

RESOLUTION NO. 2015-80

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA RECEIVING DRAFT COMMENT LETTER REGARDING THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE MONTEREY PENINSULA WATER SUPPLY PROJECT (MPWSP), AND; PROVIDING DIRECTION TO, AND AUTHORIZING THE CITY MANAGER TO SEND COMMENT LETTER TO CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)

WHEREAS, at the regular meeting of April 21, 2015 City Council received a staff report and timeline for the Responsible Agency review process for the CPUC DEIR for the MPWSP, and;

WHEREAS, at the regular meeting of May 5, 2015, City Council adopted Resolution No. 2015-48, receiving an informational report with regards to the Responsible Agency review process; authorizing FY2015-16 budget amendment, and; authorizing the Finance Director to make the necessary accounting and budgetary entries, and;

WHEREAS, at the Special Joint Meeting of May 12, 2015, City Council adopted Resolution No. 2015-54, receiving informational presentations by California American Water regarding the slant test well results, and by CPUC representatives introducing the DEIR for the MPWSP, and;

WHEREAS, SWCA Environmental Consultants has prepared draft comments regarding the Draft Environmental Impact Report (DEIR) to be transmitted by the City to CPUC, and;

WHEREAS, at a Special Joint Meeting of June 23, 2015, the City Council of the City of Marina conducted a duly noticed public meeting, considered all public testimony, written and oral, presented at the public meeting regarding the DEIR for the MPWSP.

NOW, THEREFORE IT BE RESOLVED that the City Council of the City of Marina does hereby:

1. Receive draft comment letter regarding the Draft Environmental Impact Report (DEIR) for the Monterey Peninsula Water Supply Project (MPWSP), and; provide direction to, and authorize the City Manager to send the comment letter to the to the California Public Utilities Commission (CPUC).

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on the 23rd day of June 2015, by the following vote:

AYES: COUNCIL MEMBERS: Amadeo, Brown, Delgado

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: Morton, O'Connell

ABSTAIN: COUNCIL MEMBERS: None

Bruce C. Delgado, Mayor

ATTEST:

Anita Flanagan, Deputy City Clerk

EXHIBIT A

Sound Science. Creative Solutions.

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June 19, 2015

Theresa Szymanis, AICP CTP
City of Marina
211 Hillcrest Avenue
Marina, California, 93933

Re: Review and Comments on the Draft Environmental Impact Report for the Monterey Peninsula Water Supply Project / SWCA Project No. 32027

Dear Ms. Szymanis:

SWCA Environmental Consultants (SWCA) has been retained by the City of Marina (City) to review and provide comments on the Draft Environmental Impact Report (DEIR) for California American Water's (Cal Am) proposed Monterey Peninsula Water Supply Project (MPWSP or project). This letter describes the City's role as a responsible agency and the approach to our review, which were developed in accordance with the standards of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. This letter also addresses previously identified concerns raised by the City related to groundwater rights. Our draft comments on the DEIR are included as a separate attachment for the City's review and discussion.

APPROACH

Lead Agency vs. Responsible Agency Roles/Responsibilities

CEQA and the State CEQA Guidelines contain definitions and standards for determining lead, responsible, and trustee agencies for a project, and provisions identifying responsibilities of each type of agency. The distinction in CEQA between a lead agency and responsible agencies is critical. The lead agency is the agency that has principal responsibility for carrying out or approving a project and that prepares the appropriate CEQA review document for the project (CEQA Section 21067). Public agencies other than the lead agency that have discretionary approval authority over the project are referred to as "responsible agencies".

Responsible agencies are bound by certain decisions made by a lead agency, including the decision whether an EIR or negative declaration should be prepared for a proposed project. A responsible agency complies with CEQA by considering the information in the EIR prepared by the lead agency. The lead agency is responsible for overall compliance with CEQA; once the lead agency has acted, responsible agencies generally rely on the lead agency's CEQA document and ordinarily are not allowed to prepare a separate EIR. The purpose of these provisions is to require responsible agencies to work through normal CEQA consultation and review processes to obtain adequate documents from lead agencies.

CEQA defines lead and responsible agencies as follows:

State CEQA Guidelines Section 15367. Lead Agency. “Lead Agency” means the public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR or Negative Declaration will be required for the project and will cause the document to be prepared. Criteria for determining which agency will be the Lead Agency for a project are contained in Section 15051.

State CEQA Guidelines Section 15381. Responsible Agency. “Responsible Agency” means a public agency which proposes to carry out or approve a project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term “Responsible Agency” includes all public agencies other than the Lead Agency which have discretionary approval power over the project.

The California Public Utilities Commission (CPUC) has regulatory authority over investor-owned water industry utilities (among other industries) such as the MPWSP and is the CEQA Lead Agency for the project. The CPUC directed preparation of the DEIR in accordance with State CEQA Guidelines Section 15084 and is responsible for preparation and certification of the EIR.

Additional discretionary land use permits obtained from the City for project components proposed within the City’s boundary would be required, including but not limited to a coastal development permit and grading permit.

Therefore, the City is a responsible agency for the project.

Role of a Lead Agency

The lead agency is responsible for determining whether an EIR, negative declaration, or mitigated negative declaration is required for a project, and that determination is final and conclusive on all persons, including responsible agencies, unless successfully challenged in court (CEQA Section 21080.1). When an EIR is required for a project, the lead agency is responsible for preparing the EIR and for making the determination whether the project will have a significant impact on the environment. The lead agency is responsible for the adequacy and objectivity of the EIR, and the draft EIR, which is sent out for public review, must reflect the independent judgment of the Lead Agency (State CEQA Guidelines Section 15084 (e)).

The EIR should provide both lead agency and responsible agency decision-makers with the environmental information they will need when deciding whether to approve the project.

Role of a Responsible Agency

CEQA requires that responsible agencies “consider the Lead Agency’s EIR” prior to acting upon or approving the project (State CEQA Guidelines Section 15050). Responsible agencies generally rely on the information in the CEQA document prepared by the lead agency and ordinarily are not allowed to prepare a separate CEQA document for their separate use.

Responsible agencies have two general sets of responsibilities under CEQA. The first is to respond in a timely fashion to lead agency requests for information and/or comments. The second revolves around the responsible agency’s role in approving or acting on a project. The general role of a responsible agency in reviewing a draft EIR is described in State CEQA Guidelines Section 15096, which provides (in relevant part):

State CEQA Guidelines Section 15096. Process for a Responsible Agency.

- (a) **General.** A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved.
- (b) **Response to Consultation.** A Responsible Agency shall respond to consultation by the Lead Agency in order to assist the Lead Agency in preparing adequate environmental documents for the project. By this means, the Responsible Agency will ensure that the documents it will use will comply with CEQA.
- (d) **Comments on Draft EIRs and Negative Declarations.** A Responsible Agency should review and comment on draft EIRs and Negative Declarations for projects which the Responsible Agency would later be asked to approve. Comments should focus on any shortcomings in the EIR, the appropriateness of using a Negative Declaration, or on additional alternatives or mitigation measures which the EIR should include. The comments shall be limited to those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency. Comments shall be as specific as possible and supported by either oral or written documentation.
- (f) **Consider the EIR or Negative Declaration.** Prior to reaching a decision on the project, the Responsible Agency must consider the environmental effects of the project as shown in the EIR or Negative Declaration. A subsequent or supplemental EIR can be prepared only as provided in Sections 15162 or 15163.

