



May 16, 2019

TO: Monterey County Board of Supervisors/Resource Management Agency of Monterey County

FROM: Public Water Now, Melodie Chrislock, Managing Director
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RE: Appeal of Monterey County Planning Commission approval of California American Water Company Combined Development Permit for a desalination plant on Charles Benson Road (PLN150889) / Resolution 19-008 (14175 Del Monte Blvd., Unincorporated Monterey County)

BACKGROUND

Public Water Now (PWN) hereby appeals and objects to the illegal and wrongfully issued Combined Development Permit/ Design Approval/ Use Permit application (approved by the Monterey County Planning Commission) for a desalination plant by the California American Water Company (Cal Am) on protected farmland located adjacent to Charles Benson Way near Marina. PWN, as part of this appeal, hereby asserts each and every fact, reference, and statement herein included, including Exhibits 1- 4, as grounds for both the granting of this appeal and requiring the continuance of any consideration of the subject permits until a full and complete Supplemental EIR, prepared pursuant to the CEQA guidelines, has been properly noticed, circulated, and certified.

Cal Am's project results in the unmitigated loss of protected farmlands and the unmitigated and intentional pollution of legislatively recognized and protected potable groundwater aquifers by polluting saltwater intrusion intentionally induced by the pumping of Cal Am's "feed water" wells.

The Supplemental EIR is necessary and legally required because the EIR prepared by the California Public Utilities Commission (CPUC) is not complete and did not consider or address mandatory environmental requirements of the Monterey County General Plan

and Local Coastal Plan, and because it is inadequate to properly determine the significant adverse environmental impacts of the proposed project inasmuch as that EIR did not and has not evaluated the detailed factual hydrologic and hydro-geologic data (and anticipated adverse impacts of the project) that were identified and produced by research scientists from Stanford University. The County, as a Responsible Agency under CEQA, is required under state law to order the preparation of a Supplemental EIR.

The Planning Commission decision cannot be sustained because to do so will violate CEQA, violate mandates of the Monterey County General Plan and North County Local Coastal Plan (LCP) (See Exhibit 1), violate the legislative mandates of SGMA (Sustained Groundwater Management Act), violate Article X Section 2 of the California Constitution, and violate over 100 years of case law governing percolated groundwater rights in California. Moreover, the County cannot grant groundwater rights to Cal Am.

The wrongful approval of the permits by the Planning Commission, in deed, results in the violation of mandatory environmental requirements and violations of multiple legal mandates and laws governing groundwater resources, aquifer storage and capacity, and groundwater rights in the non-adjudicated, overdrafted percolated groundwater aquifers of the Salinas Valley. The resultant violations of those mandates and requirements were not disclosed previously to the decision makers by County staff (either in the staff reports, the incomplete CPUC EIR, nor the staff's oral presentations), in spite of the fact that the approval results in easily recognizable violations of the local and state law mandates. **This is most notably true since the California Supreme Court ruled in 1935 in "Peabody v. Vallejo (2 Cal. 2nd 351)" ruled that "the use of groundwater is a legally protected property right". Cal Am has no groundwater rights, yet not once, during the Planning Commission or the Ag Advisory Board hearings, was this established law, which Cal Am intends to knowingly violate, disclosed to decision makers by County staff. The County's approval results in the illegal taking of private property rights from innocent third parties. And multiple parties holding these senior water rights have objected, yet been ignored by County staff.**

REMEDY

PWN hereby requests, as a remedy to the Planning Commission's wrongful approval of the permits, the following from the Board of Supervisors:

Sustain this appeal, hold in abeyance the continued processing of the permits, and refer the matter back to Planning staff with an order directing said staff to secure and provide to the Planning Commission, the Board of Supervisors and the public:

- 1).** A new certified Supplemental EIR (in compliance with CEQA guidelines and the mandates of the Monterey County General Plan and the North County LCP) to address both
 - a.** the legal and environmental requirements identified herein that are Monterey County General Plan and LCP mandates and required regulations that are not addressed in the CPUC EIR, and
 - b.** the necessary and factually indisputable groundwater hydrology/hydro geologic information and modeling data produced for the Marina Coast Water District by independent researchers and scientists from Stanford University;

- 2).** legally required factual data and information, including proof of a long term, sustainable water supply and groundwater rights to which Cal Am has actual, demonstrable, and current rights, as mandated by the Monterey County General Plan, that was omitted from the staff report to the Planning Commission and is not included in the CPUC EIR (Cal Am has no such groundwater rights); and

- 3).** identification of the "path forward" that will comply with established County and state statutory mandates and regulations, that will allow decision makers to be confident that all environmental facts, legal requirements, and truthful data have been presented to them prior to the rendering of decisions that would wrongfully result in violations of CEQA and the General Plan/Local Coastal Plan and the wrongful "taking" (without compensation) of private property rights and percolated groundwater rights from senior water rights holders in the Salinas Valley.

