 feet and cemented in place as a sanitary seal. The actual well casing is placed through the conductor casing and the annular area between the well casing and the conductor casing also sealed with cement as secondary protection. Slant wells have not been considered to date in the most recent well standards. However, with regard to Ranney Collector Wells, Section 8 of Bulletin 74-90 states the following: 'If the well is a radial collector well, minimum separation distances shall apply to the furthest extended point of the well.' The requirement for the radial well indicates that the surface vertical projection of the end of the radial collector should be at least 50-ft from the vertical projection of the sanitary sewer (see Figure 1).

Comment No.	Response
	 *Figure 1. Distance of Ranney Well Screen from Sanitary Sewer per Bulletin 74-90* In the case of a test slant well at CEMEX, the vertical projection of the uppermost screen interval is greater than the 50 foot horizontal separation from the outfall (see Figure 2).  *Figure 2. Distance of Well Screen from Sanitary Sewer Outfall* The test slant well will be constructed at an angle of 19 degrees below horizontal. The well screen will begin 200 lineal feet from the wellhead insertion point. The vertical projection of the well screen is 54 feet from the vertical projection of the center of the sanitary sewer outfall and therefore meets the requirements for offset per Bulletin 74-90. In addition to an 80-ft horizontal offset, there is a 54-foot vertical separation from the outfall and the slant well screen.
EHB-2	The comment requests further clarification of the potential for pumping activities to draw discharged wastewater into the groundwater aquifer, which is addressed in Response to IX(a), beginning on page 110, of the IS/MND. The diffuser portion of

Comment No.	Response
	the outfall is more than 1.5 miles away from the nearest portion of the slant test well screen. Modeling completed for a previous subsurface intake system and desalination project (the North Marina Project) estimated a 2 mile zone of influence for a full-scale subsurface intake system that included six slant wells, each with the capacity to pump up to 3,000 gallons per minute (gpm), for total maximum pumping capacity of 18,000 gpm. The slant test well has a maximum pumping capacity of 2,500 gpm, approximately 14 percent of the capacity of the full-scale North Marina Project previously analyzed. Therefore, the area that could potentially be influenced by the slant test well pumping is not expected to extend over 1.5 miles to the area of wastewater discharge, which would represent a zone of influence that included over 75 percent of that modeled for the full-scale North Marina Project.
EHB-3	This comment states EHB's support for the requirement of a groundwater monitoring plan in mitigation measure HYD/mm-1. No response is necessary.
EHB-4	The comment discusses EHB's requirement that the well be constructed to pump water from each aquifer independently and preserve separation between each aquifer to the extent any aquitard exists. Cal Am has confirmed that the well would be designed to pump water from each aquifer separately, as described in Section 2.3.4, Phase 2 – Project Operation, on page 23 of the IS/MND. Once the test well is completed, the lower portion of the well would be pumped in isolation from the upper completed portion through use of a pneumatic packer. The packer would be placed to allow well pumping of the upper portion and not the lower portion and vice versa. Separate groundwater level elevations will be continuously monitored above and below the packer. Both the lithologic data and the water quality data collected from recent borings at the CEMEX site show that the Dune Sand Aquifer and the 180-FTE Aquifer are in hydraulic continuity with similarly high saline levels and no defined aquitard separating the aquifers. Therefore, intermingling of the aquifers has already occurred historically. Once the test slant well testing is complete, the packer system would remain in place to isolate the Dune Sand Aquifer from the 180-FTE Aquifer and allow separate monitoring until the well is properly destroyed in accordance with California Bulletin 74-90. In the event an aquitard is encountered during drilling, Cal Am would implement applicable procedures for maintaining appropriate separation between each aquifer during decommissioning of the slant test well and monitoring wells.
EHB-5	The comment references the proposed direct connection between the slant test well's water discharge system and the MRWPCA wastewater outfall pipe and requests a discussion of how potential backflow of wastewater into the well would be mitigated. The IS/MND addresses engineering design of the outfall connection in consultation with MRWPCA in Response to XVII(b), beginning on page 143. Cal Am has confirmed that the discharge system from the slant test well would be equipped with a check valve to prevent any backflow from the outfall into the slant test well.

MONTEREY COUNTY

WATER RESOURCES AGENCY

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SALINAS, CA 93902
(831)755-4860
FAX (831) 424-7935

DAVID E. CHARDAVOYNE
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

June 13, 2014

Luke Connolly, Management Specialist
Monterey County RMA – Planning Department
168 West Alisal, 2nd Floor
Salinas, CA 93901

SUBJECT: Review of Notice of Intent to Adopt a Mitigated Negative Declaration for the California American Water Slant Test Well Project (REF140031)

Dear Mr. Connolly:

Monterey County Water Resources Agency (Agency) Staff have previously reviewed the "Draft Initial Study and Mitigated Negative Declaration for the California American Water Temporary Slant Well Project" (June 4, 2014) and related precursor report, "California American Water Temporary Slant Test Well Project" (March 18, 2014). **MCWRA-1**

Review of the subject "Notice of Intent to Adopt a Mitigated Negative Declaration for the California American Water Slant Test Well Project" (Slant Test Well Project) follows: **MCWRA-2**

1. Review of the as yet to be released "Monterey Peninsula Water Supply Project Hydrogeologic Investigation, Technical Memorandum (TM1) – Exploratory Boreholes" must develop a hydrogeologic conceptual model for the project area that is accepted by stakeholders.
2. Slant Test Well Project must clearly identify the aquifer(s)/zone(s) from which source water is supplied. As stated in the Execution Copy of the Settlement Agreement and Mutual Release between the Agency, the County of Monterey and California American Water entered into on December 4, 2012, "The Agency and County do not support use of the 180-foot aquifer [sic] as a source of water for the MPWSP (Monterey Peninsula Water Supply Project)." **MCWRA-3**
3. A rigorous and exhaustive accounting of active water supply wells within and bordering the project area must be made in order to protect these wells from activities associated with the proposed slant test well project. **MCWRA-4**

If you have any questions, please feel free to contact me at (831) 755-4860.

Sincerely,

Robert Johnson
Assistant General Manager

Monterey County Water Resources Agency manages, protects, and enhances the quantity and quality of water and provides specified flood control services for present and future generations of Monterey County

1.1.2 Response to Letter from Monterey County Water Resources Agency

Comment No.	Response
MCWRA-1	The comment identifies MCWRA's review of the IS/MND and previous coordination with the City through agency referral packages and other preliminary reports. No response is necessary.
MCWRA-2	This comment states that the yet-to-be-released "Monterey Peninsula Water Supply Project Hydrogeologic Investigation, Technical Memorandum (TM1) – Exploratory Boreholes" must develop a hydrogeologic conceptual model for the project area that is acceptable to stakeholders. The comment relates to a memorandum currently being prepared by the Hydrogeologic Working Group (HWG) that analyzes the results of the exploratory boring program completed earlier this year at the CEMEX site. The comment does not identify any specific environmental effects associated with the model being developed or the Slant Test Well Project; therefore, no specific response is necessary. The applicant has advised that the technical memorandum will be finalized and released in early July 2014. The City and Cal Am will continue to coordinate with MCWRA regarding the model and other documents prepared for the Slant Test Well Project.
MCWRA-3	The comment states that MCWRA does not support the use of the 180-foot aquifer as a source of water for the MPWSP and the slant test well must identify the source water aquifers or zones for pumping activities. The source of water for the MPWSP is outside of the scope of the Slant Test Well Project MND. However, the results of the Slant Test Well Project would be used to refine the North Marina Ground Water Model, which is the tool being developed to evaluate the short- and long-term hydrogeologic impacts from operation of the MPWSP. The model would use the information obtained through operation of the slant test well to determine the source of groundwater that would be extracted by the MPWSP.
MCWRA-4	The comment requests an exhaustive accounting of active water supply wells within and bordering the project area in order to protect those wells from proposed test pumping activities. Mitigation identified in the MND requires coordination with CEMEX and other off-site adjacent well owners to determine changes in off-site water levels to the maximum extent feasible (see HYD/mm-1). Therefore, although private ownership and cooperation issues could prevent coordination to some extent, Cal Am would be required to account for and coordinate with adjacent well owners to the "maximum extent feasible".

STATE OF CALIFORNIA — EDMUND G. BROWN JR., *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Established in 1938

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 *Fax* (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: **(916) 574-1890**
Contact FAX: **(916) 574-1885**

June 17, 2014

File Ref: SCH #2014051060

City of Marina
c/o Emily Creel, Environmental Planner
1422 Monterey Street, C200
San Luis Obispo, CA 93401

Subject: Mitigated Negative Declaration (MND) for the California American Water Slant Test Well Project, Monterey County

Dear Ms.Creel:

The California State Lands Commission (CSLC) staff has reviewed the subject MND for the California American Water Slant Test Well Project (Project), which is being prepared by the City of Marina (City). The City, as a public agency with principal responsibility for approving a project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The CSLC is a trustee agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency. CSLC-1

CSLC Jurisdiction and Public Trust Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust. CSLC-2

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership

extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections. CSLC-2

California American Water (CalAm) submitted an application to the CSLC for a General Lease – Public Agency Use for the proposed slant test well on July 3, 2013. The Lease Application was deemed incomplete on July 22, 2013, and remains incomplete as of the date of this letter. CSLC-3

Project Description CSLC-4

CalAm proposes to develop and operate a short-term slant test well, which would provide information on the Dune Sand Aquifer and 180-Foot Aquifer to meet the proponent's objectives and needs as follows:

- Obtain field data concerning the geologic, hydrogeologic, and water quality characteristics of the Project area.
- Use the data to assess the potential effects of a multiple slant well subsurface intake system that would serve as the supply source for a proposed desalination project.

From the Project Description, CSLC staff understands that the Project would include the following components:

- Slant Test Well. The slant test well would consist of a 22-inch-diameter casing and a 12-inch-diameter screen designed for use in marine environments. The well would be drilled from an inland site towards the ocean at an approximately 19-degree-angle to a maximum drill length of 1,000 feet. The end of the well would be located approximately 500 feet offshore at a depth of 290 feet below the seafloor.
- Vertical Monitoring Wells. Up to four vertical monitoring well clusters would be drilled to measure changes in groundwater levels and water quality during the operation of the slant test well. The monitoring wells would be drilled to different depths to provide information on different aquifers.
- Discharge Pipe. A 12-inch-diameter discharge pipe would be extended 250 feet from the slant test wellhead to a junction with an existing outfall pipeline. The water from the slant test well would be tested for its quality, and would be sampled before being discharged. No desalination would occur during the operation of the slant test well.

Environmental Review CSLC-5

The City previously requested and received comment from CSLC staff regarding the Project on two separate occasions through Project referrals. The proposed MND addresses CSLC staff's concerns regarding underwater acoustics, decommissioning, public access, and frac-out. Copies of CSLC staff's comment letters from August 29, 2013, and March 20, 2014, are enclosed for your reference.

Thank you for the opportunity to comment on the MND for the Project. As a responsible and trustee Agency, the CSLC will need to rely on the MND for the issuance of any new lease as specified above. Please send copies of future Project-related documents, including electronic copies of the MND, Mitigation Monitoring and Reporting Program (MMRP), and Notice of Determination (NOD) when they become available, and refer questions concerning environmental review to Holly Wyer, Environmental Scientist, at (916) 574-2399 or via e-mail at holly.wyer@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Drew Simpkin, Public Land Management Specialist, at (916) 574-2275, or via email at drew.simpkin@slc.ca.gov. CSLC-6

Sincerely,

Cy R. Oggins, Chief
Division of Environmental Planning
and Management

Enclosures (2)

cc: Office of Planning and Research
Drew Simpkin, LMD, CSLC
Holly Wyer, DEPM, CSLC
Jessica Rader, Legal, CSLC

STATE OF CALIFORNIA — EDMUND G. BROWN JR., *Governor*

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March 20, 2014

CSLC-7

City of Marina
Monterey Bay National Marine Sanctuary
c/o Emily Creel, Environmental Planner
SWCA Environmental Consultants
1422 Monterey Street, Suite C200
San Luis Obispo, CA 93401

Subject: Project Referral and October 2013 Initial Study (IS), Temporary Slant Test Well Project, Marina, California

Dear Ms. Creel:

As requested by the city of Marina (City) and Monterey Bay National Marine Sanctuary (MBNMS), the California State Lands Commission (CSLC) staff has reviewed the subject Project Referral and IS for the Temporary Slant Test Well Project (Project) proposed by California American Water Company (CalAm). The City, as a public agency carrying out a discretionary action to approve or deny the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and has prepared the subject IS. The MBNMS, as a Federal agency with primary approval authority over a project, is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). CSLC staff understands that the MBNMS is preparing a separate Environmental Assessment/Finding of No Significant Impact (EA/FONSI) to satisfy the requirements of NEPA.

Since the Project involves work on sovereign lands, the CSLC will act as a responsible agency under CEQA. The CSLC is also a trustee agency under CEQA because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters.

Comments and Response to the Project Referral

The City's IS addresses a number of CSLC staff's concerns regarding the Project, including staff's prior information requests regarding frac-out, and public access to the beach. CSLC staff's remaining comments regarding the Project Referral and IS are organized below by Parts I through III outlined in the Referral.

CSLC-7 (continued)

PART I – IS THE ATTACHED INFORMATION ADEQUATE FOR YOU TO DO YOUR REVIEW? Pending release and staff's review of a public draft MND with more detailed environmental analysis and mitigation measures, the Project description appears to be adequate for CSLC staff to initiate its review of the proposed Project. However, CSLC staff has the following minor questions and comments on the Project description.

1. Slant Test Well Diameter. The Project Referral mentions the diameter of the monitoring wells proposed as part of the Project; however, the diameter of the slant test well is never discussed. Please include the anticipated diameter of the slant test well in the Project description.

2. CalAm proposes to use an existing 12-inch-diameter discharge pipe currently operated by the Monterey Regional Water Pollution Control Agency (MRWPCA) as part of this Project. CSLC staff can find no record that the existing outfall is under lease. In order for CalAm to use the existing outfall, MRWPCA must submit a lease application and CalAm must be an authorized sublessee.

3. Please describe in greater detail how the slant test well will be decommissioned, including the depth to which test well equipment would be removed. Should the slant test well be decommissioned, CalAm will be required to enter into an Abandonment Agreement with the CSLC in regards to any facilities that the CSLC and CalAm mutually agree may remain on or under the State's sovereign land after decommissioning. Additionally, decommissioning plans may require CSLC engineering review

PART II – ARE THERE SIGNIFICANT CONCERNS, PROBLEMS, OR IMPACTS IN YOUR AREA OF REVIEW?

1. **CSLC as a responsible agency.** On page 25 of the IS, the CSLC is listed as a trustee agency with a lengthy explanation of why the CSLC is a responsible agency as well. To ensure clarity, please add the CSLC to the Responsible Agency list and remove the paragraph starting with "The State Lands Commission maintains..." on page 25.

2. **Sound and Vibration.** On page 40, the IS considers impacts to marine mammals from the sound and vibration of sonic drilling the monitoring wells. CSLC staff has a number of comments on this analysis.
   a. CSLC staff recommends early consultation with the California Department of Fish and Wildlife (CDFW) as well as the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) to determine whether sound from the Project will impact marine wildlife.
   b. The final paragraph on page 40 states that "sonic drilling methods utilize high frequency resonant energy," but later states that "sonic drilling generally emits a varied frequency between 50 and 160 hertz," which is considered low frequency. Please make corrections and changes to the IS as appropriate.

CSLC-7 (continued)

c. The IS does not mention the potential impacts of sound from the dual rotary drill that will be used for the slant test well. The sound from the dual rotary drill is of interest to CSLC staff because the slant test well drilling will occur much closer to the seafloor than the sonic drilling for the monitoring wells. The furthest the slant test well will be from the seafloor is 290 feet, while the monitoring wells will be 360 feet from the seafloor.

d. Sound from the dual rotary and sonic drill has the potential to propagate through the sediment and into the ocean depending on a variety of environmental factors (e.g., geoacoustic properties of the sediment) and equipment specifications (e.g., source level, operational frequency). A quantitative acoustic analysis of the dual rotary and sonic drill should be conducted to determine whether the sounds produced by the drills may impact marine wildlife. For example:

- Determine the source level (in decibels) produced by both the sonic drilling and the dual rotary drilling;
- Perform an acoustic analysis to determine the transmission loss of the signal as sound from the rotary drill or sonic drill travels through the sediment; and
- Use the acoustic analysis to determine how far the sound will have traveled from the drill before reaching acoustic thresholds established by the National Oceanic and Atmospheric Administration (NOAA) for injury (Level A harassment) and behavioral disturbance (Level B harassment) of marine mammals (NOAA thresholds are available at: www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/threshold_guidance.html). If the distances from the well at these thresholds are within the sediment/seafloor and not the ocean, then impacts may be less than significant.

e. If the acoustic analysis determines that impacts may occur, please provide an updated impact and mitigation measure section on page 41 when the public draft IS/MND is released to reduce impacts to less than significant. Conduct the additional studies necessary to fully understand the extent of the impact and develop the mitigation program. The mitigation measures in the public draft IS/MND must be feasible, enforceable, and fully described.