A responsible agency must adopt findings when it approves a project for which an EIR was prepared. Like the lead agency, a responsible agency must also adopt a statement of overriding considerations (if necessary). Because the responsible agency only considers significant impacts, mitigation measures, and alternatives pertaining to activities that it is responsible for approving or carrying out, it is generally assumed that the responsible agency is only required to make findings and adopt overriding considerations for significant impacts resulting from parts of the project subject to its jurisdiction.

The responsible agency should file a Notice of Determination (NOD) in the same manner as a lead agency, following approval of a project. In the NOD, the responsible agency must certify that it has reviewed and considered the information in the lead agency's EIR before acting on the project; however, because the responsible agency must rely on the lead agency's EIR, its NOD need not include a statement that the EIR complies with CEQA.

Scope of Responsible Agency Review and Comments

While the lead agency is responsible for considering all environmental impacts of a project before approving it, a responsible agency has more limited authority. A responsible agency may only consider those aspects of the project that are subject to the responsible agency's jurisdiction. A responsible agency's permissible scope of review and comments on a draft EIR prepared by a lead agency is described in State CEQA Guidelines Section 15086.

State CEQA Guidelines Section 15086. Consultation Concerning Draft EIR.

- (c) A responsible agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of

the agency or which are required to be carried out or approved by the responsible agency. Those comments shall be supported by specific documentation.

- (d) Prior to the close of the public review period, a responsible agency or trustee agency which has identified what that agency considers to be significant environmental effects shall advise the lead agency of those effects. As to those effects relevant to its decision, if any, on the project, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the lead agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

The lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect (State CEQA Guidelines Section 15003). However, CEQA establishes a key difference in the role of lead and responsible agencies by instructing that, in reviewing a draft EIR, responsible agencies are not required to consider the whole of the action and are, in fact, limited to commenting only on those activities that are within the jurisdiction or area of expertise of the agency or required to be approved or carried out by the responsible agency. Pursuant to CEQA Section 21002.1, the lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve.

State CEQA Guidelines Section 15204 describes the appropriate focus of review of a draft EIR, and specifies that “[e]ach responsible agency and trustee agency shall focus its comments on environmental information germane to that agency’s statutory responsibility.” Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate significant environmental effects.

As a responsible agency, the City must consider those activities associated with the MPWSP that are within the City’s jurisdiction or would result in impacts on City resources or which the City is required to approve or carry out.

Authority to Mitigate

Responsible agencies have the authority to mitigate environmental impacts and to disapprove projects on the basis of their environmental impacts. A responsible agency’s authority to mitigate impacts, however, is more limited than a lead agency’s authority.

State CEQA Guidelines Section 15041 discusses the authority to mitigate granted to public agencies by CEQA, and states that a lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the “nexus” and “rough proportionality” standards established by case law. Responsible agencies may only require changes to the parts of a project which the agency will be called upon to carry out or approve to lessen or avoid direct or indirect environmental effects.

State CEQA Guidelines Section 15096(g) discusses a responsible agency’s adoption of alternatives or mitigation measures:

- (1) When considering alternatives and mitigation measures, a Responsible Agency is more limited than a Lead Agency. A Responsible Agency has responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.
- (2) When an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.

As a responsible agency, the City has the authority to require changes to the parts of the MPWSP the City will be called upon to carry out or approve to lessen or avoid direct or indirect environmental effects. The City may adopt any feasible alternatives or feasible mitigation measures within its powers that would substantially avoid any significant effect on the environment resulting from project components within the City's jurisdiction.

Authority to Disapprove Projects

A responsible agency's authority to disapprove projects is similarly limited and is discussed in State CEQA Guidelines Section 15042.

A public agency may disapprove a project if necessary in order to avoid one or more significant effects on the environment that would occur if the project were approved as proposed. A Lead Agency has broader authority to disapprove a project than does a Responsible Agency. A Responsible Agency may refuse to approve a project in order to avoid direct or indirect environmental effects of that part of the project which the Responsible Agency would be called on to carry out or approve. For example, an air quality management district acting as a Responsible Agency would not have authority to disapprove a project for water pollution effects that were unrelated to the air quality aspects of the project regulated by the district.

Therefore, a responsible agency's authority to disapprove a project as a result of one or more significant environmental effects identified under CEQA is limited to the significant effects associated with parts of the project within the agency's jurisdiction and/or that the responsible agency will be called on to carry out or approve. A responsible agency cannot, however, disapprove a project based on environmental impacts of parts of the project that are outside of its approval authority. Essentially, a responsible agency may only act within the scope of their statutory jurisdiction in mitigating impacts or disapproving projects (Remy et al., *Guide to the California Environmental Quality Act* [11th ed. 2007], at Sections 3.31 and 17.53).

As a responsible agency, the City may disapprove the MPWSP as a result of one or more significant environmental effects resulting from project components within the City's jurisdiction or that the City will be called on to carry out or approve.

Authority to Adopt Mitigation Measures or Alternatives when Approving a Project

Similarly, when approving a project, the responsible agency must consider whether to adopt mitigation measures or alternatives, but only for the significant impacts of the activities it is approving (Remy et al., at Section 17.53 and 17.54). When an EIR has been prepared, the responsible agency may not approve the project as proposed if it finds any feasible alternative or mitigation measures it could impose that would substantially lessen or avoid any significant environmental effect resulting from the project (State CEQA

Guidelines Section 15096(g)(2)). A responsible agency may adopt alternatives or mitigation measures designed to mitigate or avoid the direct or indirect environmental impacts of only those parts of the project it decides to approve or carry out.

As a responsible agency, the City may adopt feasible alternatives or feasible mitigation measures under its authority to impose that would reduce or avoid significant environmental effects of any project components the City is called on to approve or carry out.

Responsible Agency Concerns Regarding Adequacy of EIR

A responsible agency has limited authority to determine that additional environmental review is required once an EIR has been certified by the lead agency. Pursuant to the State CEQA Guidelines, if a responsible agency believes the lead agency's EIR is not adequate for use by the responsible agency, the responsible agency must take the issue to court within the relevant limitation period (within 30 days of the lead agency's filing of the NOD). If an action challenging the adequacy of an EIR is not filed during the appropriate limitations period, the responsible agency will be deemed to have waived any objection to the adequacy of the EIR and the EIR will be conclusively presumed to comply with CEQA for purposes of its use by a responsible agency, unless circumstances permit preparation of a subsequent EIR or assuming of the lead agency role as provided in Section 15052(a)(3) (State CEQA Guidelines Section 15096).

State CEQA Guidelines Section 15052(a)(3) states that a responsible agency can assume the lead agency role when the lead agency prepared inadequate environmental documents without consulting with the responsible agency as required by State CEQA Guidelines Section 15082 (Notice of Preparation), and the time for a challenge to the action of the appropriate lead agency has expired. These circumstances are not present here, as the CPUC provided a copy of the NOP to the City in October 2012, in accordance with State CEQA Guidelines Section 15082.

Pursuant to State CEQA Guidelines Section 15162, preparation of a subsequent EIR is only permitted when any of the following occur:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified, shows any of the following: (1) new significant environmental effects, (2) a substantial increase in the severity of previously identified significant effects, (3) feasible mitigation measures (previously thought to be infeasible) that would substantially reduce significant effects, or (4) mitigation measures or alternatives that are considerably different than those analyzed in the previous EIR and that would substantially reduce significant effects.

Therefore, should the City ultimately determine that the CPUC's Final EIR is inadequate for its use as a responsible agency for the project, the appropriate remedy would be to take the issue to court, unless circumstances permitting the preparation of a subsequent EIR arise. If the circumstances potentially triggering the need for a subsequent EIR occur before the lead agency has made its determination of whether

to approve the project, the lead agency will be required to address the potential need for subsequent evaluation. If the lead agency has already made its determination, however, a responsible agency faced with subsequent discretionary project approval may be required to determine whether circumstances requiring preparation of a subsequent EIR have occurred. Because the process of preparing an EIR is expensive and time consuming, CEQA generally includes a strong presumption against requiring further environmental review once an EIR has been prepared for a project (Remy et al., at Section 19.2).

GROUNDWATER RIGHTS

The topic of the legal right to water is not typically one that is addressed through CEQA, as it is a legal matter that is rarely relevant to the question of whether the physical changes to the environment that would result from a project would be significant. However, the question of groundwater rights related to Cal Am's proposed project has been identified as an area of concern by City decision-makers and many other interested organizations and individuals. Therefore, we have included a brief overview of our understanding of this issue as it pertains to the proposed project below.

Groundwater rights in California are regulated through common law (court decisions) rather than through the issuance of permits or approvals by regulatory agencies. Therefore, the question of whether Cal Am can assert water rights in the MPWSP supply water is most likely a legal issue that would ultimately have to be resolved through court action. The State Water Resources Control Board (SWRCB) has developed a report that addresses the potential for Cal Am to establish water rights to MPWSP source water, based on established principals of groundwater law. Although acting solely in an advisory role, the SWRCB report provides a valuable evaluation of what would be required for Cal Am to establish a water right for the project.

The DEIR clarifies that water rights are not typically relevant to the environmental evaluation in an EIR. However, if Cal Am does not have any right to the MPWSP source water, then the project could not proceed and would be infeasible. Therefore, the Draft EIR includes a lengthy discussion of whether Cal Am can demonstrate water rights to the MPWSP supply water for purposes of analyzing MPWSP feasibility.

The DEIR's evaluation of water rights relies heavily on the July 31, 2013, report prepared by the SWRCB (refer to Section 2.7 and Appendix B2 of the DEIR). The report ultimately concluded that the determination of whether a legal means exists for Cal Am to extract water from the Salinas Valley Groundwater Basin (Basin) will depend on developing key hydrogeologic information to support a determination that the project would not cause injury to other users in the Basin.

The SWRCB concluded that to appropriate groundwater from the Basin, the burden is on Cal Am to show their project will not cause injury to other users. Three types of potential injuries to Basin users were identified:

1. A reduction in groundwater levels in wells, with associated increases in pumping costs;
2. A reduction in the quantity of fresh water that is available for their future use; and,
3. Additional degradation in the quality of water drawn from wells

Key factors in determining the extent of any injury would include:

1. How much fresh water Cal Am extracts as a proportion of the total pumped amount, to determine the amount of water, after treatment, would be considered desalinated seawater available for export as developed water;

2. Whether pumping affects the water table level in existing users' wells;
3. Whether pumping affects seawater intrusion within the Basin;
4. How Cal Am returns any fresh water it extracts to the Basin to prevent injury to others; and,
5. How groundwater rights might be affected in the future if the proportion of fresh and seawater changes in the larger Basin area or the immediate area around Cal Am's wells.

The SWRCB recommended that substantial additional information and testing be completed to accurately assess MPWSP impacts on current and future conditions of the Basin and determine whether Cal Am can meet the burden of showing the project will not cause injury to other users. Additional information and testing recommended by the SWRCB included:

- specific information on the depth of the wells and aquifer conditions;
- studies to determine the extent of the Dune Sand Aquifer, the water quality and water quantity of the Dune Sand Aquifer, the extent and thickness of the Salinas Valley Aquitard, and the extent of the 180-Foot Aquifer;
- a series of test boring/wells to assess the hydrogeologic conditions at the site;
- aquifer testing to determine the pumping effects on both the Dune Sand Aquifer and the underlying 180-Foot Aquifer;
- identification of pre-project conditions prior to aquifer testing;
- aquifer tests that mimic proposed pumping rates;
- updated groundwater modeling to evaluate future impacts from the MPWSP;
- modeling scenarios to predict changes in groundwater levels, groundwater flow direction, and changes in the extent and boundary of the seawater intrusion front;
- additional studies to determine how any extracted fresh water is replaced, whether through re-injection wells, percolation basins, or through existing recharge programs;
- surveys of the existing groundwater users in the affected area;
- incorporation of new information gathered during the initial phases of the groundwater investigation into the groundwater modeling studies to ensure modeling provides the best assessment of the potential effects of the project; and,
- evaluation of cumulative effects of the MPWSP, Castroville Seawater Intrusion Project, and Salinas Valley Water Project on the Basin.

As long as overlying users are protected from injury, appropriation of water consistent with the principles discussed in the SWRCB report and establishment of a water right would be possible. The studies will form the basis for a plan that avoids injury to other groundwater users and protects beneficial uses in the Basin. So the question becomes, have sufficient studies and information been developed to conclusively establish that the project would not cause injury to existing Basin users?

Some of the recommended studies have already been completed or are currently underway (i.e., Cal Am's borehole program and test slant well pumping program at the CEMEX site), other studies are included in the DEIR (i.e., groundwater modeling and cumulative impact analysis), and others are not yet available (i.e., the results of the test slant well's long-term pumping program).

Based on the studies completed to date, together with the mitigation measures identified in the DEIR, the CPUC concluded that there was a sufficient degree of likelihood that the MPWSP could operate without causing injury to Basin users and, therefore, Cal Am could establish a right to MPWSP source water and the MPWSP could be deemed feasible. However, the thresholds utilized in the DEIR for purposes of analyzing project feasibility would likely differ from those used by a court to make a legal determination of water rights.

Ultimately, the question of whether Cal Am can meet the burden of showing the MPWSP could operate without causing injury to Basin users and therefore establish a water right in MPWSP supply water is one that would be determined by the courts. The court's decision would be based on established principals of groundwater law and a review of available information and studies. It necessarily follows that the more studies and information that are available, the better courts or other interested stakeholders would be able to determine what effect the project will have on the Basin and what actions would be necessary to avoid or alleviate any injury.