3. **Hazards and Hazardous Materials Checklist.** On page 58, two boxes for section VIII(a) are marked, one for "no impact" and one for "potentially significant impact, even with mitigation incorporation." You may wish to correct checklist section VIII(a) and make changes to the IS as appropriate so that only one impact level is selected.

PART III – INDICATE YOUR RECOMMENDATIONS FOR FINAL ACTION. In your Project Referral, you request that CSLC staff "attach any conditions of approval you recommend to be incorporated into the project's approval, or state reasons for recommending denial." Please be advised that these items will be addressed at the time the CSLC takes action on the proposed Project at a noticed public hearing. CSLC staff cannot provide recommendations for final action at this time.

Thank you for the opportunity to provide comments on the subject Project Referral and IS. As a responsible agency, the CSLC will need to rely on the work done by the City for the issuance of any new lease for the Project, therefore, we request that you consider our comments while preparing the Mitigated Negative Declaration (MND). Please send copies of future Project-related documents, including electronic copies of the MND, Notice of Determination (NOD), and Mitigation Monitoring and Reporting Program (MMRP) when they become available, and refer questions concerning CSLC staff's response to Holly Wyer, Environmental Scientist, at (916) 574-2399 or via e-mail at holly.wyer@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Drew Simpkin, Public Land Management Specialist, at (916) 574-2275, or via email at drew.simpkin@slc.ca.gov.

CSLC-7 **(continued)**

Sincerely,

Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
Drew Simpkin, LMD, CSLC
Holly Wyer, DEPM, CSLC
Joe Fabel, Legal, CSLC

STATE OF CALIFORNIA — EDMUND G. BROWN JR., Governor

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August 29, 2013

CSLC-7
(continued)

City of Marina
Planning Services Division
c/o Emily Creel, Environmental Planner
SWCA Environmental Consultants
1422 Monterey Street, Suite C200
San Luis Obispo, CA 93401

Subject: Project Referral, Temporary Slant Test Well Project, Marina, California

Dear Ms. Creel,

As requested by the city of Marina (City), the California State Lands Commission (CSLC) staff has reviewed the subject Project Referral and supporting documents for the Temporary Slant Test Well Project (Project) proposed by California American Water Company (CalAm). The City, as a public agency carrying out a discretionary action to approve or deny the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and is preparing an initial study (IS) for the Project. The CSLC is a trustee agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

CSLC Jurisdiction and Public Trust Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not

CSLC-7 (continued)

limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

As proposed, a portion of the proposed Project will be located within ungranted sovereign lands in the Pacific Ocean. A lease from the CSLC will be required for any portion of the Project location waterward of the mean high tide line.

Comments and Response to the Project Referral

CSLC staff's comments regarding the Project Referral are organized below by the sections outlined in the referral:

(1) **Is the attached information adequate for you to do your review?**

No. The information attached to the Project Referral and the more detailed biological assessment, cultural resources assessment, and Project description available online do not contain information related to the following issue areas.

- **Decommissioning:** The Project description states that the test well will be operated for 24 months, but there is no description of decommissioning activities in the Project description. Please describe planned decommissioning activities for the entire test well, not just the wellhead. In addition, assess what, if any environmental impacts may occur from decommissioning activities.
- **Frac Out:** The Project does not have any prevention measures for frac-out or a frac-out contingency/cleanup plan incorporated into the Project. Please assess the impacts of potential frac-out on the coastal and marine environment in the IS, determine if the impacts are significant, and develop mitigation measures to reduce impacts to less than significant, if necessary.
- **Public Access to the Beach:** Please describe the impacts, if any to public beach access from the Project. Will there be any limits to public access of tidelands as this test well is being drilled? If so, please describe these impacts, determine their significance, and develop mitigation measures to reduce the impacts, if necessary.
- **Sound and Vibration:** The Biological Assessment provided by SWCA states that no special-status species in the marine environment are anticipated to be impacted by the Project. However, vibration caused by drilling the test well may travel through the seafloor sediments, particularly where the drilling occurs near the surface of the seafloor. Please determine whether there will be any impacts to special-status species due to vibration from the seafloor during drilling. If this issue was already considered during the preparation of the Biological Assessment, please justify why no impacts are anticipated.

(2) **Are there significant concerns, problems, or impacts in your area of review?**

Due to the lack of information on the items listed above, it is unknown at this time if there are significant concerns, problems, or impacts in CSLC staff's area of review.

(3) **Indicate your recommendations for final action.**

CSLC staff cannot provide recommendations for final action at this time.

Thank you for the opportunity to provide initial comments. As a responsible agency, the CSLC will need to rely on the work done by the City for the issuance of any new lease for the Project, therefore, we request that you consider our comments while drafting the IS. Please send copies of future Project-related documents, including electronic copies of the IS, Notice of Determination (NOD), and, if applicable, Mitigation Monitoring and Reporting Program (MMRP) when they become available, and refer questions concerning CSLC staff's response to Holly Wyer, Environmental Scientist, at (916) 574-2399 or via e-mail at holly.wyer@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Drew Simpkin, Public Land Management Specialist, at (916) 574-2275, or via email at drew.simpkin@slc.ca.gov.

Sincerely,

Cy R. Oggins, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
Drew Simpkin, LMD, CSLC
Holly Wyer, DEPM, CSLC
Sheill Haaf, Legal, CSLC

CSLC-7
(continued)

1.1.3 Response to Letter from California State Lands Commission

Comment No.	Response
CSLC-1	The comment accurately describes the CSLC as a trustee and responsible agency for the slant test well project. This is reflected in Section 3.1, Project Data, on pages 28 and 29 of the IS/MND. No response is necessary.
CSLC-2	This comment describes CSLC jurisdiction and public trust lands which it manages. No response is necessary.
CSLC-3	The comment describes the current status of Cal Am's application to CSLC for a General Lease – Public Agency Use for the proposed project. The status of the application does not relate to any specific environmental issue, and no specific response is necessary. The City understands that Cal Am has recently coordinated with CSLC regarding their application and continues to work with CSLC in that regard.
CSLC-4	This section of the CSLC comment letter accurately describes the proposed project. No response is necessary.
CSLC-5	The comment identifies the previous agency consultation that has occurred between the City and CSLC, and states that CSLC staff's concerns identified through previous consultation have been addressed in the IS/MND. As the IS/MND adequately addressed all CSLC concerns, no additional response is necessary.
CSLC-6	This comment identifies CSLC's need to rely on the MND for issuance of any lease and requests that future project-related documents be submitted to CSLC as they become available. The City and Cal Am will continue to provide project-related documents to CSLC as requested.
CSLC-7	The CSLC comment letter included two previous documents containing CSLC staff's concerns identified through previous agency consultation between the City and CSLC. As the IS/MND adequately addressed all CSLC concerns as described in Response to CSLC-5, above, no additional response is necessary.

MBUAPCD
Monterey Bay Unified Air Pollution Control District
Serving Monterey, San Benito, and Santa Cruz Counties

24580 Silver Cloud Court
Monterey, CA 93940
PHONE: (831) 647-9411 • FAX: (831) 647-8501

June 17, 2014

City of Marina
c/o Emily Creel, Environmental Planner
ecreel@swca.com
1422 Monterey Street, C200
San Luis Obispo, CA 93401

Subject: California American Water Slant Test Well Project, APN 203-011-019-000
Mitigated Negative Declaration

Dear Ms. Creel:

Thank you for providing the Monterey Bay Unified Air Pollution Control District (Air District) the opportunity to comment on the above-referenced document. The Air District has reviewed the document and has the following comment: **MBUAPCD-1**

- Based on the information provided in the Project Description, the Air District did not identify sources of emissions that would be subject to an air permit. However, the Air District recommends contacting our Engineering Division upon project approval to evaluate whether air permits may be necessary for the proposed project.

Please let me know if you have questions, I can be reached at (831) 647-9418 ext. 227 or aclymo@mbuapcd.org.

Sincerely,

Amy Clymo
Supervising Air Quality Planner

cc: David Craft, MBUAPCD Air Quality Engineer

Richard A. Stedman, Air Pollution Control Officer

1.1.4 Response to Letter from Monterey Bay Unified Air Pollution Control District

Comment No.	Response
MBUAPCD-1	The comment states that MBUAPCD has not identified sources of emissions that would be subject to an air permit. Table 1, Required Entitlements, on page 27 of the MND, recognizes the potential need for operational or construction permits from MBUAPCD "if necessary". The City and Cal Am would continue to confer with MBUAPCD, as requested, upon project approval to confirm the need for any air permits for the proposed project.

MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099
Home Page: www.mcwd.org
TEL: (831) 384-6131 FAX: (831) 883-5995

VIA U.S. Mail & email (ecreel@swca.com)

June 17, 2014

City of Marina
c/o Emily Creel, Environmental Planner
1422 Monterey Street, C200
San Luis Obispo, CA 93401

Re: Draft Initial Study and Mitigated Negative Declaration (IS/MND) for the California American Water Slant Test Well Project

Dear Ms. Creel:

Thank you for the opportunity to submit comments on the above document.

Section 2.3, Proposed Project, of the Draft IS/MND states, "The purpose of the proposed project is to gather technical data related to the potential hydrogeologic and water quality effects of the proposed MPWSP." **MCWD-1**

Section IX of the Initial Study form addresses Hydrology and Water Quality.

Item IX(b) asks, would the project "Substantially deplete groundwater supplies . . . such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level . . .?"

Item IX(f) asks, would the project otherwise "substantially degrade water quality."

1. Cal-Am is proposing to pump approximately 1,613 to 4,032 acre feet per year on the CEMEX property; 3,226 to 8,064 acre feet over a maximum 24-month operational period. However, groundwater extraction on the CEMEX property is legally limited to 500 acre feet per year under the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands signed by the City of Marina, MCWD, and RMC Lonestar, predecessor in interest to CEMEX. MCWD submitted a letter to Mr. David Burnett, Chair of the Marina City Planning Commission, for the February 6, 2014 Special Meeting on Action Item to provide a requested interpretation of MMC Section 17.41.260 relating to Cal-Am's request to drill test bore holes on this same CEMEX property. In our letter, we pointed out the following: **MCWD-2**

> MCWD, the City of Marina, the Monterey County Water Resources Agency (MCWRA), J. G. Armstrong Family Members, and RMC Lonestar, the predecessor in interest to CEMEX, signed the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands. The 1996 Agreement has two separate but related

purposes as enumerated in Section 1.1. The first purpose "is to help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin through voluntary commitments by the Parties to limit, conserve and manage the use of groundwater from the Salinas River groundwater basin." The second purpose was to address annexation issues. To meet that first purpose, Section 7.2, Quantity Limitations, states, "*Commencing on the effective date of this Agreement and Framework,* Lonestar shall limit withdrawal and use of groundwater from the Basin to Lonestar's historical use of 500 afy of groundwater." [Emphasis added.]. Furthermore, Section 7.4.5, Additional Annexation Fee for Change in Water Use, provides for increased fees if use of water on the property changes from industrial or agricultural uses. That means that Lonestar (now CEMEX), the City of Marina, the MCWRA, and MCWD are contractually obligated to prohibit anyone (including CAW) from (1) extracting more than 500 afy on the property, (2) using extracted water for purposes other than industrial or agricultural, and (3) exporting any groundwater off the CEMEX property.

MCWD-2 (continued)

MCWD hereby objects to any approval by the City of Marina of the slant test well project as described in the Draft IS/MND as constituting a breach of the 1996 Annexation Agreement.

2. The slant test well pumping itself could have a significant impact on the Salinas Valley Groundwater Basin since this is the third year of drought, which prompted Governor Brown to declare a drought emergency and requesting all citizens to reduce water use.

MCWD-3

The Draft IS/MND describes the amount of water to be pumped on the CEMEX property as follows:

- "The slant test well would operate continuously, 24 hours a day for a period of up to 24 months. Routine operation would include continuous extraction of water from the Dune Sand and/or 180-FTE Aquifers and discharge into the Pacific Ocean via the existing outfall pipe. The water flow rate during the operational period would vary from 1,000 gallons per minute (gpm) to 2,500 gpm." (p. 23)

- The proposed rate of pumping from the CEMEX property will equal an approximate extraction of between 4.5 and 11 acre feet of water per day, and 3,226 to 8,064 acre feet over the up to 24-month life of the project. (p. 111) This translates to approximately 1,613 to 4,032 acre feet per year.

To put Cal-Am's estimate of pumping 1,613 to 4,032 acre feet per year on the CEMEX property in perspective, MCWD's Central Marina Service Area used approximately 2,100 acre feet in 2013. The proposed slant test well is projected to extract approximately 0.78 to 1.9 times the amount of groundwater pumped by MCWD to serve its Central Marina Service Area in one year. If it is later determined that, for example, 25% of the source water is Salinas Valley groundwater, then approximately 403 to 1,008 acre feet of slant test well water pumped per year is Salinas Valley groundwater.

3. The Draft IS/MND (a) misrepresents what the 2013 SWRCB draft report actually said and (b) prejudges the the slant test well results even though "The purpose of the proposed project is to gather technical data related to the potential hydrogeologic and water quality effects of the proposed MPWSP." **MCWD-4**

The Draft IS/MND on page 145 states, "SWRCB has indicated that Cal Am has the right to pump from within the aquifers at the CEMEX site (SWRCB 2013)." That is a significant misrepresentation of what the SWRCB draft report actually stated. Furthermore, the SWRCB draft report did not address the 1996 Annexation Agreement (Comment 1 above). The SWRCB draft report on page 28 stated the following:

> Cal-Am needs no groundwater right or other water right to extract seawater from Monterey Bay. Based on the information provided, however, the proposed MPWSP could extract some fresh water from within the Basin. An appropriative groundwater right is needed to extract water from the Basin for use outside the parcel where the wells are located.

The SWRCB draft report went on to state, "In summary, to appropriate groundwater from the Basin, the burden is on Cal-Am to show no injury to other users."

On page 112, the Draft IS/MND states, **MCWD-5**

> Areas in the immediate vicinity of the slant test well that could potentially experience marginal amounts of drawdown are not expected to have usable water supplies in the Dune Sand or 180-FTE Aquifers where pumping would occur due to the extent of seawater intrusion in that area. Therefore, drawdown of water in surrounding wells would not constitute an adverse effect on a usable water source." [Emphasis added.]

If the Final IS/MND is going to rely upon the SWRCB draft report, then the Final IS/MND must state that based upon the information then available to the SWRCB, the SWRCB concluded that "the proposed MPWSP could extract some fresh water from within the Basin," that legally Cal-Am could not extract that water since it did not have an appropriative groundwater right, and that Cal-Am had the legal burden to show no injury to other users within the Basin. In addition, the City of Marina must delete all misstatements of what was contained in the SWRCB draft report.