SWCA'S SCOPE OF REVIEW AND COMMENTS

Based on the City's role as a responsible agency, as described above, we have limited our review of the MPWSP DEIR to those project components and significant environmental impacts that would be developed within the City's boundary and/or that the City would be called upon to carry out or approve. For example, we did not complete a detailed evaluation of Section 4.5, Marine Resources, as the City does not have jurisdiction over marine areas associated with the project and does not have the authority to recommend additional or different mitigation measures or alternatives to reduce or avoid identified significant effects on those resources.

Major project components such as the desalination plant and proposed aquifer storage and recovery (ASR) facilities would be located outside of the City's boundary and other local agencies would be called upon to approve these project components. These project components are discussed in relation to some environmental issue areas where it was determined environmental effects could impact City resources, but not in others. For example, the DEIR's analysis of aesthetic impacts of the desalination plant from public views within the City of Marina was reviewed. However, site stormwater flows and resulting impacts were not specifically reviewed, as site drainage is not likely to impact City resources or any areas under City jurisdiction.

Although we are familiar with and will review the technical sections and analyses contained within the DEIR, our scope does not include any independent peer reviews of technical reports or studies utilized in preparation of the DEIR.

State CEQA Guidelines Section 15204 provides (in relevant part) that:

In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that ... CEQA does not require a lead agency

to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.

Lead agencies are only required to respond to comments related to significant environmental issues. Therefore, our review and comments are limited to the DEIR's adequacy in identifying and evaluating the significance of potential physical changes in the environment that would result from the project. State CEQA Guidelines Section 15131 specifically states that economic or social effects of a project shall not be treated as significant effects on the environment. Therefore, our review does not include an evaluation of potential economic or social impacts associated with the MPWSP, including any evaluation of project alternatives based on economic or social factors. These issues, if established in the CPUC's formal proceeding record, will be considered by the CPUC outside of the CEQA process. However, they are not relevant to review of the DEIR.

Alternatives Analysis

We have reviewed the Alternatives section of the DEIR, and have generally concluded that it is adequate for CEQA purposes. The project alternatives discussed in that section are summarized below. We will need direction from the City on which alternative it would like to support as a preferred alternative. If there are additional alternatives the City would like to see analyzed, we can make those recommendations as well in our response.

Alternative 1 – This alternative would rely on subsurface slant wells at Potrero Road. All other components would be the same as the MPWSP.

Based on groundwater modeling, a subsurface intake at this location is projected to draw a larger percentage of freshwater from the Salinas Valley Groundwater Basin (approximately 17 percent). Because this larger percentage of inland water would need to be returned to the Basin (consistent with Cal Am's proposal to return all inland water), a smaller amount of produced water would be available for Cal Am's distribution under Alternative 1. Therefore, Alternative 1 would not provide sufficient water supplies to completely replace the existing Carmel River supplies. Growth would continue to be constrained under this alternative; therefore, indirect impacts associated with growth would be reduced under Alternative 1.

Alternative 1 would result in increased construction-related impacts to: air quality, noise and vibration, aesthetics, cultural resources, recreation, and traffic as a result of approximately 5.2 miles of additional pipeline construction. Alternative 1 would result in impacts to different biological and historic resources. Alternative 1 would also result in more severe impacts to the Basin.

Alternative 2 – This alternative would rely on an open ocean intake system at Moss Landing. All other components would be the same as the MPWSP.

Alternative 2 would produce the same volume of product water and meet all of the objectives of the MPWSP. However, the open ocean intake presents feasibility and permitting issues that would not be associated with the MPWSP.

Alternative 2 would result in new and greater impacts to: Monterey Bay, aquatic species, marine resources, Moss Landing Harbor, and Elkhorn Slough. Similar to Alternative 1, this alternative would require construction of additional pipelines, resulting in increased construction-related impacts to: air quality, noise and vibration, traffic, aesthetics, and cultural resources. Alternative 2 would result in impacts to different

biological resources and historic/archaeological resources. As Alternative 2 would take water directly from the ocean, it would have no impact on the Basin.

Alternative 3 – This alternative is the same as Alternative 1 (subsurface slant wells at Potrero Road), but would serve a reduced-scale desalination plant. An option for reducing the size and scale of the MPWSP is described in the DEIR as the MPWSP Variant. Under this option, Cal Am would purchase 3,500 acre-feet per year of product water from the Pure Water Monterey Groundwater Replenishment (GWR) project, a joint project proposed by the Monterey Regional Water Pollution Control Agency (MRWPCA) and the Monterey Peninsula Water Management District (MPWMD). The desalination component of the MPWSP Variant would be accordingly reduced.

Similar to Alternative 1, Alternative 3 would require return of a larger volume of water to the Basin and would not fully develop sufficient alternative water supplies. Environmental effects of Alternative 3 would be similar to those of the MPWSP Variant (which includes impacts associated with development of the GWR project), as well as increased impacts to the Basin and increased construction-related impacts associated with additional pipeline development.

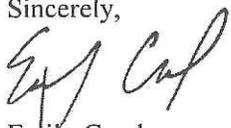
Alternative 4 – This alternative is the same as Alternative 2 (open ocean intake at Moss Landing), but would serve the reduced-scale MPWSP Variant. Alternative 4 would meet all project objectives and provide the same amount of water as the MPWSP Variant. However, the open ocean intake would result in additional permitting complexity and increased costs.

Similar to Alternative 2, Alternative 4 would result in increased impacts to: Monterey Bay, aquatic species, marine resources, Moss Landing Harbor, and Elkhorn Slough. Alternative 4 would have no impact on the Basin.

Our comments on the MPWSP DEIR have been provided as a separate attachment for the City's review, consideration, and comment. We look forward to finalizing the comments based on feedback from the City for submittal to the CPUC prior to the end of the public comment period on July 1, 2015.

Please let me know if you have any questions or concerns about the foregoing information.

Sincerely,



Emily Creel
Environmental Planner

Attachments: Draft Comments on the DEIR for the Cal Am Monterey Peninsula Water Supply Project

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Similar to Alternative 1, Alternative 3 would require return of a larger volume of water to the Basin and would not fully develop sufficient alternative water supplies. Environmental effects of Alternative 3 would be similar to those of the MPWSP Variant (which includes impacts associated with development of the GWR project), as well as increased impacts to the Basin and increased construction-related impacts associated with additional pipeline development.

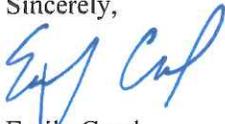
Alternative 4 – This alternative is the same as Alternative 2 (open ocean intake at Moss Landing), but would serve the reduced-scale MPWSP Variant. Alternative 4 would meet all project objectives and provide the same amount of water as the MPWSP Variant. However, the open ocean intake would result in additional permitting complexity and increased costs.

Similar to Alternative 2, Alternative 4 would result in increased impacts to: Monterey Bay, aquatic species, marine resources, Moss Landing Harbor, and Elkhorn Slough. Alternative 4 would have no impact on the Basin.

Our comments on the MPWSP DEIR have been provided as a separate attachment for the City's review, consideration, and comment. We look forward to finalizing the comments based on feedback from the City for submittal to the CPUC prior to the end of the public comment period on July 1, 2015.

Please let me know if you have any questions or concerns about the foregoing information.

Sincerely,



Emily Creel
Environmental Planner

Attachments: Draft Comments on the DEIR for the Cal Am Monterey Peninsula Water Supply Project

EXHIBIT C

Virgil M. Piper
3010 Eddy St., Marina, CA. 93933
(831) 384-9595 (fax 384-6059)
pipersvc@sbcglobal.net

May 18, 2015

CA Public Utilities Commission
Public Advisor's Office
Division of Ratepayer Advocates
505 Van Ness Ave., Rm 2103
San Francisco, CA. 94102

RE: A. 12.04-019 Monterey Peninsula Water Supply Project

Gentlemen:

The Problem.

A Public Utility, like California-American Water Co (Cal-Am), is a legal monopoly created, supposedly, for the public benefit. California, in an effort to restrict a public utility from excessive fees, rate increases or other potential abuses to their customer base, created the Public Utilities Commission (CPUC) as an advocate for the rate payer.

Cal Am made an EIR presentation (Marina council chambers, May 12, 2015) for the above named project. Considering the CPUC is acting as the "Lead Agency" in behalf of Cal-Am, ***Who remains to speak for the rate payer here?*** And why isn't this a *conflict of interest*?

The CPUC procedure.

According to ***Appendix "A" (of the EIR) NOP Scoping Report*** page 3: "The CPUC. . . authorizes water providers to charge their customers ***'just and reasonable' rates.***"

1. Did Cal-Am give public notice of cost and resulting rate increase of their project which was proposed back in 2012?
2. If so, was a **"Just and Reasonable" rate** established for the entire project utilizing other projects to determine what was reasonable?

De-Sal project COMPARABLES:

1. The San Diego De-sal deal: Poseidon agreed to build the plant and be responsible for all costs (legal and construction). They estimated a \$2,000 per acre foot cost to San Diego County Water Authority and would allow the purchase the plant for \$1 at the end of 30 years.
2. Moss Landing's ***Deep Water Desal*** claims they can provide water for \$1100 to \$2000 per acre foot – depending on distance from the plant.
3. ***The People's Desal Project*** (also in Moss Landing) claims they can provide water at a cost of \$1,650 - \$1,950 per acre foot.

What is the actual “**Just and Reasonable**” per acre foot cost to be passed on to Cal Am rate payers for this project? The Monterey Herald reported the Cal-Am rate payers, for this project, could expect to pay **\$3,732 per acre foot (or more)** and this project **might** be operational sometime in 2019.

The Deep Water Desal project offers a cheaper rate and they estimate an operational date of the fourth quarter 2017.

The real question: Will Cal-Am be held to a “Just and Reasonable Rate?”

It appears that Cal-Am has decided to build their own De-sal plant without regard to cost because they expect their rate payers to pick up the tab **AND**, their technique involves support from CPUC in approving minor steps in the process so that the total project cost is lost in the shuffle. In fact the CPUC has characteristically approved rate increases for many of the preliminary steps in the De-sal project i.e. the test wells, the EIR report and so on.

What about the December, 2015 deadline? If Cal Am fails to solve its water problems and reduce pumping of Carmel River water, ***is it barred from passing on the related State fines to its customer base?***

Cal-Am Advice Letter 1079: *(Please see Partial copy of publication attached)*

Under the guise of Governor Brown’s executive order regarding water conservation, Cal Am wants to double or triple various water rates. Apparently the theory is that if consumer rates become prohibitively expensive, then no one will elect to consume any water.

But is this really a water conservation measure or just another rate increase to cover the huge costs related to their De-sal plant?

Obviously, The Cal-Am rate payers need an outside and objective investigation to determine what is best for the consumer by an organization which is designed to be a rate payer advocate . . . and that would be you folks.

Sincerely,

Virgil M. Piper

cc: Governor Jerry Brown,
State Senator Bill Monning
Assemblyman Mark Stone
U.S. Representative Sam Farr

CALIFORNIA AMERICAN WATER – MONTEREY DISTRICT (MAIN)

CALIFORNIA AMERICAN WATER has requested authority from the CALIFORNIA PUBLIC UTILITIES COMMISSION (Commission) to revise its Water Conservation Plan ("Plan"). The revised Plan would only go into effect once approved by the Commission.

In order to comply with the Governor's executive order, emergency regulations from the State Water Resources Control Board and orders from the Commission, California American Water is revising its current Rule 14.1.1 and Schedule MO 14.1.1. Upon acceptance of the revisions by the Commission, California American Water will implement the stage of the plan, including activation of the Schedule, necessary to achieve the required level of conservation and restrictions on water use in a separate filing.

California American Water will hold a **public meeting on May 21, 2015, at 6 p.m.** at the California American Water office located at 511 Forest Lodge Road, Suite 100, Pacific Grove, CA 93950, to explain the process and receive public input.

HIGHLIGHTS OF THE PLAN

Emergency Conservation Rates

The Allotment for summer landscape adjustment will be excluded from the block width for emergency conservation rate design.

The emergency conservation rates for residential customers will have a five-block rate design, which would add a 50% increase to the base rates for blocks 2 and 3, and increase block 4 and 5 rates by 100% of the base block rates to the current rates being charged in blocks 4 and 5.

Block	Current %	Proposed % of base rate
1	100%	100%
2	150%	225%
3	400%	600%
4	800%	1,600%
5	1,000%	2,000%

An increase in each of the four customer division rates for non-residential customers will occur. Customer Division 1 base block rate would increase by 10%, customer Division 2 and 3 base block rate would increase by 25% and customer Division 3 base block rate would increase by 100%. For non-residential customers in Hidden Hills and Bishop during emergency conservation rates, the above percentages of base rate would be added to the current rates being charged in each of those areas.

An increase of 100% to the Temporary Water Service Rates to Other Water Utilities will occur. There will be a rate increase in block 2 of 50% and in block 3 of 100% for Permanent Water Sales to Other Water Utilities customers.

Water-use restrictions - Landscape Irrigation Limitations:

1. Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week on a schedule established and posted by the California American Water Company. This provision does not apply to landscape irrigation zones that exclusively use very low-flow drip-type irrigation systems when no emitter produces more than two (2) gallons of water per hour. Use of potable water for more than minimal landscaping, as defined in the landscaping regulations of the jurisdiction or as described in Article 10.8 of the California Government Code.
2. Sprinkler irrigation overseen by a professional gardener or landscaper who is available on site may occur between 9 a.m. and 5 p.m., but shall not exceed two watering days per week.
3. **NEW!** Watering duration. Watering or irrigating of any lawn, landscape, or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes of watering per day per station. This subsection does not apply to landscape irrigation systems that exclusively use very low-flow drip-type irrigation equipment when no emitter produces more than two (2) gallons of water per hour and weather-based controllers or stream rotor sprinklers that meet a 70% efficiency standard.
4. **NEW!** Watering during and for 48 hours after measureable precipitation. Watering or irrigating of any lawn, landscape, or other vegetated area with potable water during and for 48 hours following measureable precipitation.