4. The Response to IX(f) on page 115 concludes that "the project is not expected to increase existing seawater intrusion in the project area." However, no mitigation measures are proposed in the event that there is evidence that the slant test well pumping does increase seawater intrusion or does increase salinity within the CEMEX property or anywhere within the 2-mile radius. The Final IS/MND must (a) prescribe threshold limits, (b) justify those threshold limits with sound science, and (c) require that all project pumping cease should any of those threshold limits be met. **MCWD-6**

5. The Draft IS/MND fails to recognize that Cal-Am will need to obtain a construction water permit from MCWD for an out-of-district use. **MCWD-7**

The Draft IS/MND states, "Approximately 226,000 gallons (0.7 acre foot) of water would be needed for drilling activities [on the CEMEX property] and would be obtained [by trucking water] from the City of Marina's domestic water supply. The City's supplies would be sufficient for project construction needs." (p. 113) See also the Response to XVII(d) on page 145. The drafters of the Draft IS/MND apparently do not know that MCWD is the domestic water supplier to the City of Marina. MCWD has no legal obligation to provide water for use outside of the District's service area. Especially given the drought and the Governor's Emergency Declaration, MCWD staff will need to determine whether MCWD's supplies are sufficient for the project's estimated construction water needs. Cal-Am will need to apply to MCWD for a construction water permit for an out-of-district use. MCWD should be included in the list on page 27 of agencies from which "entitlements" must be obtained. These requirements need to be addressed in the final version of the CEQA document. **MCWD-7**

6. The Final IS/MND needs to include a proposed timeline showing when all "entitlements" are projected to be obtained (p. 27), the preparation, review, and approval of the groundwater monitoring plan (including determination of baseline conditions) (p. 119), project construction, project operation, project decommissioning, and any other significant project milestones. You cannot determine the potential impacts of the project unless you know when, where, and for how long specific activities are projected to occur. **MCWD-8**

7. The Draft IS/MND's Response to IX(b) conclusion states, "impacts associated with a depletion of groundwater supplies would be less than significant with mitigation described in HYD/mm-1." The mitigation measures proposed in HYD/mm-1 are inadequate and, consequently, the IX(b) conclusion is not supportable and at least a focused EIR should be required and prepared. The SWRCB placed the legal burden on Cal-Am to show no injury to other users within the Basin. That requirement also applies to any slant test well pumping. **MCWD-9**

The amount of groundwater proposed to be extracted from the slant test well is not an insignificant amount. The proposed slant test well is projected to extract between 4.5 and 11 acre feet of water per day, and 1,643 to 4,015 acre feet per year for up to 2 years, which is approximately 0.78 to 1.9 times the 2,100 acre feet of groundwater pumped by MCWD to serve its Central Marina Service Area during 2013. If the MPWSP desalination plant will need 7 to 9 slant wells constructed in order to extract 25,000 acre feet per year (68.5 acre feet per day) of feed water, that is over 6 times greater than the maximum 11 acre feet per day (or over 15 times greater than the minimum of 4.5 acre feet per day) being proposed to be extracted by the slant test well. **MCWD-10**

The proposed HYD/mm-1 mitigation measures on page 119 are inadequate. The following additional mitigation measures must be required: **MCWD-11**

(1) The first two sentences under HYD/mm-1 state, "Prior to construction, the applicant shall prepare a groundwater monitoring plan for City review and approval. The plan shall determine, through preliminary monitoring and sampling prior to pumping activities, a baseline condition of groundwater levels and quality, including reasonable range of natural fluctuations, in the Dune Sand, 180-FTE, and 400-Foot Aquifers." Determining the appropriate baseline conditions are very important in any environmental impact analysis.

Hydrologic baseline conditions must be determined based upon measurements taken during all five water year types (i.e., critical, dry, below normal, above normal, and wet). What appears being proposed in this instance is just some cursory, preliminary monitoring occurring over a very short time period. If that is not the case, the HYD/mm-1 needs to explain in detail how hydrologic baseline conditions are intended to be established for this project and by whom and when. Also see Comment 6 above calling for a project timeline. **MCWD-11 (continued)**

(2) The proposed groundwater monitoring plan must also be submitted to MCWD and to all well owners within a 2-mile radius of the project site for review and approval. **MCWD-12**

(3) Justification must be provided for the proposed drawdown threshold of "1 foot above natural fluctuations on groundwater levels." There does not appear to be any discussion in the Draft IS/MND as to why "1 foot" is a reasonable mitigation threshold and on the historic "natural fluctuations" of groundwater levels within the 2-mile radius of the project site, especially during a multi-year drought. Nacimiento and San Antonio Reservoirs are basically empty so there is very little groundwater recharge occurring from Salinas River water. **MCWD-13**

(4) "If pumping activities reflect a drawdown of 1 foot or greater" in any well within the 2-mile radius, then the slant well testing should cease and the entire slant well testing project should be reevaluated. If the MPWSP desalination plant will need 7 to 9 slant wells constructed in order to extract 25,000 acre feet per year (68.5 acre feet per day) of feed water, that is over 6 times greater than the maximum 11 acre feet per day (or over 15 times greater than the minimum of 4.5 acre feet per day) being proposed to be extracted by the slant test well. **MCWD-14**

(5) "Compensatory mitigation" is not a proper mitigation measure in this situation where the MPWSP itself would extract 6 to 15 times greater amounts of water. **MCWD-15**

(6) After the first sentence in the third paragraph that "The plan shall designate a person or persons to monitor implementation of the monitoring plan and to order implementation of mitigation if necessary," add the following: "The person or persons so designated shall have at least ten (10) years of experience as an expert on groundwater hydrology or hydrogeology (preferably with experience with the Salinas Valley Groundwater Basin) and shall not have been or is not currently and shall not during this or follow-on MPWSP studies be a consultant for California American Water or its parent or any of its affiliates." **MCWD-16**

(7) The groundwater monitoring plan must include a requirement for regular reporting (no less than monthly) on the results of the monitoring activities, and the reports shall be submitted to the City, MCWD, other relevant regulatory agencies, and all well owners within the 2-mile radius, and be posted on the City's website within 3 days of receipt. **MCWD-17**

The Draft IS/MND does not address at all (1) the 1996 Annexation Agreement limiting groundwater extractions from the CEMEX property to 500 acre feet per year and (2) MCWD being the source of the potable water needed for well drilling activities other than to misidentify the City of Marina as the source. **MCWD-18** **MCWD-19**

For the reasons stated above, the Draft IS/MND does not adequately address the potential impacts to groundwater supplies and groundwater quality and does not require adequate mitigation measures. A focused EIR should be prepared to address all of the issues described in this letter. **MCWD-20**

Please do not hesitate to contact me if you have any questions about these comments.

Very truly yours,

Brian C. Lee

Brian Lee
Interim General Manager
Marina Coast Water District

1.1.5 Response to Letter from Marina Coast Water District

Comment No.	Response
MCWD-1	The comment accurately describes an identified purpose of the Slant Test Well Project and two relevant CEQA thresholds under which the proposed project was analyzed in the MND. No response is necessary.
MCWD-2	This comment states that Cal Am lacks the right to pump groundwater from the CEMEX site pursuant to the terms of a 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands and that the City's approval of the project would be a breach of that Agreement. This comment relates to contractual rights rather than potential environmental impacts or CEQA requirements. Therefore, no further response is necessary.
MCWD-3	This comment compares the amount of water to be pumped through operation of the slant test well to historic water usage within MCWD's Central Marina Service Area and states that the test pumping could have a significant impact on the Salinas Valley Groundwater Basin (SVGB). The MND identified the total amount of water to be pumped through the slant test well project and addressed potential impacts to the SVGB at pages 111 to 113. The IS/MND analyzed the potential for environmental effects on the SVGB and determined that operation of the slant test well would not result in a significant impact on the SVGB or its users. As noted in Response to IX(b), at pages 111 to 113 of the MND, the slant test well would primarily capture water originating from the seaward direction rather than the landward direction, reducing the possibility that it would capture freshwater from the Salinas Valley Groundwater Basin. The 2013 SWRCB draft report supports this conclusion, stating: "with a landward gradient of groundwater flow, more of the water captured by the pumping well comes from the upgradient direction (in this case from the seawater direction) and a much smaller proportion of the water captured by the pumping well is from downgradient (inland) direction. Water captured from the seaward direction would likely be seawater. Water captured from the landward side could potentially have a greater likelihood of capturing some portion of freshwater. Therefore, because the gradient means more water will be captured from the seaward direction there is a reduced possibility that the wells will capture freshwater. An individual might assume the extraction wells would draw water equally from seaward and landward areas. While this may be true in a system that has no gradient of flow, it would not be true in the proposed MPWSP area because there is a significant gradient of groundwater flow from the seaward areas toward the inland pumping depressions. In this situation, the extraction well system would draw most of its water from the upgradient (seaward) direction, and very little of the 'fresh' water from inland areas would be captured." (Appendix E, page 21). The MND conservatively recognizes that a small percentage of landward water could be captured by the slant test well as there is some uncertainty in the ratio of seawater to brackish water that the well ultimately would withdraw. However, the SWRCB report notes that the water withdrawn from the landward side is likely to be brackish, not freshwater, and therefore it is unlikely that injury would result (Appendix E, page 37 and 38). Pumping activities would be of a limited duration and would not create a long-standing use or right to water within the aquifers. The water pumped from the aquifers would primarily be tidally influenced groundwater and is not expected to

Comment No.	Response
	significantly reduce available freshwater supplies for existing or planned land uses. The effects of the temporary pumping program would be closely monitored throughout its duration to determine the precise amount of drawdown caused by the slant test well. Due to the minimal extent of drawdown anticipated, the unusable condition of wells in the Dune Sand, 180-FTE, and 400-Foot Aquifers in the project area, potential impacts associated with groundwater supplies were found to be less than significant with recommended monitoring and reporting measures. The amount of proposed pumping is not substantial when compared to the SVGB as a whole. The SVGB is divided into eight sub-regions; the project area is located in the 180/400 Foot Aquifer sub-region. Calculations by the California Department of Water Resources (DWR) estimate the total storage capacity of the 180/400 Foot Aquifer sub-basin to be 7,240,000 acre feet and as of 1998, there was an estimated 6,860,000 acre feet of groundwater in storage (California's Groundwater Bulletin 118; DWR 2004). The maximum amount of water proposed to be pumped by Cal Am during operation of the slant test well equates to approximately 0.1 percent of the estimated groundwater in storage in the 180/400 Foot Aquifer sub-region, and a large majority of the pumped water would be seawater captured from the seaward direction. Monterey County Water Resources Agency (MCWRA) has designated four distinct hydrologic zones of the SVGB; the project is located in the Pressure Subarea designated by MCWRA. MCWRA estimated the total 2012 extractions from the Pressure Subarea from agricultural and urban pumping to be 113,898 acre feet (2012 Ground Water Summary Report; MCWRA 2013). Pumping activities proposed by Cal Am through the slant test well project (1,613 to 4,032 acre feet per year) equate to approximately 1.4 to 3.5 percent of 2012 extractions from the Pressure Subarea. Again, a large portion of this percentage would be comprised of seawater. It is unknown exactly what portion of SVGB groundwater would be captured by the slant test well, though the large majority of captured water is expected to come from the upgradient (seaward) direction. Any portion captured from the downgradient (landward) direction would consist of saline or brackish water with little to no beneficial use due to the extent of seawater intrusion, further reducing the potential for significant impacts on usable SVGB freshwater resources. Even under MCWD's hypothetical, if 25 percent of the slant test well's source water came from the landward direction SVGB groundwater (up to a maximum of 1,008 acre feet/year or a total of up to 2,016 acre feet), this would equate to pumping of up to a maximum of approximately 0.0003 percent of the total groundwater in the 180/400 Foot Aquifer sub-region per DWR estimates, and up to approximately 0.9 percent of 2012 annual extractions from the MCWRA-designated Pressure Subarea. In the context of the larger SVGB, pumping of approximately 0.0003 percent of the total groundwater in the 180/400 Foot Aquifer sub-region, and a less than 1 percent annual increase in pumping in the Pressure Subarea, for a limited duration of up to 2 years, is considered a less than significant impact.

Comment No.	Response
MCWD-4	This comment asserts that the MND misrepresented the contents of the 2013 SWRCB draft report, and in particular, that the statement that "SWRCB has indicated that Cal Am has the right to pump from within the aquifers at the CEMEX site" is a "significant misrepresentation" of what the SWRCB report actually said. The comment does not suggest that the determination made in Response to XVII(d) is incorrect. Rather, the comment takes issue with the abbreviated description of SWRCB's conclusions in the passing reference to SWRCB's report. The comment fails to acknowledge that the full report is included in the MND as part of Appendix E. The comment implies the MND suggested that Cal Am has the right to pump groundwater from the aquifer below the CEMEX site without regard to the impacts on SVGB or its users. That was not the intent of the reference. Instead, what was meant by the reference was that SWRCB has identified a pathway by which Cal Am would be able to extract saline or brackish water at that location. Obviously, Cal Am would have to follow the prescribed pathway in order to be able to perform the subject pumping, but the MND reflected SWRCB's conclusion that it appeared possible for Cal Am to do so. The comment accurately notes the conclusion in the SWRCB report that, in order to pump groundwater from within the Basin, the burden is on Cal Am to show no injury to the SVGB or its users. However, the comment fails to recognize the MND's analysis of impacts to the SVGB and conclusion that no significant impacts would occur, or SWRCB's additional discussion of various legal means by which it appears Cal Am could meet this requirement, including through replacement of fresh water supplies within the Basin and/or use of a "physical solution". The SWRCB report states: "The aquifers underlying the proposed extraction locations have been intruded with seawater since at least the 1940's. The impairment means that there is little or no beneficial use of the water in the intruded area. Groundwater quality at the site of the proposed MPWSP wells will play an important role in determining the effects of extraction on other users in the Basin." (Appendix E, pages i and ii) "There is expected to be minimal impact to freshwater sources at start-up and for the first several years of operation as water will certainly be sourced from the intruded portion of the aquifer." (Appendix E, page 37). "Based on the information provided in the FEIR [for the Coastal Water Project], North Marina Project modeling suggests a zone of influence of approximately 2 miles from the proposed extraction wells. Within this zone, there are approximately 14 known water wells. These 14 wells are within the seawater intruded portion of the Basin. The current use of these well is unknown; however, it is unlikely the MPWSP would injure users of these wells as the wells are within a zone where water quality is significantly impacted from seawater intrusion. Within this 2-mile radial zone, the two foreseeable injuries that overlying users could experience are: (1) a reduction in the overall availability of fresh water due to possible incidental extraction by the MPWSP; and (2) a reduction in groundwater elevations requiring users to expend additional pumping energy to extract water from the Basin. Monetary compensation for increased pumping costs is one possible mitigation approach for any lowering of the water table caused by MPWSP." (Appendix E, page 38)

Comment No.	Response
	"There are two types of potential impacts the proposed extraction wells could have on inland water users. First, the inland groundwater users may experience a reduction in groundwater levels in their wells, with associated increases in pumping costs... The second type of effect the extraction well system could have on in-Basin groundwater users is a reduction in the quantity of fresh water that is available for their future use." (Appendix E, page 27) The SWRCB report indicates that there would be little to no injury to Basin users associated with extraction of seawater-intruded groundwater, and further concludes that monetary compensation is a feasible mitigation approach for any lowering of the water table that did occur. The report states that "So long as overlying users are protected from injury, appropriation of water consistent with the principles previously discussed in this report should be possible" (Appendix E, page ii and 39). The MND discussed the potential for well drawdown in proximity of the slant test well and concluded that any such drawdown would be a less than significant impact due to the degraded and unusable condition of water in the project vicinity. The MND also identified appropriate mitigation, including compensation for increased pumping costs, in the event actual drawdown or loss of freshwater supplies substantially exceeds current estimates developed through best available information and modeling. These measures are consistent with recommendations and findings in the SWRCB report and are consistent with the statement that Cal Am can establish an appropriative groundwater right to pump from within the CEMEX parcel by showing no injury to other users ("In summary, to appropriate groundwater from the Basin, the burden is on Cal Am to show no injury to other users." Appendix E, page 38). Further, the SWRCB report specifically recommends development of additional necessary information through a series of test borings and test wells: "Second, the effects of the MPWSP on the Basin need to be evaluated. Specifically, a series of test boring/wells would be needed to assess the hydrogeologic conditions at the site." (Appendix E, page 42) "The studies will form the basis for a plan that avoids injury to other groundwater users and protects beneficial uses in the Basin." (Appendix E, page 43). The slant test well meets a specific recommendation of SWRCB and would provide the additional information identified as necessary in the SWRCB report. The IS/MND does not prejudge the slant well test results, but rather cites to substantial evidence in the SWRCB report in support of its finding that the impacts are not expected to be significant. The IS/MND conservatively incorporated mitigation measure HYD/mm-1 in the event unexpected impacts do occur.
MCWD-5	The comment quotes the MND's statement that "drawdown of water in surrounding wells would not constitute an adverse effect on a usable water source" due to the extent of seawater intrusion in the potentially affected area and points out that the SWRCB recognized that the MPWSP "could extract some fresh water from within the Basin". The comment does not recognize the SWRCB statements that little to no impact would result from extraction of intruded portions of the Basin (refer to Response to MCWD-5, above) or ultimate conclusion that "So long as overlying users are protected from injury, appropriation of water consistent with the principles