All customers shall refrain from water waste and non-essential water use.

Non-Essential Water Use shall mean the indiscriminate or excessive dissipation of water which is unproductive, or does not reasonably sustain life or economic benefit. Non-essential water use includes, but is not limited to, the following:

- Serving drinking water to any person unless expressly requested, by a restaurant, hotel, cafe, cafeteria and other public place where food is sold, served or offered for sale.
- Operation of fountains, ponds, lakes or other ornamental use of potable water without recycling.
- Using unmetered fire hydrant water by individuals for any reason other than fire suppression or utility system maintenance purposes.
- Draining and refilling swimming pools or spas except to prevent or correct structural damage or to comply with public health regulations.
- Unreasonable or excessive use of potable water for dust control or earth compaction without prior written approval of MPWMD.

EXHIBIT D

Comments regarding CalAm Desalination EIR:

From: Kathy and Harvey Biala
3012 Crescent Street
Marina, CA 93933

Cell: 559-903-0604
Home: 831-920-2762
Email: kbiala@milestonemma.net

Under section 4.4.1 and 4.4.2 the current DEIR does not mention the recent (2015), electrical resistivity imaging of this entire region conducted by Stanford University under the auspices of Dr. Margaret Knight and Dr. Adam Pidlisecky.

We recently attended the May 26, 2015 presentation by Dr. Knight and Dr. Pidlisecky at the Hopkins Marine Laboratory in Monterey on saltwater intrusion in the Monterey Bay area. They have successfully plotted the salt intrusion and fresh water subsurfaces using electrical resistivity imaging. This technique has been used by the oil and gas industries and now, thanks to Dr. Knight and her team of geophysicists, this has been applied to the mapping of water resources and saltwater intrusion. The imaging of the Monterey Bay subsurface by this technique is superior to drilling sentinel wells for data collection because of the breadth and depth of the imaging. It can track regional impacts of localized water extractions and water migration patterns.

Along the entire perimeter of Monterey Bay coast, two notable exclusions of data were from Moss Landing and the Cemex area. At both locations, approvals were not granted. As the property of Cemex is the precise location of a proposed massive desalination plant, it is unacceptable to not have electrical resistivity imaging for this site when it has been made available to us.

Furthermore, there is apparently a significant possibility that the clay aquatard may have multiple fracture lines in the location of the Cemex plant. Fractures allow seepage of saltwater that may increase the intrusion rates and can be monitored by the electrical resistivity imaging techniques.

The imaging produced by the Stanford team helps us understand the changes to an *entire* region from water extractions of localized wells and desalination efforts. This information is vital to the EIR for monitoring and verification of changes within the subsurface region for future impacts. Association with Stanford University is highly beneficial from an impartial, science based monitoring approach as we move towards the development of desalination plants, the long term effects of which cannot be accurately predicted.

CPUC must do all it can to insist that the electrical resistivity imaging data be collected at the Cemex site with mandatory participation at future data collection points of the Stanford research for Monterey Bay. The Stanford researchers have confirmed that collecting imaging data from the approximate 8 kilometers of the Cemex coast property is quite possible if funding is provided. The next date for restudy of the coast may be in October of this year. It would be advisable to have Cemex property surveyed as soon as possible so that it may be included in the next anticipated data collection point. If CalAm is serious about transparency and maximizing the long term success of their plant, this data should be mandatory.

Desalination EIR Comments by Kathy and Harvey Biala

Important points arising out of Dr. Carol Reeb's presentation at the Monterey Unitarian Universalist Church 5/19/15 with relevance to the CalAm desalination project as summarized by Kathy Biala, resident of Marina.

Dr. Reeb from Stanford University presented technical issues related to desalination plants in such a clear manner that a layperson such as myself could understand even complex concepts. She is to be commended for her community contributions on this subject of great import to us.

1. Waste water from our three current small Monterey County desalination plants comprise only 1% of the wastewater that will be produced by the proposed CalAm slant well in Marina. This slant well will create 40-50 million gallons of wastewater per day...most being discharged to the current sewer system. **Can our current sewer system, in the short and long term, sustain such a huge volume of additional wastewater?**

2. Current coil membranes used for reverse osmosis desalination have been deemed "safe" against pathogens, pharmaceuticals, and most common contaminants in seawater (boron), mercury, etc. IF incoming source water is monitored and appropriately treated and the facility is adequately maintained AND IF the water is filtered 1 ½ to 2 times to remove boron. **Is the maintenance plan in place and accounted for in the cost of the project long term? How does this maintenance plan compare to other plants?**

Here is a link to the World Health Organization's document on safe drinking water from desalination. For boron, go to pg 5, Section 4:
http://www.who.int/water_sanitation_health/publications/2011/desalination_guidance_en.pdf

3. Brine is a waste byproduct of the desalination process. It has a high concentration of salt and therefore is denser, and if not properly diluted and mixed, it will sink to the bottom of the ocean floor where it can accumulate and persist through time. Brine accumulating on the seafloor can also create hypoxia, whereby oxygen is depleted beneath the brine layer. This is deadly to marine life.

As is often said by the experts, "Solution to pollution is dilution". On the seafloor, there is very little energy to mix brine. Most of the energy for mixing in the ocean occurs at the surface with the wind and waves, not on the seafloor. If a desalination plant uses an offshore sewer outflow, it has been determined that a high pressure discharge pump can disperse and dilute the brine in the ocean better than low pressure (velocity) discharges. In fact, the new regulatory policies adopted by the State Water Resources Control Board encourage high velocity (pressure) diffuser modifications on discharge outflows when there is inadequate wastewater to dilute the brine. Using high velocity diffusers will allow brine to be significantly diluted.

Is such a pressure diffuser pump being considered and if not, how can we ensure that this will be part of the mitigation plan?

4. Since brine returned to the ocean has the potential to layer on the seafloor and persist over time in the outflow area, monitoring of salinity and dissolved oxygen are critical steps. There are many ways marine scientists can monitor the outflow area: take direct samples, use of sonar to gauge water density, or use aquatic submersible “drones” to patrol and measure water quality parameters (oxygen and salinity). In addition, there are many research studies currently underway in which electronic tags housing salinity meters have been deployed on fish and marine mammals in Monterey Bay. These tags record and relay water quality data to the lab for analysis. Over time, any change in water quality in regions where tagged animals swim will be detected and reported. **What are the current proposed monitors for ocean salinity and the monitoring schedules?**

5. Brine layers act as a “plastic saran wrap” and cut off oxygen exchange with the upper water column. As a result, respiration by bacteria and other organisms beneath the brine layer will quickly deplete the water of oxygen and cause animals on the seafloor to essentially suffocate. In addition, when marine life is exposed to these denser layers of salt water, animals will begin to dehydrate – embryos and eggs of marine species are especially vulnerable, as are marine invertebrates like squid, mollusks, sand dollars, and others. This is because water within the cells of animals is drawn from their bodies into the saltier sea around them – in other words, in the brine, animals start to dehydrate. Dr. Reeb’s lab has shown that squid embryos have less resiliency in slightly elevated concentrations of salt water. Because the California market squid uses the seafloor for its egg nurseries, brine discharge into these nurseries could negatively affect squid populations over the long-term. If these effects are severe enough, there could not only be economic impacts to the squid industry, but there might be ecologic affects to the food chain because squid are an important food source for a multitude of species of marine life, including endangered species like steelhead trout. **There is no mention of the impact to squid in the EIR, except quoting a 1998 study that showed “no squids” in the study area. The EIR did not include a more recent survey of marine life inhabiting the proposed brine outflow area. The EIR must have a thorough study of the food chain and the impact of squid in the project areas.**

6. It has been shown that Red Tides are a recurring phenomenon in Monterey Bay. These harmful algal blooms (HABs) occur when colonies of algae grow out of control. Sometimes, they produce harmful toxins that can accumulate in seafood (fish, shellfish). These toxins can harm marine mammals, birds, and people too (NOAA).

Here is a link for HABs in the Marine Sanctuary:

<http://coastalscience.noaa.gov/news/coastal-pollution/monterey-bay-national-marine-sanctuary-seeks-advice-harmful-algal-bloom-threat/>

The EIR does include this impact. This is why subsurface wells are a benefit to the CalAm plant design because they can mitigate the effects of algal blooms much more successfully than open ocean intakes used in other desalination plant designs currently proposed for Monterey Bay. Large, persistent Red Tides have been shown to clog the intake pipes in desalination plants even for as long as 8 months as in one desal plant in Saudi Arabia; there is also the issue of algal blooms that can harbor cyanobacteria. In our area, Red Tides are absolutely present in Monterey Bay. Fortunately, the EIR proposed to use subsurface (slant wells) to mitigate the affects of Red Tides. **However, if these slant wells are found to be "not feasible," for example because of cost, then the EIR does not mention how algal toxins will be mitigated if CalAm needs to use open ocean intakes instead. Will there be another opportunity for additional EIR considerations if direct ocean intake is considered?**

NOTE: According to Dr. Reeb, as long as CalAm uses subsurface wells, they should have little problem with Red Tides. It is only if these wells are considered too expensive or not feasible that there would be the need to add more information to the EIR that would mitigate clogs and toxins.

7. With the currently 21 proposed desalination plants in California, only 1.2 % of our current water needs can be met via these plants. Once built, for whatever reasons, plants should not be "turned off" as it is tremendously expensive to restart the system (rebooting costs one-third of original costs to build the plant).

NOTE: Dr. Reeb reports that in the case of Santa Barbara, a desalination plant was built about 20 years ago. Because it started raining shortly thereafter, the facility was never used. Eventually, they gutted the valuable parts and sold them. Now those parts must be replaced. The cost is around \$40M. If Reverse Osmosis facilities are not used regularly, the components will become "fouled," clogged and will need to be replaced. These plants cannot simply be turned on and off as needed. Once on, they should stay on. Otherwise, there will be the cost of replacing the filtration components, which can be expensive.

We must fully debate the taxpayer burdens committed to one very expensive water method over commitments to several less costly methods that can be used simultaneously (diversification). Can we not consider the impact of ALL planned water system projects and the contributions of the desal plant as one of several operating initiatives?

8. If there is 24.1 million gallons of ocean water taken in, 9.5 M gallons can become potable (drinking) water, 14.6 M gallons will be brine that must be safely dispersed or distributed. These are not good proportions, by any means! In addition, 40% of the cost of desalination is for electricity to run the plants. Desalination is not a clear

cut, "final" solution to the water shortage. Dr. Reeb recommends a diversity of methods that can generate reliable availability of continuous potable water.

NOTE: According to Dr. Reeb, a diversified water portfolio includes: Wastewater and stormwater recycling and purification (using reverse osmosis desalination technologies – which require 1/3 less than seawater desalination); Aquifer storage and recovery, grey water recycling, and of course, more conservation (do we need lawns and water features?). Seawater desalination should be a supplement to our water supply; it should be used as a last resort.

Does CalAm have a full understanding of the other system water sources and are plans in place to connect and collaborate for the greater water needs of our local communities, rather than propose a single project that in and of itself cannot guarantee uninterrupted or continual adequacy of potable water supplies?

9. Currently available technologies must be developed, tested, and adopted to current desalination methodologies e.g. adding forward osmosis component to reverse osmosis plant to create a hybrid facility; or including electrodialysis or using the newer graphene (nanoporous single-layer) membranes, which can use less energy. We need serious focus on science not just on business enterprises.

What role does our community/CalAm/university/public officials have in ensuring that we continue to invest in research and development for future improvements so that this new slant well technology evolves and can be viable for our long term future?

10. Issue of what to do with resultant brine is a critical problem. The CalAm project will rely on using our current sewage systems or following the recommendations of the State Water Board, diluting the brine with waste water; BUT waste water is currently being used to irrigate farming fields, especially in the summer. **Will there be enough unused wastewater to dilute the brine?**

Furthermore, converting wastewater to potable water uses only one third the amount of electricity it would take to dilute brine water to an acceptable level to put it back into the ocean. Does it make sense to choose dilution of brine with wastewater when purifying wastewater is a more efficient way to create potable water? **What alternatives are in place for unavailability of adequate volume of wastewater for brine dilution? Are there any current plans to convert more wastewater to potable water?**

We need to be firm on the stance that no brine should be dumped back into the ocean undiluted and/or without adequate outflow distribution methods. This has a real potential to alter our marine eco-system in ways we cannot fully imagine now. If we invest heavily in seawater desalination, we must do it right. **Is there an**

absolute guarantee in the proposal, that no brine will be dumped back into the ocean undiluted and/or without adequate distribution methods?

11. In the future, we should find ways, and perhaps develop research funding to recover salt from the brine, harvest minerals/metals present in brine, and/or producing energy/electricity from brine. All this may be possible if we are committed to research and development and are committed to developing ocean-friendly seawater desalination for the future. Is there added funding allocated and/or any efforts aimed at promoting allied technologies/methodologies for continued research and development connected to the current slant well project?

12. The EIR presented by CalAm did not include the results from the slant well pilot (only in operation 20 days at the time of the EIR presentation). This appears to be a rather brief testing period by any scientific study standards. Any timetable of approvals must be delayed until the EIR is properly documented with public comment. What do the scientists say is a proper amount of "test time" for a pilot slant well (Dana Point ran for 2 years) given the unique geographies and marine life at each location?