Comment No.	Response
	previously discussed in this report should be possible" (Appendix E, page ii and 39). The statements on page 112 of the MND are consistent with the SWRCB findings. The entire 2013 SWRCB draft report is included in the MND. Alleged inconsistencies in the findings of the SWRCB report are addressed in Response to MCWD-4, above.
MCWD-6	The comment requests mitigation measures be developed in the event the project increases seawater intrusion. The MND discusses the potential for additional seawater intrusion as a result of pumping activities and found no risk associated with operation of the slant test well, consistent with SWRCB and MCWRA information. All groundwater within the CEMEX parcel and a 2-mile radius has been rendered unusable due to the extent of seawater intrusion and the SWRCB has concluded that these waters would have little or no beneficial use. Therefore, an increase in salinity in these areas would not constitute a significant environmental impact on a water resource. No evidence has been provided that would indicate a risk of increased seawater intrusion as a result of operation of the slant test well; therefore, no mitigation is necessary. CEQA does not require development of mitigation for impacts that are found to be unlikely to occur, and doing so would place an unjustified burden on project applicants to mitigate conditions that would not be caused by their proposed actions.
MCWD-7	This comment states that the MND fails to recognize that Cal Am would need to obtain a construction water permit from MCWD for an out-of-district use. Cal Am commonly obtains water needed for various projects from the nearest local municipality and proposed the same when the MND was drafted. If a purchase of water from MCWD is infeasible, Cal Am would purchase water from an alternative proximate source, such as one of its other water systems or a third party supplier, and truck it to the project site for well construction as proposed.
MCWD-8	The comment asserts that potential impacts of the project cannot be assessed unless the MND discloses when, where, and for how long specific activities are expected to occur, and recommends a timeline showing when all entitlements would be obtained. The Project Description describes when, where, and how long project activities would occur, including a 5-month construction phase, 2-year operational phase, and 4-week decommissioning phase. Pumping would occur for a duration long enough to obtain a predictable trend in salinity data, up to a maximum of 2 years, though a shorter time period may be adequate based on test results. The project would be located in interior portions of the CEMEX parcel as depicted on graphics in the MND. All required entitlements identified in Table 1 on page 27 of the MND would have to be obtained prior to project construction. Approval of the monitoring plan would be required prior to construction as stated in HYD/mm-1.
MCWD-9	The comment asserts that HYD/mm-1 is inadequate and a focused EIR should be prepared to assess potential impacts associated with a depletion of groundwater supplies because the legal burden is on Cal Am to prove no injury to users in the Basin. The comment does not explain why HYD/mm-1 is inadequate in the view of the commenter. As discussed in Response to MCWD-4, above, the SWRCB has indicated that "[t]here is expected to be minimal impact to freshwater sources at start-up and for

Comment No.	Response
	the first several years of operation as water will certainly be sourced from the intruded portion of the aquifer" (Appendix E, page 37). Impacts to groundwater supplies in the SVGB were analyzed in the IS/MND and determined to be less than significant with implementation of HYD/mm-1, which is also consistent with recommendations in the SWRCB report. Therefore, due to the limited anticipated impact and mitigation measures in place to compensate adjacent water users in the event of any unanticipated injuries, consistent with the SWRCB recommendations, impacts would be less than significant. No EIR is necessary for the Slant Test Well Project.
MCWD-10	The comment states that the amount of water proposed to be pumped is a significant amount and the proposed MPWSP would pump over 6 times the amount proposed through operation of the slant test well. The MND accurately disclosed the amount of water proposed to be pumped and assessed the potential for environmental impacts associated with proposed test pumping (refer also to Response to MCWD-3, above). The amount of water to be pumped by the MPWSP, if developed, is not relevant to the Slant Test Well Project or IS/MND.
MCWD-11	The comment states that HYD/mm-1 is inadequate because baseline hydraulic measurements must be taken during critical, dry, below normal, above normal, and wet years. The Slant Test Well Project proposes a short-term pumping and testing activities for a limited duration to provide information regarding the hydraulic conditions of the groundwater aquifers in the project vicinity. Timing is of the essence due to water supply shortages that have existed on the Monterey Peninsula for decades. The comment recommends that the project be postponed until all five types of water years (critical, dry, below normal, above normal, and wet) have occurred and baseline fluctuations can be monitored; this would take a minimum of 5 years and most likely it would take much longer to experience all five weather conditions. This requirement would result in an unreasonable delay in project implementation under CEQA, which envisions that a negative declaration for a private project requiring a permit from a city is supposed to be completed within 180 days after the application for the permit is accepted as complete. Additional baseline monitoring is not required under CEQA and would not minimize any potentially significant environmental impacts. Monitoring wells would monitor changes in water levels and quality in areas surrounding the slant test well. HYD/mm-1 requires preliminary monitoring and sampling prior to pumping activities to develop a baseline condition of groundwater levels and quality, including the reasonable range of natural fluctuations, in the Dune Sand, 180-FTE, and 400-Foot Aquifers. HYD/mm-1 also eliminates the possibility of greater than 1 foot drawdown on any adjacent well. HYD/mm-1 is adequate to mitigate all potential impacts to less than significant levels.
MCWD-12	This comment states that Cal Am's monitoring plan must be submitted to MCWD and all well owners within a 2-mile radius of the slant test well for review and approval. HYD/mm-1 requires Cal Am coordination with and reporting to adjacent well owners, including CEMEX and other users within 2 miles of the slant test well. It is subject to review and approval of the City. There is no environmental justification under CEQA for requiring further approval by other parties other than the CEQA Lead Agency. However, the monitoring plan will be a public document and any party who wishes to submit comments relating to the plan will be able to do so.

Comment No.	Response
MCWD-13	The comment requests justification for the 1 foot drawdown threshold. The threshold was considered appropriate because a water level change of 1 foot would not be critical to the operation of most municipal or private water supply wells, particularly in the seawater-intruded area of the SVGB, where there is little to no beneficial use of groundwater in the Dune Sand and 180-Foot (or equivalent) Aquifers. Increased pumping costs potentially created by a 1 foot drawdown would be marginal (i.e., a pump running six hours per day pumping an additional 1 foot because of drawdown would cost an estimated $6 to $10 more per year in electricity). It is not uncommon for groundwater levels in the project vicinity to naturally fluctuate by 1 foot or more in any given year and other studies have used a 1 foot drawdown as the appropriate significance threshold. The 1 foot threshold is extremely conservative considering drawdown is expected to be limited to seawater-intruded areas of the basin, and there is little to no beneficial use of groundwater within the Dune Sand and 180-Foot (or 180-Foot equivalent) Aquifers in the project area. There are portions of the 400-Foot Aquifer within 2 miles of the slant test well that are outside of the seawater-intruded zone; however, no pumping is proposed in the 400-Foot Aquifer and no significant drawdown is expected in the 400-Foot Aquifer as a result of operation of the slant test well.
MCWD-14	This comment states that the Slant Test Well Project should cease entirely in the event a 1 foot drawdown is reflected in any well and discusses the additional pumping that would occur under the MPWSP. The MND determined that drawdown of less than 1 foot in the seawater-intruded areas surrounding the slant test well would be a less than significant impact. Therefore, there is no justification under CEQA to require that all pumping cease in the event this threshold is initially exceeded; doing so would defeat the information-gathering purpose of the slant test well. Mitigation is identified in HYD/mm-1 that would require pumping activities to be reduced in the event the threshold is exceeded to ensure drawdown is limited to less than 1 foot in any adjacent well. This measure is adequate to ensure potential impacts associated with well drawdown would be less than significant. No further measures are required under CEQA to avoid or reduce impacts. Potential impacts associated with the MPWSP are outside of the scope of the MND.
MCWD-15	The comment states that compensatory mitigation is inappropriate where the MPWSP would extract 6 to 15 times greater amounts of water. The SWRCB specifically mentioned potential feasible mitigation for well drawdown through compensatory measures, including measures to cover the additional costs of pumping. Therefore, this mitigation is appropriate to minimize potential impacts of slant test well pumping. Potential impacts associated with the MPWSP are outside of the scope of the MND.
MCWD-16	The comment states that the person designated to monitor implementation of the monitoring plan should have at least 10 years of hydrology or hydrogeology experience and not have been a consultant of Cal Am on any past, present, or future projects. The designated monitor will be subject to City review and approval. The City will consider these suggestions in considering whether to approve the monitor and the approval process will ensure a properly-qualified monitor is designated. The monitoring reports would be public documents that any interested party could comment on.
MCWD-17	The comment requests regular reporting (no less than monthly) of monitoring results, submittal of monitoring reports to relevant agencies and owners within 2

Comment No.	Response
	miles of the slant test well, and posting on the City's website within 3 days of receipt. HYD/mm-1 requires regular reporting (no less than annually) and submittal of monitoring reports to the City and other interested regulatory agencies. Therefore, monitoring information will be made public and available to MCWD and other interested parties. The monitoring plan will define timing and frequency of reporting requirements, which would be subject to City approval. These measures are adequate under CEQA to minimize potential impacts associated with the project and ensure regular reporting by Cal Am.
MCWD-18	The comment asserts that the MND failed to address the 1996 Annexation Agreement limiting groundwater extractions from the CEMEX property to 500 acre feet per year. The MND focuses on the potential environmental impacts of the project as opposed to the impact of any contractual agreements. The comment does not address any environmental issue; therefore, no further response is necessary. Impacts to the SVGB are addressed in the IS/MND and were found to be less than significant with identified mitigation. Refer to Response to MCWD-3, above.
MCWD-19	This comment asserts that the MND failed to identify MCWD as the source of potable water needed for drilling activities. The applicant proposes to purchase construction water from a proximate source and truck it to the site for drilling. If purchase from the City's supply through MCWD is infeasible, an alternate source would be utilized. Due to minimal amount of water needed for construction purposes, no significant environmental impact would result, regardless of the ultimate source. See Response to MCWD-7, above.
MCWD-20	The comment states that a focused EIR should be prepared for the slant test well. Despite the long history of groundwater planning in the project area, when considered under CEQA, implementation of the Slant Test Well Project as proposed does not implicate significant environmental impacts. All potentially significant impacts associated with the project would be mitigated to less than significant levels through fairly standard mitigation identified in the MND. Therefore, no EIR is required under CEQA.

Monterey Regional Water Pollution Control Agency

"Dedicated to meeting the wastewater and reclamation needs of our member agencies, while protecting the environment."

Administration Office:
5 Harris Court, Bldg. D, Monterey, CA 93940-5756
(831) 372-3367 or 422-1001, FAX: (831) 372-6178
Website: www.mrwpca.org

June 17, 2014

Emily Creel
Environmental Planner
SWCA Environmental Consultants
1422 Monterey Street, C200
San Luis Obispo, CA 93401

RE: City of Marina Slant Test Well Project Notice of Intent to Adopt a Mitigated Negative Declaration

Dear Emily,

You sent a Notice of Intent to adopt a Mitigated Negative Declaration regarding the California American Water Slant Test Well Project to me at MRWPCA. The review period ends today, June 17, 2014, and we would like to provide comments. **MRWPCA-1**

MRWPCA is supportive of the project. Within the Mitigated Negative Declaration (MND) we have identified two issues we would like to comment on:

1) On page 28 of the MND, MRWPCA should be added to the list of Responsible Agencies which have discretionary approval power over the project. As the project proposes to use the Ocean Outfall owned and operated by the MRWPCA we feel it is important to be included in this list, and
2) On pages 142 – 145 concerns previously identified by MRWPCA staff are recognized and appreciated. However the issue raised of the potential need for mechanical screening of sand prior to discharge into the Outfall was not addressed in the **Response to XVII(b)**. If mechanical screening is needed prior to discharge into the Agency Outfall this potential should be recognized. **MRWPCA-2**

In addition, MRWPCA would like to reiterate that if the temporary well does not become permanent, that it would be abandoned in place. Removal of the **MRWPCA-3**

Joint Powers Authority Member Entities
Boronda County Sanitation District, Castroville Community Services District, County of Monterey, Del Rey Oaks, Fort Ord, Marina Coast Water District, Monterey, Moss Landing County Sanitation District, Pacific Grove, Salinas, Sand City, and Seaside.

temporary well could adversely affect the Land and Ocean Outfalls more than construction.

MRWPCA-3 (continued)

Overall the MRWPCA has no objection to the City preparing a mitigated negative declaration in connection with California American Water's application for a test well in connection with its proposed desalination facility.

MRWPCA-4

Sincerely,

Garrett Haertel
Compliance Engineer

1.1.6 Response to Letter from Monterey Regional Water Pollution Control Agency

Comment No.	Response
MRWPCA-1	This comment indicates MRWPCA's support of the project and states that MRWPCA should be included in the list of responsible agencies who have discretionary approval over the project. The comment correctly identifies MRWPCA as a responsible agency due to the proposed connection to and use of the MRWPCA outfall. This is indicated on pages 27 and 28 of the MND.
MRWPCA-2	This comment identifies the potential need for mechanical screening of sand prior to discharge into the outfall. This concern was addressed in Response to XVII(b), on page 144 of the MND. Under the bullet point discussing "Sand", it is recognized that MRWPCA has requested mechanical screening to prevent sand from entering the junction structure or outfall pipe. Cal Am has confirmed that mechanical screening and/or other engineered solutions (such as an inline strainer) would be feasible, as necessary to eliminate the potential for sand to enter the junction structure and/or outfall. This issue will be addressed through the agreement between MRWPCA and Cal Am required by mitigation measure UTIL/mm-1.
MRWPCA-3	This comment reiterates MRWPCA's preference that if the well is not converted to a permanent well for use in the permanent MPWSP, that it be abandoned in place. The MND recognizes this request in the Response to XVII(b), at page 143 of the MND. As currently proposed, in the event the slant test well is not converted into a permanent well, it would be decommissioned pursuant to the requirements of California Well Standards Bulletin 74-81 and 74-90, which require removal to a depth of 5 feet below ground surface. In addition, the MND identified the potential for future re-surfacing of well casing as a result of coastal shoreline erosion, and therefore, recommended removal of the well casing to a depth of 40 feet below ground surface to eliminate the possibility for future exposure. The City and Cal Am are receptive to MRWPCA's concerns that removal of the well could adversely affect the outfall. If removal of the well to the total depth of 40 feet below ground surface upon project completion proves to be infeasible and Cal Am and MRWPCA cannot agree on a feasible and safe method of removing the well to the required depth at the time of project decommissioning, then implementation of HYD/mm-3 and removal of the well casing to a depth of 40 feet below ground surface could be achieved through mutually agreed upon measures, including for example, removal to a safe depth at the time of decommissioning (no less than 5 feet as required by Bulletin 74-81 and 74-90) and future removal to the total depth of 40 feet at a later date. Because the MRWPCA outfall sits at a higher elevation than the slant test well would, it would be subject to exposure as a result of coastal erosion before the slant test well. Removal of the well could be timed to take place as necessary to protect MRWPCA facilities and eliminate the potential for surfacing of the well components. HYD/mm-3 has been modified as follows to clarify this potential: *HYD/mm-3: The slant test well and wellhead vault shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project. The alternative slant test well location shall avoid all identified sensitive plant species and shall be limited to the graded area of the CEMEX access road to the maximum extent feasible. The slant test well location shall not encroach north of the graded roadway in closer proximity to the CEMEX settling ponds or Canal Flume. At project*

Comment No.	Response
	decommissioning, the slant test well and all related infrastructure shall be removed to a depth of no less than 40 feet below ground surface to eliminate the possibility for future re-surfacing and exposure of submerged well casing or related project components as a result of coastal erosion and shoreline retreat. Removal of the well would take place upon completion of the test pumping and/or in segments over time as mutually agreed upon by the City, MRWPCA, Cal Am, the California State Lands Commission, and other identified regulatory agencies. If removal to the total required depth of 40 feet below ground surface is not completed within 5 years following completion of the test pumping, the applicant shall post a bond with the City to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.
MRWPCA-4	This comment states that MRWPCA has no objection to the City preparing an MND for the proposed slant test well. No response is necessary.

STATE OF CALIFORNIA, NATURAL RESOURCES AGENCY — EDMUND G. BROWN JR., GOVERNOR

STATE MINING AND GEOLOGY BOARD

DEPARTMENT OF CONSERVATION

801 K Street • Suite 2015 • Sacramento, California 95814

PHONE: 916 / 322-1082 • FAX: 916 / 445-0738 • TDD: 916 / 324-2555 • INTERNET: conservation.ca.gov/smgb

IGNACIO GONZALEZ, CHAIR
JELISAVETA GAVRIC, VICE CHAIR
GEORGE KENLINE
JOHN LANE
NEGAR NOUSHKAM

June 17, 2014

VIA E-MAIL: ecreel@swca.com

City of Marina
c/o Ms. Emily Creel, Environmental Planner
1422 Monterey Street, Suite C200
San Luis Obispo, California 93401

Re: California American Water Slant Test Well Project – Draft MND

Dear Ms. Creel:

Thank you for the opportunity to provide comments on the California American Water Slant Test Well Project Draft Mitigated Negative Declaration. State Mining and Geology Board (SMGB) staff has completed a preliminary review of the Draft MND, and at this time we have no comments. **SMGB-1**

Please continue to forward all environmental documents pertaining to this project to the SMGB for review and comment. Should you have any questions regarding this matter, please do not hesitate to contact either Mr. Will Arcand or myself at the SMGB office.

Sincerely,

Stephen M. Testa
Executive Officer

cc: Dr. John Parrish, Office of Mine Reclamation
Theresa Szymanis, City of Marina Planning Services Division

Mission of the State Mining and Geology Board is to Represent the State's Interest in the Development, Protection and Conservation of Mineral Resources; Reclamation of Mined Lands; Development of Geologic and Seismic Hazard Information; and to Provide a Forum for Public Review.

1.1.7 Response to Letter from State Mining and Geology Board

Comment No.	Response
SMGB-1	The comment states that SMGB has no comments on the proposed slant test well project and requests that subsequent project-related documents continue to be provided to SMGB for its review and comment. The City and Cal Am will continue to provide project-related documents to SMGB. No additional response is necessary.

1.2 Non-Agency Organization Comment Letters and Responses

The following agencies have submitted comments on the Draft MND.

Respondent	Code	Contact Information	Page
AG Land Trust Letter dated: June 17, 2014	ALT	P.O. Box 1731 Salinas, CA 93902 *Contact: Kellie D. Morgantini, Land Trust Board Member*	43

To: City of Marina
211 Hillcrest Avenue
Marina, California 93933

Sent by Facsimile (831.384.9148)
and Email Transmission

To the City of Marina -

RE: Draft Mitigated Negative Declaration for the California American Water Slant Test Well Project

The Ag Land Trust hereby incorporates by reference all statements in the attached documents - demonstrating the Land Trust's continuing objection to the proposed slant wells due to the lack of any proof provided by Cal-Am, the County of Monterey and all affected and permitting governmental agencies regarding the fact Cal-Am has any groundwater rights within the overdrafted Salinas Valley aquifers. **ALT-1**

Absent actual written proof of groundwater rights in the overdrafted (since 1948) Salinas Valley groundwater basin, Cal-Am cannot demonstrate it's right to pump water from its proposed slant wells for any purpose. It is the Land Trust's position the draft negative declaration is deficient because it does not address the significant, unmitigatable (under California groundwater rights law) adverse impacts to the over-drafted groundwater basin and to the Ag Land trust's overlying groundwater rights. **ALT-2** **ALT-3**

The Land Trust believes the proposed Cal-Am test pumping will degrade irreparably our groundwater supplies and has the potential to cause significant economic and environmental damage to our property, to other overlying land owners who have not received actual written notice of this project, and to the water resources of the Salinas Valley. **ALT-4** **ALT-5**

The draft mitigated negative declaration must not be adopted untill this necessary issue and it consequential significant adverse environmental impacts are addressed with proposed mitigations which may then be the subject of public discussion and debate as required by CEQA. **ALT-6**

Thank you for this opportunity to comment. Please contact us if you have any questions.

Sincerely,

The Ag Land Trust

s/ Kellie D. Morgantini
Land Trust Board Member

ALT-7

PAJARO / SUNNY MESA

COMMUNITY SERVICES DISTRICT
136 San Juan Road, Royal Oaks, CA 95076
(831) 722-1389 • (831) 663-2181 • Fax (831) 722-2137

April 28, 2008

The Honorable Supervisor Lou Calcagno
Second District
P.O. Box 787
Castroville, CA 95012

Dear Supervisor Calcagno:

As you know, Pajaro/Sunny Mesa Community Services District (PSMCSD) is the only non-profit, public agency providing retail potable water services in Prunedale. After five (5) years of appearances before the United States District Court, PSMCSD, on April 11, 2008, assumed ownership of all of the water systems and water rights that previously belonged to the Alisal Water Corporation (ALCO). We are now the largest purveyor of water to residents of North Monterey County.

Pursuant to the unanimous direction of the Board of Directors of the PSMCSD, we are forwarding this letter to you to address, in writing, a number of significant, legal, financial, and land use concerns related to and apparently affecting the proposed "Granite Ridge" pipeline project. We offer these comments so as to avoid public controversy in the resolution of the groundwater problems in Prunedale.

We believe these serious legal issues and questions must be addressed to the voters before a public vote on this project should be held. We provide these comments and these descriptions of issues and concerns to you in order to help facilitate the full and fair consideration of these issues by the land owners in the affected area prior to an election. Further, a number of our new customers on the former ALCO systems have approached our District and have asked us questions regarding the proposed pipeline project. Responses to these unanswered questions included herein apparently were not addressed by the Monterey County Water Resources Agency (MCWRA) representatives at the March 19th meeting.

PSMCSD offers the following questions and comments in the spirit of cooperation with you, and so as to help you and the Board of Supervisors to avoid any divisive legal conflicts or the excessive monetary damages awards against the County, like those that have burdened the Salinas Valley Water Project and Pajaro Valley Water Management Agency (PVWMA). As you know, PSMCSD, as the largest purveyor of water in Prunedale, has struggled with water supply and water quality issues on a daily basis for the last five (5) years. We believe it is imperative for the staff of

1

Monterey County to provide to you and the public with clear, definitive, specific, and detailed answers to the issues raised below:

ALT-7 (continued)

1. The Prunedale percolated groundwater basin is in overdraft, and it is not an adjudicated groundwater basin. The Prunedale percolated groundwater aquifer is generally a single, unconfined aquifer that has been and continues to experience regional and localized over-drafting of ground water in excess of annual recharge. The sole source of recharge to the aquifer is rainfall. The overdraft was initially identified in Monterey County studies in the 1960's and 1970's and has been repeatedly identified as being in overdraft by more recent MCWRA hydrologic and hydro-geologic studies (U.S. ARCORPS, 1980; Anderson-Nichols 1980-81; Fugro, 1995; Montgomery-Watson 1998). Further, the overdraft in the North County aquifers (Prunedale and Elkhorn) has been publicly acknowledged for decades by both the Monterey County Board of Supervisors and the California Coastal Commission in the adopted "North County Local Coastal Plan" (1982), the "Monterey County General Plan" (1984) and the "North County Area Plan" (1984).

   In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (Katz v. Walkinshaw 141 Cal. 116). In an over-drafted basin, there is no surplus water available for new "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Prunedale percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Prunedale aquifers. Moreover, no legal claim or relationship asserting that water from a distant water project (over 13 miles from Prunedale to the rubber dam) may be credited for the over-drafted Prunedale percolated groundwater basin can be justified or sustained. California groundwater law refutes such "voo doo hydrology" by holding that "Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters" (Vineland I.R. v. Azusa I.C. 126 Cal. 486).

   The 1998 MCWRA Montgomery-Watson report (prepared for MCWRA) determined that there is no hydrologic connection between the Salinas River and the over-drafted Prunedale percolated groundwater aquifers. Generally, this is explained because water, even groundwater, does not run uphill from a water course. Moreover, after extensive research, PSMCSD is not aware of any continuous control maintained by MCWRA over water used or percolated into Salinas Valley confined aquifers at the Salinas River. Loss of continuous management and control of appropriated water results in an abandonment and forfeiture of the right to use such water by the initial appropriator.

   As we have advised you at your office, PSMCSD, after working for over five (5) years, has acquired and secured all of ALCO's pre-existing appropriative groundwater rights in North County, both as ALCO's successor agency (by prior use, overlying rights, and prescriptive use) and by court order of the U.S. District Court (see Judge Jeremy Fogel's attached order). PSMCSD has spent thousand of hours and dollars to legally secure these groundwater water rights, along with the plumbing of the systems, because we were intensely aware of the over-drafted percolated groundwater aquifers in the Prunedale and

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North County areas, and the lack of surplus water for new appropriators. Had PSMCSD not secured these rights, we would have had no water to serve the ALCO systems.

Other than our court-affirmed ground water rights, we are aware of no other appropriative water rights held by other public agencies of any significant amounts. The rest of the water rights that may be legally exercised in the Prunedale groundwater basin are "correlative overlying groundwater rights" that belong, as property rights, solely to the individual land owners whose lands overly the over-drafted percolated groundwater basin.

We are not aware of any water rights, appropriative or prescriptive, that are held or previously claimed by MCWRA in the over-drafted Prunedale groundwater basin or aquifer. We are not aware of MCWRA ever owning wells or pumping water that it put to beneficial uses in Prunedale.

Further, we believe that the "correlative overlying groundwater rights" held by the Monterey County Parks Department (as an overlying landowner) at Manzanita Park are fully used to irrigate and maintain the fields and park facilities at the park. In fact, it appears that the park may be using more than its "correlative" share of the percolated groundwater. As we have pointed out, California law holds that by definition, no surplus water is legally available to "new appropriators" in an over-drafted basin. The clear and often re-stated law regarding groundwater rights in an over-drafted basin has been reiterated by California courts for over a century (Katz v. Walkinshaw, 141 Cal. 116; Burr v. Maclay 160 Cal. 268; Pasadena v. Alhambra 33 Cal. 2nd 908; City of Barstow v. Mojave 23 Cal. 4th 1224). PSMCSD believes that the MCWRA may have no water rights in Prunedale.

Given the facts that we have outlined above, we believe that your County staff and County Counsel must specifically identify and address the actual sources of the asserted appropriative rights and/or alleged entitlements claimed by MCWRA or RMC for the water that MCWRA and RMC propose to pump from the new wells. We believe they need to answer these questions for you before the County is placed in a position of defending a legally deficient project that has been proposed to the voters. The fact that excessive amounts of water can be pumped from a well is akin to the ability of a driver of a car to exceed 100 mph. Without legal authority or rights, neither is legal conduct.

2. The wells as proposed by MCWRA and RMC are located in the Coastal Zone and in the sub-watershed of the Moro Cojo Slough. The Aromas Sands formation aquifer underlying the park, from which MCWRA and RMC propose to extract water, is an over-drafted coastal percolated groundwater aquifer that is recharged by "local rainfall" (see: U.S. ARCORPS 1980; Anderson-Nichols, 1981; North County LCP 1982; Fugro 1994-96; Montgomery-Watson 1998). The North County Local Coastal Plan states that the remedy for this overdraft is "Canals or tunnels would have to be constructed to deliver water to North County". No such delivery conveyances are proposed by MCWRA or RMC.

   There is no reported scientific or hydro-geologic evidence that PSMCSD has identified that there is any exchange of water between the "unconfined" Aromas Sand formations in the North County Local Coastal Plan area and the "confined" 180 ft. or 400 ft. aquifers in the Salinas Valley.

3

ALT-7 (continued)

ALT-7
(continued)

The use or percolation of water into Salinas Valley aquifers from the "Salinas Valley Water Project" does not and will not benefit the Prunedale /Granite Ridge Aquifers. This was the conclusion of the Montgomery-Watson report (1998) which was used to justify the necessity of the "Salinas Valley Water Project" to address seawater intrusion within the confined aquifers of the Salinas Valley groundwater basin.

River water from the "SVWP" is not available to be extracted from the wells drawing on the distant over-drafted, percolated groundwater aquifers at Manzanita Park. Further, the river water from the "SVWP" is released from the "management and control" of the MCWRA at the rubber dam over 13 miles from Prunedale. In other words, MCWRA gives up its appropriative water rights to the water from the SVWP when it allows the water to be used or to percolate into the non-adjudicated aquifers of the Salinas Valley. Once that water is used by farmers or percolated into the ground, it is "abandoned" and, as percolated groundwater, is available to be pumped and used by the landowners whose lands overly the confined aquifers of the Salinas Valley. There are hundreds of intervening landowners with overlying groundwater rights in the unadjudicated over-drafted groundwater basin between the Salinas River and North County.

PSMCSD believes that you must demand that your staff and County Counsel answer the following questions to avoid future legal conflicts: Has MCWRA or RMC prepared any legal analysis, based upon the established doctrines and tenants of California groundwater law, to explain "whose water" they are proposing to pump into their proposed pipeline? What water rights are they relying on that would justify the development of the proposed $25 million dollar project and the attachment of the incumbent debt upon rate payers? Do MCWRA and RMC plan on trying to take, through prescription, water rights from overlying landowners in Prunedale, only to sell the landowners' water back to them at an inflated cost? A specific answer to these questions needs to be publicly provided to water rights holders in Prunedale before a public vote on this matter.

3. The wells proposed by MCWRA and RMC are to be located in the Coastal Zone, in the watershed of the Moro Cojo Slough, even though a large portion of the proposed service area is in the watershed of the Tembladero Slough. The over-drafted aquifers that are proposed to be utilized by MCWRA and RMC are required to be used by the North County LCP "to protect groundwater supplies for coastal priority agricultural uses". We believe your staff need to tell you that, if the Coastal Commission enforces the policies of the North County LCP that have been in effect since 1982 and which correspond with the requirements of state law, will MCWRA and RMC be made to pay back to the taxpayers the public funds that they have expended or received for the proposed project that, on its face, appears to violate existing county and state laws?

4. The project proposed by MCWRA and RMC is a "project" as defined by the North County Local Coastal Plan, the Monterey County General Plan, the California Public Resources Code, the California Coastal Act, the California Water Code, and the California Government Code. The Monterey County General Plan requires that any "project" applicant must have and shall demonstrate proof of a long-term, sustainable supply of water for their proposed "project". It goes without saying that the applicant must own or control the rights to the water, or that long-standing County mandate and condition would be rendered meaningless. Your staff needs to tell you: has MCWRA or RMC, which has

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ALT-7
(continued)

been paid nearly $150,000.00 to investigate this project, indentified the "long-term, sustainable" water supply for their "project" that they are now advocating? Does MCWRA have any entitlement to such percolated water? Have they disclosed to the public, or the Board of Supervisors, or the County Counsel's office the source of the groundwater and groundwater rights for their planned project for which they have already been paid nearly $150,000.00? Have they addressed the fact that existing wells at Manzanita Park already show nitrate contamination levels, due to past fertilizer use in the area, of 20 ppm? What is RMC's "long-term sustainable" supply of water if their increased pumping in their proposed new wells, in an already over-drafted coastal aquifer, results in increased migration and concentration of nitrate contamination? What is the additional cost of their proposed solution? Does the proposed project violate the existing North County LCP prohibition's on the use of more than 50% of the safe yield level of water supplies by compromising water use for projects in the Coastal Zone? We ask that you secure the answers to these questions from the people who have been paid thousands of taxpayer's dollars before the public is asked to vote on this issue.

5. The Monterey County Board of Supervisors adopted, in the late 1990's, a "no groundwater credit or transfer" ordinance for North County. Please explain how this project, proposed by MCWRA and RMC to offset existing well pumping with transferred, increased pumping of new wells, does not violate the County's existing ordinance against the transfer of water supply credits. We believe your staff and RMC need to answer this before a project that violates county policy and ordinances is put to a vote.

6. When a public agency sells bonds or offers Certificates of Participation (C.O.P.'s) for sale to fund capital facilities projects, the Purchasers of the bonds or C.O.P.'s rely on the truthful representations made by the public agency related to facts and the factual circumstances surrounding the proposed project. When PSMCSD sought approval of our voters for C.O.P.'s to re-construct the old Vega Road Mutual Water Company water system, PSMCSD was able to, and did, represent to the buyers of the C.O.P.'s that we had acquired Vega Road Mutual's pre-existing appropriative groundwater rights. In other words, we secured, through purchase, the groundwater rights and the water supplies needed to fill the pipes and deliver water. PSMCSD is not aware of any groundwater water rights or water supplies that are owned by or have been purchased by MCWRA to "fill the pipes" of the proposed "Granite Ridge" project. Moreover, PSMCSD believes public disclosure and representations of the source and legality of appropriation of the groundwater, or the lack thereof, must be disclosed to potential buyers of bonds or C.O.P.'s so as to avoid potential allegations of fraud. It is important to point out those challenges to illegal appropriations of groundwater by overlying land owners may lawfully be filed for up to five (5) years after the initiation of the pumping of the water. Loss by the County of a suit against the MCWRA for illegal takings or prescriptive appropriations of groundwater four (4) or five (5) years after the project is built would put Monterey County in the same position as the Pajaro Valley Water Management Agency (PVWMA) has now found itself, owing tens of millions of dollars to its constituents. In this case, however, the purchasers of the C.O.P.'s would also have a cause of action against MCWRA and the County given that the apparent lack of water rights to fill the pipes and operate the proposed project has now been disclosed.

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PSMCSD believes that you need to ask: has the County Counsel's office determined what appropriative water rights are to be publicly represented to potential buyers of the bonds or C.O.P.'s as the source of the water for the project? No money appears in the MCWRA proposed budget to purchase the existing sources and the water rights of the water systems and overlying land owners in Prunedale. Was this an oversight? If this amount is added to the project costs, how much will this increase the costs to rate-payers? In the event that a lawsuit against the MCWRA and the County, challenging their lack of groundwater rights for this project, is successful, has the County mandated and required that RMC to maintain a liability insurance policy for the benefit of the County and the ratepayers in the amount of at least $25 million dollars to indemnify the County and the ratepayers for following RMC's recommendations? PSMCSD believes that this assurance must be disclosed to the voters before an election on this project. The voters will not be excused from their obligation to pay for their share of the indebtedness of the pipeline, even if there is no water that can be delivered to them because of a lack of water rights.

ALT-7 (continued)

7. As we have disclosed to you in your office, in early 2007, PSMCSD filed several applications for grants with the California Department of Public Health to repair water facilities and remediate water quality issues in the former ALCO systems. These systems are in disrepair and have existing arsenic and nitrate contamination issues. Please ask your staff to disclose to us and our customers if the grants that RMC proposes to apply for, as part of their project, conflict with or compete with our prior grant applications. Please disclose how much RMC has been and is to be paid for their activities on this proposed project. Has this information been disclosed to the voters? RMC's contract, granted to them by MCWRA, was not subject to a public bid process, so the voters need to know how much RMC is being paid and will be paid to advance a project with problematic water rights.