13. Note: This comment is separate from Dr. Reeb's presentation and expresses an additional concern of Kathy Biala. The EIR sections 4.6-2 (Result in substantial adverse effects on riparian habitat, critical habitat, or sensitive natural communities during construction) is labeled LSM (less than significant impact with mitigation). Among the mitigation actions listed is providing a lead biologist who "oversees implementation of protective measures". This would be a very key person to protect the interests of our community. How will this biologist be chosen? Who will pay the salary? If CalAm pays the salary for this position, what are the safeguards for conflict of interest, transparency, and accountability? Can this position report to a responsible public board as opposed to reporting to a CalAm employee? Does this position have only data reporting capabilities or will this position have direct authority to stop or revise operations that are out of compliance? Who will write the plan/standards for "protective measures" that this position will "oversee"?

Thank you for considering our concerns about the slant well desalination project and its corresponding EIR.

May 25, 2015

Kathy Biala, Harvey Biala
kbiala@milestonemma.net
3012 Crescent Street
Marina, CA 93933
Cell: 559-903-0604, Home: 831-920-2762

RESOLUTION NO. 2015-n/a no Vote

~~A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MARINA RECEIVING DRAFT COMMENT LETTER REGARDING THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) FOR THE MONTEREY PENINSULA WATER SUPPLY PROJECT (MPWSP), AND; PROVIDING DIRECTION TO, AND AUTHORIZING THE CITY MANAGER TO SEND COMMENT LETTER TO CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)~~

~~WHEREAS, at the regular meeting of April 21, 2015 City Council received a staff report and timeline for the Responsible Agency review process for the CPUC DEIR for the MPWSP, and;~~

~~WHEREAS, at the regular meeting of May 5, 2015, City Council adopted Resolution No. 2015-48, receiving an informational report with regards to the Responsible Agency review process; authorizing FY2015-16 budget amendment, and; authorizing the Finance Director to make the necessary accounting and budgetary entries, and;~~

~~WHEREAS, at the Special Joint Meeting of May 12, 2015, City Council adopted Resolution No. 2015-54, receiving informational presentations by California American Water regarding the slant test well results, and by CPUC representatives introducing the DEIR for the MPWSP, and;~~

~~WHEREAS, SWCA Environmental Consultants has prepared draft comments regarding the Draft Environmental Impact Report (DEIR) to be transmitted by the City to CPUC, and;~~

~~WHEREAS, at a Special Joint Meeting of June 23, 2015, the Planning Commission of the City of Marina conducted a duly noticed public meeting, considered all public testimony, written and oral, presented at the public meeting regarding the DEIR for the MPWSP.~~

~~NOW, THEREFORE IT BE RESOLVED that the Planning Commission of the City of Marina does hereby:~~

- ~~1. Receive draft comment letter regarding the Draft Environmental Impact Report (DEIR) for the Monterey Peninsula Water Supply Project (MPWSP), and; provide direction to, and authorize the City Manager to send the comment letter to the to the California Public Utilities Commission (CPUC).~~

~~PASSED AND ADOPTED by the Planning Commission of the City of Marina at a regular meeting duly held on the 23rd day of June 2015, by the following vote:~~

~~AYES: PLANNING COMMISSIONERS:
NOES: PLANNING COMMISSIONERS:
ABSENT: PLANNING COMMISSIONERS:
ABSTAIN: PLANNING COMMISSIONERS:~~

David Burnett, Chair

ATTEST:

Theresa Szymanis, AICP-CTP
Director, Community Development Department
City of Marina

May 19, 2015

Item No. **4a**

Honorable Mayor and Members
of the Marina City Council

Special City Council Meeting
of June 23, 2015

Honorable Members
Of the Marina Planning Commission

Special Planning Commission Meeting
of June 23, 2015

**CITY COUNCIL AND PLANNING COMMISSION CONSIDER
ADOPTING RESOLUTION NO. 2015- , AND RESOLUTION NO. 2015 -,
RESPECTIVELY, RECEIVING DRAFT COMMENT LETTER
REGARDING THE DRAFT ENVIRONMENTAL IMPACT REPORT
(DEIR) FOR THE MONTEREY PENINSULA WATER SUPPLY
PROJECT (MPWSP), AND; PROVIDE DIRECTION TO, AND
AUTHORIZE THE CITY MANAGER TO SEND COMMENT LETTER
TO CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC)**

REQUEST:

It is requested that the City Council and Planning Commission:

1. Consider adopting Resolution No. 2015- , and Resolution No. 2015- , respectively, receiving draft comment letter regarding the Draft Environmental Impact Report (DEIR) for the Monterey Peninsula Water Supply Project (MPWSP), and; provide direction to, and authorize the City Manager to send the comment letter to the to the California Public Utilities Commission (CPUC).

BACKGROUND:

At the regular meeting of April 21, 2015 City Council received a staff report and timeline for the Responsible Agency review process for the CPUC DEIR for the MPWSP.

At the regular meeting of May 5, 2015, City Council adopted Resolution No. 2015-48, receiving an informational report with regards to the Responsible Agency review process; authorizing FY2015-16 budget amendment, and; authorizing the Finance Director to make the necessary accounting and budgetary entries.

At the Special Joint Meeting of May 12, 2015, City Council adopted Resolution No. 2015-54, receiving informational presentations by California American Water regarding the slant test well results, and by CPUC representatives introducing the DEIR for the MPWSP.

ANALYSIS:

In 2016, the City of Marina Planning Commission will be asked to review and consider issuance of a Coastal Development Permit (CDP) for the Monterey Peninsula Water Supply Project. As part of this review, the City of Marina will be asked to rely upon the EIR now being prepared by the CPUC to satisfy the requirements of the California Environmental Quality Act (CEQA). The City's review contributes to create the Final EIR (FEIR). As Lead Agency, the CPUC will certify the FEIR, and jurisdictions with permitting authority will be asked to rely upon that certified document as the CEQA document for the project.

SWCA Environmental Consultants has prepared a cover letter to the City to frame the review (“**EXHIBIT A**”) and has provided draft comments to be transmitted by the City to CPUC (“**EXHIBIT B**”).

The cover letter outlines Lead Agency versus Responsible Agency roles and responsibilities in this process.

The cover letter also addresses the question of groundwater rights.

City comments on the DEIR will be forwarded to CPUC for their consideration in the FEIR. The comments will incorporate any further direction by the Planning Commission and City Council.

Public comment letters regarding the DEIR submitted by Virgil Piper and Kathy & Harvey Biala are also attached (“**EXHIBIT C**” and “**EXHIBIT D**”). Issues raised within these letters have been addressed through SWCA’s comment letter, as appropriate.

Next Steps

The comment period on the DEIR concludes on June 30, 2015. The CPUC will respond to and address the City’s comments prior to release of the FEIR. CEQA Guidelines Section 15088 requires that the Lead Agency provide responses to comments from public agencies at least 10 days prior to the certification of the Final EIR. A decision by the CPUC regarding certification of the FEIR is anticipated in February 2016.

California American Water anticipated filing an application for a Coastal Development Permit with the City of Marina in November 2015, contemplating timely certification of the FEIR.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,



Theresa Szymanis, AICP CTP
Acting Director
Community Development Department

REVIEWED/CONCUR:



Layne P. Long
City Manager
City of Marina