8. In 2002, the Board of Supervisors passed a resolution that it would no longer own or develop water systems. The Board subsequently sold the Ralph Lane water system, that was built with state grants, to the California-American Water Company, and Cal-Am has now increased the water rates of the customers by over 50%. Given the continued existence of the Board's 2002 resolution, your staff needs to disclose to the public what happens if a majority of the Board decides to sell the proposed system to a "for-profit" privately owned utility? The voters need to know the answer to this question given the County's past conduct.

9. The project proposed by MCWRA and RMC will allow the new development of lots and residential units (non-coastal priority uses) outside of the Coastal Zone that do not otherwise have water supplies. The proposed new wells do not increase or generate any new water resources for the Prunedale area. The proposed project does, however, propose to permanently increase the consumptive use of groundwater from an already over-drafted, coastal percolated groundwater basin. Has MCWRA or RMC explained how their proposed project does not violate the mandate to prevent adverse cumulative impacts upon coastal zone groundwater resources (North County LCP Sec. 2.5.3 (A) (3))?

In January, Kevin O'Brien, an attorney who works for the County of Monterey, admitted, at a public hearing held by PVWMA, that the City of Watsonville had no existing appropriative rights for the water that the City contracted to pump to blend with its reclaimed sewage for

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PVWMA's Coastal Water project. Pajaro Valley landowners are currently considering filing suit against the City to challenge its lack of additional appropriative water rights and its apparent attempt to "take" groundwater in the over-drafted Pajaro Valley groundwater basin. The consulting firm that authored and proposed the controversial PVWMA project, without securing appropriative water rights to "fill the pipes", was RMC. RMC was, however paid millions of dollars to consult, design, and supervise the construction of a pipeline with a problematic water supply.

PSMCSD knows all to well the need for a remedy to the "water problems" in Prunedale. They are grave. We have to deal with them every day. We have spent years working to address these issues in a lawful and environmentally responsible way. The issues we have raised are issues of law and are not premature. The issues that we have raised cannot wait to be addressed in a future E.I.R. These are issues of legality that must be addressed before any more money is spent on a project that may be illegal in its face, or dependant upon water to which MCWRA has no legal rights or entitlements. We ask that you provide the answers to the questions that we have raised before any election for the protection of our customers, your constituents, and all of the land owners in the affected area.

Respectfully,

Joe Rosa

Executed on behalf of the Board of Directors
By Joe Rosa
General Manager

cc: Charles McKee, County Counsel

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ALT-7
(continued)

ALT-8

AG LAND TRUST

Monterey County Agricultural and Historic Land Conservancy

P.O. Box 1731, Salinas CA 93902

www.aglandconservancy.org

Phone: 831-422-5868 Fax: 831-758-0460

April 25, 2009

TO: Monterey County Board of Supervisors

FROM: Monterey County Ag Land Trust

RE: Opposition to proposed MOU's for Monterey Regional Supply Planning and Coastal Water Project

By this letter, the Board of Directors of the Ag Land Trust unanimously and vehemently objects to the proposed MOUs and the Coastal Water Project that are recommended for your approval by the staff of the MCWRA. These proposed MOUs and the project that they expressly advance are wrongful, illegal acts that propose to take and convert our water and water rights for the benefit of a private company. We hereby incorporate by reference into this letter (as our own) each, every, and all facts, objections, statements, references, legal citations, and assertions located within each and every Attachment herewith attached to this correspondence. **Before your Board takes any action on these matters that will expose you to significant litigation from landowners with senior overlying percolated groundwater rights, you need to ask the question and receive a written answer from your staff, "If the Salinas Valley percolated groundwater basin has been in overdraft for sixty years, whose percolated groundwater and overlying percolated groundwater rights are you proposing that we take without compensation to benefit Cal-Am?'**

1. The proposed MOUs, and the projects which they include, violate and will result in an illegal, wrongful, "ultra vires", and unlawful "taking" of our percolated overlying groundwater rights. Our Trust owns (in fee) the large ranch (on which we grow artichokes and row crops) that lies between the ocean and the proposed "well field" that the California-American Water Company (a private, for profit appropriator) proposes to use to illegally divert percolated groundwater from the overdrafted Salinas groundwater basin. The so-called "environmentally superior alternative" in the Coastal Water Project EIR is based upon the illegal taking of our water rights and pumping of our percolated groundwater for the economic benefit of Cal-Am. The Salinas basin has been in overdraft for over 60 years and California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (Katz v. Walkinshaw 141 Cal. 116). In an over-drafted basin, there is no surplus water available for new "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Salinas percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Moreover, no legal claim or relationship asserting that water from a distant water project (over 6 miles from the proposed Cal-Am well field to the rubber dam) may be credited for the over-drafted Salinas percolated

ALT-8 (continued)

groundwater basin can be justified or sustained. California groundwater law refutes such "voo doo hydrology" by holding that "Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters" (Vineland I.R. v. Azusa I.C. 126 Cal. 486). Not only does Cal-Am have no right to take ground water from under our lands, but neither does the MCWRA. **MCWRA HAS NO PERCOLATED OVERLYING GROUNDWATER RIGHTS THAT IT MAY USE TO GIVE TO CAL-AM FOR EXPORT OUT OF THE BASIN.** Our first objection to this illegal project and conduct was filed with the CPUC and MCWRA on November 6, 2006 (see herein incorporated Attachment 1). Your staff has not responded and our concerns have been ignored.

2. The recommended MOUs before the Board of Supervisors is a project under CEQA and the MCWRA staff recommendations to the Board violate the California Environmental Quality Act and the California Supreme Court decision in the "Tara" case. The California Supreme Court's decision in *Save Tara v. City of West Hollywood*, Case No. S151402 (October 30, 2008), provides specific direction to public agencies entering into contingent agreements. In this opinion, the Supreme Court held that the City of West Hollywood ("City") had violated CEQA by entering into a conditional agreement to sell land and provide financing to a developer before undertaking and completing environmental (CEQA)review. This is exactly what the MCWRA staff is asking the Board to do. They want you to approve their project without a certified EIR from the CPUC. One of the proposed MOUs even references the fact that it is contingent on the certification of the FEIR by the CPUC. Monterey County abdicated its role as the "lead" agency under CEQA years ago when it agreed to allow the CPUC to prepare the EIR on the Coastal Water Project. Monterey County is now a "responsible agency" and must wait while the CPUC staff deals with the fact that its draft EIR is woefully inadequate because of its failure to address that fact that none of the public agencies in Monterey County have the rights to pump groundwater from an overdrafted basin for the economic benefit of Cal-Am(see Attachment 2). Further, the Draft EIR acknowledges that the proposed MOUs and Coastal Water Project violate MULTIPLE provisions of the Monterey County General Plan, and the North County Local Coastal Plan, and contradicts the express purpose (ELIMINATION OF SEAWATER INTRUSION) of every water development project for which land owners have been assessed and charged (and continue to be charged) by Monterey County and the MCWRA for the past 50 years, including the Salinas Valley Water Project.

3. It is clear that the MOUs and the Coastal Water Project are being advanced by MCWRA staff and Cal-Am jointly as if they are already one entity. In fact, the proposed MOUs advanced by MCWRA staff advocate a governmental structure (JPA) that would be completely immune for the voters' constitutional rights of initiative, recall, and referendum. Moreover, this plan to deny the Monterey County public's right to public ownership of any new water project was also secretly advanced this month in Assembly Bill AB 419 (Caballero) wherein Cal-Am lobbyists got the Assemblywoman to try to change one hundred years of state law by "redefining a JPA with a private, for-profit utility (Cal-Am) member" as a "public agency". (See Attachment 3). These actions by MCWRA staff and Cal-Am to circumvent and "short-circuit" the mandatory CEQA process for the MOUs and the Coastal Water Project are further reflected in Attachment 4 wherein counsel for MCWRA requested an extension of time from the SWRCB (on permits issued to address water shortages in the Salinas Valley) to develop "alternative plans". Although the letter says that "there will be no export of groundwater outside of the Salinas basin", that is exactly what the MOUs and the Coastal Water Project proposes... to pump and export thousands of acre feet of groundwater out of the Salinas basin for the benefit of Cal-Am.

4. Our wells and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. MCWRA nor the CPUC has never contacted our Board of Directors that includes farmers (including past

presidents of the Grower-Shippers Assn.), bankers, attorneys, and agricultural professionals to get our input on this proposed taking of our water rights. As a result of this lack of concern for our property rights, we must assume that the County has now assumed an adversary position toward our Land Trust and our groundwater rights. In 2001-2002, MCWRA staff recommended that you include the Gonzales area in the assessment district for the SVWP. The Gonzales farmers objected, your MCWRA staff ignored them, you got sued and the taxpayers ended up paying the bill. From 1999 – 2005, the owner of Water World objected to the conduct of MCWRA staff and was ignored by your staff. Thirty (30) million dollars later, you lost the lawsuit and the taxpayers paid the bill. When will the taxpayers stop having to pay for poorly conceived ideas from MCWRA and Cal-Am?

ALT-8 (continued)

5. The draft CPUC EIR marginalizes the grave and significant environmental impacts on groundwater and groundwater rights, violations of the General Plan and Local Coastal Plan policies, and the illegal violations and takings of privately owned, usufructory water rights upon which the Coastal water Project depends. **These and the illegal appropriations of thousands of acre feet of groundwater from under privately owned land in an overdrafted basin ARE NOT A LESS THAN SIGNIFICANT IMPACTS! This is the project that the staff of the MCWRA staff wants the Board to approve without a certified EIR.** (see Attachment 5). Further, the Marina Coast Water Agency has used up all of its full allocation of groundwater from the Salinas Valley groundwater basin, and as an appropriator is not entitled to any more water from the overdrafted basin, contrary to the information presented to the Growers-Shippers Association by Mr. Curtis Weeks of MCWRA (see Attachment 6)..

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

The Board of Directors of the Monterey County Ag Land Trust

CC: CPUC, MCWD, and California-American Water Co.

ALT-9

LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

March 22, 2010

Via Email
Leslie Girard
Assistant County Counsel
County of Monterey
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Irven Grant
Deputy County Counsel
Monterey County Water Resources Agency
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Subject: March 3, 2010 Public Records Request; Lack of Adequate Response

Dear Mr. Girard and Mr. Grant:

On March 3, 2010, this Office made a records request for all County records and Monterey County Water Resources Agency (MCWRA) records as follows:

Our Request

1. All records that reference the groundwater rights held by the MCWRA or by Marina Coast Water District, as asserted by Curtis Weeks at the Board of Supervisors' hearing on February 26, 2010. (In response to Supervisor Calcagno's question regarding whether the MCWRA has rights to pump groundwater for the proposed Regional Desalination Project, Mr. Weeks had responded in part: "As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas basin.")

MCWRA Response

On March 12, the MCWRA asked for an additional time to respond, to March 19. On Friday, March 19, at 4:46 PM, the MCWRA faxed a letter claiming that the March 3 request was "ambiguous." MCWRA interpreted our request regarding groundwater rights to "mean MCWRA authority over groundwater. In this regard, the reference would be to the Agency Act."

Problems with the MCWRA Response

The MCWRA response is disingenuous. Mr. Weeks stated that "both ourselves [MCWRA] and Marina Coast Water District are organizations that can pump groundwater within the Salinas basin." In order to pump groundwater legally, the MCWRA must hold rights to that groundwater. The MCWRA Act does not document such rights. Either (1) the MCWRA does not have records that show MCWRA has

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(continued)

groundwater rights, or (2) the MCWRA has records that show its groundwater rights and has violated the Public Records Act by not producing them.

As to our records request showing the Marina Coast Water District groundwater rights, the MCWRA response was "you should contact them [MCWD]." That response is equally disingenuous. On February 26, Mr. Weeks represented to the Board of Supervisors that MCWD "can pump groundwater within the Salinas basin." In order to pump groundwater legally, MCWD needs rights to do so. Either (1) there are no records that show MCWD holds groundwater rights outside of the MCWD boundaries, or (2) MCWRA has such records and is illegally withholding them from the public.

The March 19, MCWRA response further states that Mr. Weeks' February 26 comment – that "every drop of water that we pump that is Salinas groundwater will stay in the Salinas Groundwater basin" – refers "to the design and intent of the Salinas River Diversion Project." That response does not make sense because the Diversion Project does not involve any groundwater pumping by the MCWRA.

Urgent Request

By Wednesday, March 24, please either produce all County and MCWRA records that show that MCWRA or MCWD hold groundwater rights that can be used for the Regional Project pumping, or advise us that there are no such records. My clients ask the County, the MCWRA and its legal counsel to pay immediate attention to this request. To date, the County has not responded to the March 3, 2010 request, although it is required to respond. My clients reserve all rights, and are considering their options under the California Public Records Act.

Very truly yours,

Molly Erickson

Attachments:

A. March 3, 2010 Public Records Request
B. March 12, 2010 MCWRA response
C. March 19, 2010 MCWRA response (The fax header reads "CA WATER RESOURCES AGENCY." The time stamp is incorrect; it is one hour slow.)

cc: Board of Supervisors
Curtis Weeks and David Kimbrough, MCWRA

ALT-10

LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
(831) 373-0242

479 Pacific Street, Suite 1
Monterey, California 93940

Telephone
(831) 373-1214

March 3, 2010

Via Facsimile
Les Girard
Assistant County Counsel
County of Monterey
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Irv Grant
Deputy County Counsel
Monterey County Water Resource Agency
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Subject: Public Records Request

Dear Mr. Girard and Mr. Grant:

This Office would like to inspect the following County records and County Water Resources Agency records, and possibly copy some of them.

1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency.

   As further information, we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency has rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows:

   > "As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas basin. Every drop of water that we pump that is Salinas groundwater will stay in the Salinas groundwater basin. After the implementation, which will begin . . . actually, the operation of the Salinas Valley Water Project on the 22nd of April, we'll be fully in balance. There will be no harm to any pumpers in the Salinas Valley."

2. All records that show that after the initiation of the operation of the Salinas Valley Water Project, the Salinas Groundwater basin will "be fully in balance," as Mr. Weeks asserted.

EXHIBIT A 1 of 3

The request includes all email communications of all kinds, including those, for example, residing on personal computers, on shared drive(s), and in archived form. We request access to the emails in the same format held by the County. (Gov. Code, § 6253.9, subd. (a).) Instead of printing out electronic records, please place them on CDs. If the records are kept individually, please copy them as individual emails, and include attachments attached to the respective emails.

If you produce an EIR or any lengthy documents in response, please identify the specific pages on which the responsive information is presented.

If there are records that you think might be eliminated from the County production, please let me know. If the County has any questions regarding this request, please contact me. We will be happy to assist the County in making its response as complete and efficient as possible.

I draw the County's attention to Government Code section 6253.1, which requires a public agency to assist the public in making a focused and effective request by (1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the County determines that any or all or the information is exempt from disclosure, I ask the County to reconsider that determination in view of Proposition 59, which amended the state Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the County has relied in the past. If the County determines that any requested records are subject to a still-valid exemption, I ask that: (1) the County exercise its discretion to disclose some or all of the records notwithstanding the exemption, and (2) with respect to records containing both exempt and non-exempt content, the County redact the exempt content and disclose the rest.

Should the County deny part or all of this request, the County is required to provide a written response describing the legal authority on which the County relies.

Please respond at your earliest opportunity. If you have any questions, please let me know promptly. Thank you for your professional courtesy.

Very truly yours,

Molly Erickson

EXHIBIT A 2 of 3

TRANSMISSION VERIFICATION REPORT

TIME : 03/03/2010 16:45
NAME : STAMP LAW OFFICES
FAX : 8313730242
TEL : 8313731214
SER.# : BROF5J297015

DATE,TIME	03/03 16:45
FAX NO./NAME	7555283
DURATION	00:00:24
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

LAW OFFICES OF
MICHAEL W. STAMP

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Monterey, California 93940

Telephone
(831) 373-1214

March 3, 2010

Via Facsimile
Les Girard
Assistant County Counsel
County of Monterey
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Irv Grant
Deputy County Counsel
Monterey County Water Resource Agency
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Subject: Public Records Request

Dear Mr. Girard and Mr. Grant:

This Office would like to inspect the following County records and County Water Resources Agency records, and possibly copy some of them.

1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency.

   As further information, we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency has rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows:

   EXHIBIT A 2 of 3

   "As to wells that are developing basin water, both [illegible]

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MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
SALINAS, CA 93902
(831)755-4860
FAX (831)424-7935

CURTIS V. WEEKS
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

March 12, 2010

Molly Erickson
Law Offices of Michael W. Stamp
479 Pacific St., Suite 1
Monterey, CA 93940

Re: Your Public Records Act Request dated March 3, 2010

Dear Molly,

This letter is in response to your request dated March 3, 2010, wherein you requested:

"1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency.

As further information we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency as rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows: 'As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas Basin,. Every drop of water that we pump that is Salinas groundwater will stay in the Salinas groundwater basin. After the implementation, which will begin…actually the operation of the Salinas Valley Water Project on the 22nd of April, we'll be fully in balance. There will be no harm to any pumpers in the Salinas Valley'.

"2. All records that show that after the initiation of the operation of the Salinas Valley Water Project, the Salinas Groundwater basin will 'be fully in balance,' as Mr. Weeks asserted."

We are in the process of collecting and reviewing records that may be responsive to your request as we understand it. Because your request is quite broad and involves the collection and review of many records, we are extending the time to provide you with a complete response. We will advise you further, no later than March 19, 2010, as to the status of our response.

Sincerely,

Alice Hehauit
Public Records Coordinator

EXHIBIT B 1 of 1

Monterey County Water Resources Agency manages, protects, and enhances the quantity and quality of water and provides sacrificed flood control services for present and future generations of Monterey County.

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MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
SALINAS, CA 93902
(831)755-4860
FAX (831) 424-7935

CURTIS V. WEEKS
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

March 19, 2010

Molly Erickson
Law Offices of Michael W. Stamp
479 Pacific St., Suite 1
Monterey, CA 93940

Re: Your Public Records Act Request dated March 3, 2010

Dear Molly,

This letter is in response to your request dated March 3, 2010, wherein you requested:

"1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency."

The first part of your request is ambiguous. When you use the term "all records that reference the groundwater rights held by Monterey County Water Resources Agency," this is interpreted to mean MCWRA authority over groundwater. In this regard, the reference would be to the Agency Act provided. If you mean some other interpretation, let me know. As for Marina Coast Water District, you should contact them.

"As further information we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency has rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows: 'As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas Basin. Every drop of water that we pump that is Salinas groundwater will stay in the Salinas groundwater basin. After the implementation, which will begin ... actually the operation of the Salinas Valley Water Project on the 22nd of April, we'll be fully in balance. There will be no harm to any pumpers in the Salinas Valley.'"

As for the second part of your request, again, the Agency Act provides MCWRA with the authority to control the movement of groundwater, and its exploration. The Agency Act is available on our website. The reference that every drop of water ... will stay in the basin ... This is a reference to the design and intent of the Salinas River Diversion Project. Records referencing this are available for review.

EXHIBIT C 1 of 3

ALT-12 (continued)

"2. All records that show that after the initiation of the operation of the Salinas Valley Water Project, the Salinas Groundwater basin will 'be fully in balance,' as Mr. Weeks asserted."

Information responsive to your last request is on pgs. 3-30 to 3-32 of the EIR/EIS Vol. II. You should also consider the findings in the DEIR, Chapter 5.3.2 as relevant to your request. Both of these documents are available on our website.

You may give our office a call and make an appointment to review responsive documents.

Sincerely,

David Kimbrough
Chief of Administrative Services

EXHIBIT C 2 of 3

TOTAL P.03

ALT-12
(continued)

FAX TRANSMISSION

MONTEREY COUNTY WATER RESOURCES AGENCY
P. O. BOX 930
SALINAS, CA 93902
831.755.4860
FAX: 831.424.7935

FOR IMMEDIATE DELIVERY DATE: 3/19/10

To: Molly Erickson From: David Kimbrough

~~ATTN~~: 373 0242

FAX: ( )

Re: PRMW 3/3/10

EXHIBIT C 3 of 3

GROWERS-SHIPPERS NEWSLETTER

The GSA Water Committee met on April 14, 2009. We invited the Monterey County Farm Bureau Water Committee to attend this meeting as well. GSA Water Committee Chairman presided. Monterey County Water Resources Agency General Manager Curtis Weeks reported to the group the following information:

1. There is a set of projects proposed by Cal-Am currently being evaluated by the Public Utilities Commission that include; 1) Desal Plant at Moss Landing using one pass cooling water from the power plant and piping treated water back to the Monterey Peninsula; 2) a North Marina Brackish Water desal plant (owned and operated by Cal-Am) using brackish groundwater near the coast for the Monterey Peninsula; and 3) a Regional Water Supply Program (successful negotiations with the PUC from county efforts started this program) what also includes a North Marina Brackish Water Desal (owned by Marina Coast Water District), a Recycled Water Project for FORA, an Aquifer Storage and Recovery Project (Carmel River winter under flow pumped and stored for summertime use, owned by the MPWMD), and a small ocean water desal plant owned by Sand City.
2. The Regional Program provides several key benefits including: 1) a set of multi-objective projects serving a broad set of communities; 2) Preserves and protects our agricultural communities water supply while helping solve a long-standing water supply shortage on the peninsula (MCWD has pumping rights in the Salinas Valley and this project will move their pumping to the coastline); 3) Groundwater will be monitored to confirm the brackish water removal will draw fresh water towards the coast reversing seawater intrusion; 4) the Regional Program diversifies water supplies by relying on multiple sources of water (brackish, recycled, Carmel underflow, ocean desal); 5) will not export fresh water from the Salinas Valley; and 6) keeps local control of our water resources in the hands of local government.
3. There are multiple agreements moving thru the approval process to implement the Regional Program between Monterey County Water Resources Agency, Monterey Regional Water Pollution Control Agency and the Marina Coast Water District.
4. Key Points: No Salinas Valley resources headed to peninsula, protects agricultural water supply, meets urban needs, moves Marina's pumping towards the coast, reduces costs for agriculture, monitors and protects Salinas groundwater, and keeps control local.

After review and discussion, the GSA Water Committee concluded that if we don't follow this course of action we lose all control of the process. All things considered, the Committee feels this is the wisest course to follow and recommended the GSA Board of Directors to support this process.

ALT-14

MONTEREY COUNTY AGRICULTURAL AND HISTORICAL LAND CONSERVANCY
P.O. Box 1731, Salinas CA 93902

November 6, 2006

Jensen Uchida
c/o California Public Utilities Commission
Energy and Water Division
505 Van Ness Avenue, Room 4A
San Francisco, Ca. 94102
FAX 415-703-2200
JMU@cpuc.ca.gov

SUBJECT: California-American Water Company's Coastal Water Project EIR

Dear Mr. Uchida:

I am writing to you on behalf of the Monterey County Agricultural and Historic Lands Conservancy (MCAHLC), a farmland preservation trust located in Monterey County, California. Our Conservancy, which was formed in 1984 with the assistance of funds from the California Department of Conservation, owns over **15,000 acres of prime farmlands** and agricultural conservation easements, including our overlying groundwater rights, in the Salinas Valley. We have large holdings in the Moss Landing/Castroville/Marina areas. Many of these acres of land and easements, and their attendant overlying groundwater rights, have been acquired with grant funds from the State of California as part of the state's long-term program to permanently preserve our state's productive agricultural lands.

We understand that the California-American Water Company is proposing to build a desalination plant somewhere (the location is unclear) in the vicinity of Moss Landing or Marina as a proposed remedy for their illegal over-drafting of the Carmel River. On behalf of our Conservancy and the farmers and agricultural interests that we represent, I wish to express our grave concerns and objections regarding the proposal by the California-American Water Company to install and pump beach wells for the purposes of exporting groundwater from our Salinas Valley groundwater aquifers to the Monterey Peninsula, which is outside our over-drafted groundwater basin. This proposal will adversely affect and damage our groundwater rights and supplies, and worsen seawater intrusion beneath our protected farmlands. We object to any action by the California Public Utilities Commission (CPUC) to allow, authorize, or approve the use of such

beach wells to take groundwater from beneath our lands and out of our basin, as this would be an "ultra-vires" act by the CPUC because the CPUC is not authorized by any law or statute to grant water rights, and because this would constitute the wrongful approval and authorization of the illegal taking of our groundwater and overlying groundwater rights. Further, we are distressed that, since this project directly and adversely affects our property rights, the CPUC failed to mail actual notice to us, and all other superior water rights holders in the Salinas Valley that will be affected, as is required by the California Environmental Quality Act (CEQA). The CPUC must provide such actual mailed notice of the project and the preparation of the EIR to all affected water rights holders because California-American has no water rights in our basin.

ALT-14 (continued)

Any EIR that is prepared by the CPUC on the proposed Cal-Am project must included a full analysis of the legal rights to Salinas Valley groundwater that Cal-Am claims. The Salinas Valley percolated groundwater basin has been in overdraft for over five decades according to the U.S. Army Corps of Engineers and the California Department of Water Resources. Cal-Am, by definition in California law, is an appropriator of water. No water is available to new appropriators from overdrafted groundwater basins. The law on this issue in California was established over 100 years ago in the case of Katz v. Walkinshaw (141 Calif. 116), it was repeated in Pasadena v. Alhambra (33 Calif.2nd 908), and reaffirmed in the Barstow v. Mojave Water Agency case in 2000. Cal-Am has no groundwater rights in our basin and the CPUC has no authority to grant approval of a project that relies on water that belongs to the overlying landowners of the Marina/Castroville/Moss Landing areas.

Further, the EIR must fully and completely evaluate in detail each of the following issues, or it will be flawed and subject to successful challenge:

1. Complete and detailed hydrology and hydrogeologic analyses of the impacts of "beach well" pumping on groundwater wells on adjacent farmlands and properties. This must include the installation of monitoring wells on the potentially affected lands to evaluate well "drawdown", loss of groundwater storage capacity, loss of groundwater quality, loss of farmland and coastal agricultural resources that are protected by the California Coastal Act, and the potential for increased and potentially irreversible seawater intrusion.
2. A full analysis of potential land subsidence on adjacent properties due to increased (365 days per year) pumping of groundwater for Cal-Am's desalination plant.
3. A full, detailed, and complete environmental analysis of all other proposed desalination projects in Moss Landing.

On behalf of MCAHLC, I request that the CPUC include and fully address in detail all of the issues and adverse impacts raised in this letter in the proposed Cal-Am EIR. Moreover, I request that before the EIR process is initiated that the CPUC mail actual notice to all of the potentially overlying groundwater rights holders and property owners in the areas that will be affected by Cal-Am's proposed pumping and the cones of

depression that will be permanently created by Cal-Am's wells. **The CPUC has an absolute obligation to property owners and the public to fully evaluate every reasonable alternative to identify the environmentally superior alternative that does not result in an illegal taking of third party groundwater rights.** We ask that the CPUC satisfy its obligation.

ALT-14 (continued)

Respectfully,

Brian Rianda

Brian Rianda, Managing Director

Cc: MCWRA
Chair/Clerk of the Board of Supervisors

ALT-15

FAX TRANSMISSION

MONTEREY COUNTY WATER RESOURCES AGENCY
P. O. BOX 930
SALINAS, CA 93902
831.755.4860
FAX: 831.424.7935

FOR IMMEDIATE DELIVERY DATE: 3/25/10

To: Molly Erickson From: Daniel Kim-Hough

C/O:

FAX: 373-0242 ( )

Re: PGAR-3/3/10

ALT-15
(continued)

MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
SALINAS, CA 93902
(831)755-4860
FAX (831) 424-7935

CURTIS V. WEEKS
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

March 24, 2010

Molly Erickson, Esq.
LAW OFFICES OF MICHAEL W. STAMP
479 Pacific Street, Suite 1
Monterey, CA 93940

Re: Your Letter of March 22, 2010

Dear Ms. Erickson:

You were wrong in considering MCWRA's response to your March 3, 2010 Public Records Request as "disingenuous." Consider the following:

At the Board hearing of February 26, 2010, Mr. Weeks addressed the development of basin water; that is water that the proposed Regional Desalination Project will produce. The project will rely upon the removal of sea water, which will most likely contain some percentage of ground water. Whatever percent is ground water will be returned to the basin as part of the project processing. As a result, no ground water will be exported. Mr. Weeks' comment to "pump groundwater," refers to this process. The process is allowable under the Agency Act. See the Agency Act (previously provided) and the EIR for the SVWP, which I believe your office has, but if you desire a copy, they are available at our offices for $5.00 a disc. In addition, a copy of the FEIR for the Coastal Water Project and Alternatives is also available for $5.00 a copy. Further, MCWRA intends to acquire an easement, including rights to ground water, from the necessary property owner(s) to install the desalination wells. These rights have not been perfected to date, hence no records can be produced.

As to MCWD, it was previously annexed into Zones 2 & 2A and as such has a right to ground water. These documents are hereby attached PDF files.

As for the reference to "every drop of water that we pump that is Salinas ground water will stay in the Salinas Ground Water Basin," this was a reference to the balancing of ground water in the basin. The development of the Salinas River Diversion Project is relevant, as it will further

ALT-15
(continued)

relieve pressure on the ground water wells. As such, it is a component of the overall plan to protect and enhance the ground water supply, keep it in the basin, and prevent salt water intrusion. In your letter of March 22nd, you did not consider this project as relevant. Nevertheless these records are available for your review

Looking forward, one additional document is the staff report yet to be finalized for the Board's consideration in open session of the Regional Project. When available, this will be provided.

Very truly yours,

David Kimbrough
Chief of Admin Services/Finance Manager

Encls.

cc: Curtis V. Weeks

TOTAL P.03

1.2.1 Response to Letter from AG Land Trust

Comment No.	Response
ALT-1	This comment identifies the Ag Land Trust's continuing objection to the "proposed slant wells" due to the lack of proof that Cal Am has any groundwater rights within the SVGB. Impacts to the SVGB were addressed in the MND and found to be less than significant with identified mitigation. The SWRCB has also indicated that "So long as overlying users are protected from injury, appropriation of water consistent with the principles previously discussed in this report should be possible" (Appendix E, page ii and 39). Refer also to Response to MCWD-3 and MCWD-4, above. The comment relates to legal water rights, rather than any potential environmental impacts of the project or the content of the MND; therefore, no response is necessary.
ALT-2	The comment states that, absent written proof of groundwater rights in SVGB, Cal Am cannot demonstrate its right to pump water from the proposed slant wells for any purpose. The lack of written proof of a legal right to extract water does not specifically relate to the MND or to any potential environmental impacts of the project. The IS/MND addressed potential impacts to groundwater supplies in Response to IX(b) at pages 111 to 113 and concluded that no significant impact to groundwater resources would occur after implementation of identified mitigation due to the pumps largely capturing seawater and the unusable condition of the aquifers in the project vicinity due to seawater intrusion. Refer also to Response to ALT-1, MCWD-3, and MCWD-4, above.
ALT-3	The comment states that the MND failed to address adverse impacts to the over-drafted SVGB and the Ag Land Trust's overlying groundwater rights. The MND addressed potential impacts to groundwater resources in Response to IX(b) at pages 111 to 113 of the MND. The amount of drawdown in adjacent wells is expected to be minimal and limited to seawater-intruded areas. Therefore, impacts to groundwater users in the project vicinity were determined to be less than significant with identified mitigation, which would ensure drawdown would be limited to less than 1 foot and any potential significant effects would be compensated for. The comment provides no basis for its assertion that California groundwater law requires adverse effects on SVGB to be significant and unmitigable. See also Response to MCWD-3, and MCWD-4, above.
ALT-4	The comment states that Ag Land Trust believes the slant test well would irreparably degrade groundwater supplies. The MND addressed potential impacts to groundwater resources in Response to IX(b) at pages 111 to 113 of the MND. The amount of drawdown in adjacent wells is expected to be minimal and limited to seawater-intruded areas. The wells are located and designed such that no risk of increased seawater intrusion would occur and no other potential adverse effects on groundwater supplies were identified. Therefore, impacts to groundwater users in the project vicinity were determined to be less than significant with implementation of identified mitigation. See also Response to MCWD-3 and MCWD-4, above.

Comment No.	Response
ALT-5	The comment states that Ag Land Trust believes the project would cause significant economic and environmental damage to its property, and the property of other overlying land owners who have not received actual written notice of the project, and to the water resources of SVGB. Given the less than significant impact on groundwater in SVGB, it is unclear how the project would cause economic or other environmental impacts on overlying properties. CEQA specifies that economic effects of a project shall not constitute significant effects on the environment unless they result in some physical change to the environment (CEQA Guidelines Section 15131). There is no evidence that the project would cause economic harm to water users within SVGB due to modeled drawdown estimates, the unusable condition of water that would be captured by the well, and measures in place to monitor and mitigate effects on adjacent well owners (if necessary). The comment does not specify what "other environmental impacts" might occur as a result of operation of the slant test well; however, due to the limited nature of disturbance and activities proposed, no changes or impacts to overlying properties outside of the CEMEX parcel are anticipated. Pursuant to the requirements of CEQA, notice of the project and IS/MND was provided by publishing in the local newspaper, posting at the County Clerk's Office, and direct mailings to all organizations and individuals that had requested notice.
ALT-6	The comment asserts that the MND cannot be adopted until the issue of groundwater rights and appropriate mitigation measures are addressed and subjected to public discussion and debate as required by CEQA. The MND addressed potential impacts to groundwater resources in Response to IX(b) at pages 111 to 113 of the MND and identified appropriate mitigation in HYD/mm-1 at page 119 of the MND. The MND, including identified mitigation measures and the Mitigation Monitoring and Reporting Plan, was circulated for public review and comment for 30 days as required by CEQA. Public hearings on the proposed project and the City's intent to issue an MND under CEQA will provide additional opportunity for public comment. No additional public discussion or debate is required.
ALT-7	The Ag Land Trust comment letter incorporated a number of additional documents, which have been enumerated as comment numbers ALT-7 through ALT-15. The attached documents are addressed individually in Responses to ALT-7 through ALT-15, below. The letter referenced as ALT-7 is an April 2008 letter from the Pajaro/Sunny Mesa Community Services District to Monterey County District 2 Supervisor Louis Calcagno. The letter discusses the CSD's concerns regarding "the proposed Granite Ridge pipeline project" and other groundwater problems in Prunedale, California. Prunedale is located approximately 8.5 miles northeast of the project site. The CSD's letter generally discusses its position that MCWRA does not hold necessary appropriative or prescriptive groundwater rights to develop wells within the over-drafted Prunedale percolated groundwater aquifers. The letter references the fact that the CSD is not aware of any connectivity or exchange of water between the unconfined Aromas Sand formations in the North County Local Coastal Plan Area and the confined 180 Foot and 400 Foot Aquifers of the Salinas Valley. The CSD asserts that the percolation of water into Salinas Valley through the Salinas Valley Water Project does not and will not benefit the Prunedale/

Comment No.	Response
	Granite Ridge Aquifers. The letter also indicates that the Granite Ridge pipeline project would allow new development that would not otherwise have water supplies. The relevance of comments to the proposed Slant Test Well Project and MND is unclear, as they relate to a different project in a different aquifer. The slant test well would not produce any new water supplies and would not remove any existing constraint to development. The issue of Cal Am's legal right to pump from the underlying aquifers is discussed in Response to MCWD-3 and MCWD-4, above. Because the document does not provide any comments specific to the proposed Slant Test Well Project or related IS/MND, no further response is necessary.
ALT-8	This document is an April 2009 letter from Ag Land Trust to the Monterey County Board of Supervisors. The letter generally discusses Ag Land Trust's general opposition to several Memorandums of Understanding (MOUs) and the Coastal Water Project due to the allegation that no public agencies in Monterey County have the rights to pump groundwater from the over-drafted Salinas Valley to transfer to Cal Am for the Coastal Water Project. The letter asserts that the County Board of Supervisors cannot enter into the MOUs without completing CEQA review. The MOUs, which were considered by the Board of Supervisors over 5 years ago, and the Coastal Water Project, which is no longer proposed for development, are not relevant to the proposed Slant Test Well Project or IS/MND. The letter points to several alleged insufficiencies of the EIR prepared for the Coastal Water Project, including impacts on groundwater and groundwater rights, violations of applicable policies, and illegal takings of privately-owned water rights. Cal Am's legal right to water that would be pumped during operation of the slant test well is addressed in Response to MCWD-3 and MCWD-4, above. The MND included a review of the City of Marina General Plan and Local Coastal Program and found the proposed project to be consistent with applicable policies (refer to Response to X(b) on pages 121 through 123 of the MND). The letter does not contain any specific comments on the proposed Slant Test Well Project or IS/MND; therefore, no further response is necessary.
ALT-9	This document consists of March 22, 2010 correspondence from Molly Erickson of the Law Offices of Michael Stamp to Monterey County and MCWRA. It describes a previous (March 3, 2010) Public Records Act request and MCWRA's response claiming additional time was needed to respond due to the ambiguous nature of the request. The letter describes MCWRA's response as disingenuous and makes a subsequent demand for requested records. The Public Records Act request is not relevant to the proposed Slant Test Well Project or IS/MND. No response is necessary.
ALT-10	This document contains the original March 3, 2010 Public Records Act request to MCWRA, referenced in Response to ALT-9, above. The Public Records Act request is not relevant to the proposed Slant Test Well Project or IS/MND. No response is necessary.
ALT-11	This document contains MCWRA's March 12, 2010 response to the Public Records Act request referenced in Response to ALT-9, above. The response states that due to the broad nature of the request, MCWRA is extending the time to respond to no later than March 19, 2010. The MCWRA response is not relevant to the proposed Slant

Comment No.	Response
	Test Well Project or IS/MND. No response is necessary.
ALT-12	This document contains MCWRA's March 19, 2010 follow-up response to the Public Records Act request referenced in Response to ALT-11, above. The response identifies the location of various documents in response to the Public Records Act request and states that others are on the MCWRA website or available for review at MCWRA offices. The MCWRA response is not relevant to the proposed Slant Test Well Project or IS/MND. No response is necessary.
ALT-13	This document appears to consist of notes contained in the Growers-Shippers Newsletter and/or taken at a Grower-Shipper Association Water Committee meeting on April 14, 2009. The document includes a report of comments made by MCWRA to the group regarding a set of projects proposed by Cal Am and being evaluated by the CPUC, including a desalination plant at Moss Landing, a north Marina brackish water desalination plant, and a regional water supply program that includes a variety of water supply projects. The document identifies key benefits of the regional water supply program and includes a recommendation that the GSA Board of Directors support the regional program process. The document does not provide comments specific to the proposed Slant Test Well Project or IS/MND. No further response is necessary.
ALT-14	This document is a November 2006 letter from Monterey County Agricultural and Historical Land Conservancy to the CPUC regarding the EIR prepared for the previously-proposed Coastal Water Project. The Conservancy objected to the Coastal Water Project on the grounds that it would damage groundwater supplies and rights and worsen seawater intrusion, among other claims. The letter was prepared almost 8 years ago in response to a different project that is no longer proposed for development. Similar environmental impacts, including potential effects on groundwater supply and seawater intrusion, were considered in the MND for the Slant Test Well Project; however, potential effects were determined to be less than significant with identified mitigation. No comments or issues raised in the letter are specific to the Slant Test Well Project or the MND's analysis of these issues. Comments relating to past projects that are no longer being proposed for development are outside of the scope of the MND. No further response is necessary.
ALT-15	This document contains MCWRA's response to Molly Erickson's March 22, 2010 correspondence referenced in Response to ALT-9, above. In the letter, MCWRA provides additional documents and responses regarding the documents available for review. The MCWRA's response to the Public Records Act request is not relevant to the proposed Slant Test Well Project or IS/MND. No additional response is necessary.

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EXHIBIT E

CALIFORNIA
AMERICAN WATER

Ian Crooks, P.E.
Engineering Manager
Coastal Division
511 Forest Lodge Road, Suite 100
Pacific Grove, CA 93950
ian.crooks@amwater.com
P 831.646.3217
C 831.236.7014

July 1, 2014

via email

City of Marina
Planning Commission
211 Hillcrest Ave
Marina, CA 93933

Re: Test Slant Well Application

Dear Planning Commissioners:

Good evening, Commissioners and staff. My name is Ian Crooks. I'm the Engineering Manager for California American Water.

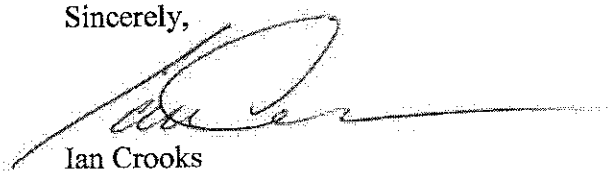
Tonight we are asking you to support staff's recommendation to allow us to move forward with permitting of a test well for our proposed desalination plant. Your approval tonight does not commit you to approving the full-scale MPWSP project. We will be back to the City for a local coastal development permit and various building permits when the time comes to build the full production wells.

What is at issue now is a temporary well that will be constructed for the purpose of gathering data to assist determining potential effects of the full-scale project on groundwater. The test well is supported by a broad array of stakeholders, including agricultural interests that are concerned about the Salinas Valley groundwater basin, who have signed a Community Letter of Support, which you have. They support the test well because they want to see the data to understand the impacts, if any, of the full-scale production wells for the MPWSP.

The purpose of this project is to cease over-pumping of the Carmel River. We have support from elected leaders, the business community and advocates for the Steelhead Trout and the environment, who have also signed the community support letter. We are working hard to complete this project in order to protect the river and to protect our customers from cutbacks that would ration residents to 35 gallons per person per day and essentially leave no water for business. These cutbacks would have dramatic, regional impacts.

Thank you very much for your consideration. I am happy to answer any questions you may have concerning our application. Thank you.

Sincerely,



Ian Crooks

CALIFORNIA
AMERICAN WATER

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July 1, 2014

Via Email

Ms. Theresa Szymanis
Planning Services Manager
Planning Services Division
209 Cypress Avenue
Marina, CA 93933
tszymanis@ci.marina.ca.us

Re: Draft Initial Study and Mitigated Negative Declaration for the California American Water Slant Test Well Project

Dear Ms. Szymanis,

As project applicant, California-American Water Company ("CAW") wishes to briefly address the following issues related to the *Draft Initial Study and Mitigated Negative Declaration for the California American Water Slant Test Well Project*: (A) comments sent to the City of Marina by the Marina Coast Water District ("MCWD") and the Ag Land Trust; and (B) issues raised to CAW by the land owner of the property on which the project is to be located. I would be happy to provide any further information on these issues if necessary.

1. Construction and operation of the Slant Test Well Project on the CEMEX site does not conflict with 1996 Annexation Agreement

In its comments, MCWD argues that extraction from a slant test well located on the CEMEX property would conflict with the 1996 Annexation Agreement by and among MCWD, the City of Marina, the Monterey County Water Resources Agency ("MCWRA"), Armstrong Ranch and CEMEX predecessor, Lonestar. MCWD has repeatedly and unsuccessfully advanced this argument in other proceedings related to CAW's proposed Monterey Peninsula Water Supply Project ("MPWSP"). This argument provides no basis for the City to disapprove the IS/MND and is misplaced for the following reasons.

The Annexation Agreement is inapplicable to the Slant Test Well Project. Paragraph 7.2 of the Annexation Agreement provides that Lonestar (or its successors or assignees) may pump up to 500 afy of groundwater for overlying use on the Lonestar property. The

provision is intended to recognize and protect Lonestar's overlying groundwater rights for use on the property. (See, Annexation Agreement, ¶¶ 5.1.1.3 [referring to the limitations as "*Lonestar's* entitlement" (emphasis added)]; 7.2 ["*Lonestar* shall limit withdrawal" (emphasis added)]; Executive Summary ["*Lonestar* will limit its pumping to its current use of 500 afy" (emphasis added)].) The Annexation Agreement does not, in any way, limit pumping of salt or brackish water for analytical testing or desalination as part of the Slant Test Well Project and the MPWSP, because the Annexation Agreement itself does not prohibit or restrict a project that proposes to appropriate water from the CEMEX property.[1]

MCWD is well aware of this fact because it had proposed the CEMEX property as a location for the installation of similar water supply wells for the failed Regional Desalination Project, which it was undertaking with MCWRA. MCWD is now taking a position contrary to its longstanding interpretation of the Annexation Agreement simply because it is no longer a participant in the project.

2. The water rights approach for the Slant Test Well Project is consistent with water rights law, as set forth in the July 2013 State Water Resources Control Board Report

In its comment letter, the Ag Land Trust objects to the Slant Well Test Project "due to lack of any proof… that [CAW] has any groundwater rights within the overdrafted Salinas Valley aquifers."

Contrary to these statements, there is no requirement or means to obtain advanced written "proof" of a right to appropriate surplus groundwater in the Salinas Valley Groundwater Basin. The law is well established, and is thoroughly described in the State Water Resources Control Board's ("SWRCB's") July 2013 Report. Surplus waters may be appropriated if overlying users are not injured. California groundwater law authorizes the appropriation of surplus and developed groundwater. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 368-369; *Garvey Water Co. v. Huntington Land & Imp. Co.* (1908) 154 Cal. 232, 241.)

The sea/brackish water in the vicinity of the project is unusable by other pumpers, and is surplus water that can be extracted by CAW if it can be done without causing injury to other groundwater users. Development of such waters furthers the constitutional mandate to maximize the beneficial use of the waters of the State. The law requires the development of measures that maximize the beneficial use of water and mitigates effects on other legal users of groundwater. (*Lodi v. East Bay Mun. Water Dist.* (1936) 7 Cal.2d 316, 344-345.) In the event that the Slant Test Well Project results in any such effect to other groundwater users, those effects will be mitigated such that no injury occurs. The

[1] Cal-Am has been working closely with the MCWRA, its representatives, and representatives of other parties including Salinas Valley Groundwater Basin water users to ensure the MPWSP is developed and carried out to avoid negatively impacting that basin, consistent with the purposes of the MCWRA Act. Indeed, the proposed Slant Test Well Project is in furtherance of this effort to understand the potential effects of the MPWSP.

mitigations contained in the City's negative declaration and conditions of approval require steps to taken to insure no such injury occurs to other groundwater users. The SWRCB's July 2013 Report endorses CAW's approach to development of appropriative rights to groundwater for the Slant Test Well Project and the MPWSP, and consistent with these principles.

3. The owner of the project property has raised the following issues in discussions with CAW.

The owner of the project property (CEMEX) has raised the following issues in discussions with CAW. CAW would like to note these for inclusion in the record.

Cultural Resources

The *Draft Initial Study and Mitigated Negative Declaration* concludes that there is no impact related to cultural resources as a result of this project because of this distance between the project and the structures located on the rest of the CEMEX property.

CEMEX does not believe that this property qualifies as a historic resource because it does not meet any of the United State Department of the Interior standards for consideration as a historic resource. Nor does the site qualify as a historic landscape as a result of the extensive site changes that have occurred on the property over the last century.

Site Restoration

There are various mitigation measures related to well abandonment and restoration of the site contained in the initial study.

The test well site is located within the active mining area of the CEMEX property. CEMEX wants to make sure that there is no condition requiring site restoration beyond the current (disturbed) condition of the test well site since such a requirement would be inconsistent with the continued use of this portion of their property as a part of their mining operation.

Wetlands Characterization

The "Biological Resources" section states that "the dredge and settling ponds within the [CEMEX] property meet the state definition of a wetland." (p.51.). This section then suggests that the United States Army Corps of Engineers and the California Coastal Commission would consider the dredge and settling ponds as wetlands subject to their regulation (pp.52, 66.) First, CEMEX's dredge and settling ponds are not within the 0.75 acre Project footprint. Second, per regulatory guidance, the United States Army Corp of Engineers has stated that it does not consider "[a]rtificial lakes or ponds created by excavating dry land to collect and retain water and which are used exclusively for such purposes as …settling basins"; and "pits excavated for the purpose of obtaining… sand… as 'waters of the United States' unless and until the excavation operation is abandoned."

(Definitions of Waters of the United States, 51 Fed. Reg. 41206, 41217 (Nov. 13, 1986)). Furthermore, applying the California Coastal Commission's "one parameter" definition of wetlands (14 CCR § 13577(b)) literally would result in the unintended jurisdiction over bodies of water (such as dredging and settling ponds and swimming pools) simply due to satisfaction of the hydrology requirement.

Please let me know if you would like CAW to provide any further information on these issues.

Sincerely,

Ian Crooks

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REQUEST TO THE MARINA PLANNING COMMISSION
Please Support Test Well

July 2, 2014

We, submit this letter united, to ask for your approval of California American Water's request for a temporary test well. It is the next step in solving our area's critical water issue.

We are a broad coalition of business, environmental, labor, and community organizations. We represent all facets of this diverse region and work together to protect the quality of life for all who live and work here. We must work cooperatively, be good neighbors and, when asked, support each other for the greater good. Together, we must work hand-in-hand to create a sustainable water supply to ensure a prosperous future. Your support tonight is a vital part of that future.

We respectfully ask the Marina Planning Commission to join us as a part of the solution and to vote in favor of the test well.

Carmel Chamber of Commerce

Carmel River Steelhead Association

Carmel River Watershed Conservancy

Mayor Jason Burnett, City of Carmel-by-the-Sea

Mayor Jerry Edelen, City of Del Rey Oaks

Mayor Bill Kampe, City of Pacific Grove

Mayor Dave Pendergrass, City of Sand City

Monterey Bay Aquarium

Monterey Bay Central Labor Council

Monterey County Association of Realtors

Monterey County Business Council

Monterey County Farm Bureau

Monterey County Hospitality Association

Monterey Peninsula Business Coalition

Monterey Peninsula Chamber of Commerce

Monterey/Santa Cruz Counties Building and Construction Trades Council

Pacific Grove Chamber of Commerce

Planning and Conservation League