DISCUSSION OF VIOLATIONS, OMISSIONS AND INADEQUACIES

Violation of County Policies

PWN appeals herein because this proposed project violates both the 1982 and the 2010 Monterey County General Plans, the 2010 Greater Monterey Peninsula Area Plan, and the North Monterey County Local Coastal Plan policies requiring the mandated protection and preservation of farmlands and the protection of agricultural water supplies and senior agricultural water rights. Further, this project (in its entirety) intentionally induces seawater intrusion into protected and potable Salinas Valley groundwater aquifers. (See Exhibit 1)

Violation of California Constitution

This project directly violates **Article X, Section 2** of the California Constitution (the Reasonableness of Use doctrine), which each Supervisor has sworn to uphold and defend. The intentional inducement of salt pollution into a potable aquifer wherein the polluter (Cal Am) holds no water rights is not a “reasonable use of water.” (See SGMA reference)

Violation of SWRCB Policy

Further, Cal Am’s project intends to intentionally violate the State Water Resources Control Board’s (SWRCB) Statewide 1968 Non-Degradation Policy and intends to intentionally contaminate “potable groundwater supplies” for the Salinas Valley as specifically identified by the adopted Central Coast Regional Water Quality Control Board’s 2012 “Water Quality Control Plan for the Central Coastal Basin”, which has been ratified by the SWRCB. Importantly, these potable and statutorily protected groundwater resources further have been demonstrably identified by independent researchers from Stanford University, yet this required environmental data and information has not been included in the CPUC’s incomplete/defective EIR, nor in the County Planning staff’s presentations to decision makers. The findings in the Planning Commission’s approval are contradicted by the facts and the law.

Violation of Property Rights

Moreover, the percolated groundwater supply that Cal Am proposes to use to “feed” its “plant” is “property” that belongs to overlying landowners and senior appropriators in the Salinas Valley, including agencies of the federal government of the United States, which hold

reversionary rights to the groundwater supplies and groundwater aquifers. Cal Am has no rights to any groundwater in the Salinas Valley for its project. **Importantly, the County also holds no such groundwater rights in the basin. The County lacks the authority to effect a “taking” of private property rights and potable groundwater for the benefit of a private, for-profit entity.** (See Exhibit 3).

Violation of Groundwater Rights

For over 100 years, California law holds that, in an overdrafted percolated groundwater basin (like the Salinas Valley), there is no groundwater available for junior appropriators (Cal Am) to take outside of the basin. In an overdrafted, percolated groundwater basin, California law holds that the “Doctrine of Correlative Overlying Water Rights” applies. In an overdrafted basin, there is no surplus water for new junior appropriators (like Cal Am). This decisive statement of law was first articulated by the California Supreme Court in 1902 in Katz v. Walkinshaw (141 Cal. 116) and has remained the law in California for over a century. (See: Burr v. Maclay (160 Cal. 268); Pasadena v. Alhambra (33 Cal.2nd 908); and the most recent decision (2000) by the Supreme Court affirming this law of groundwater rights City of Barstow v. Mojave (23 Cal.4th 1224). Simply put, Cal Am has no groundwater rights in the Salinas Valley and cannot legally secure any. This is grounds to sustain this appeal. The County General Plan and LCP, SGMA and CEQA require proof of groundwater rights and aquifer storage rights before a permit to intentionally pollute a potable aquifer with saltwater intrusion may be considered.

Violation of ‘Piecemealing’ Prohibitions

This Cal Am Combined Development Permit application process is an illegal “piecemeal” application of a much larger project wherein the true significant adverse environmental consequences and the adverse legal impacts upon senior property (percolated groundwater) rights holders were not disclosed to the Monterey County Planning Commission nor to the Agricultural Advisory Committee.

Regarding the larger project, PWN believes that Cal Am intends to intentionally pollute the City of Marina’s sole source of potable water within their aquifer with salt, thereby forcing the Marina Coast Water District to either file bankruptcy or to unwillingly be forced to purchase water from Cal Am.

STAFF OMISSIONS AND INADEQUACIES

Farmland

This property is surrounded on three sides by cultivated farmland and has been designated in an agricultural classification since the adoption of the 1982 Monterey County General Plan.

(See land use map from the 2010 Monterey County General Plan, Greater Monterey Peninsula Area Plan here:

<http://www.co.monterey.ca.us/home/showdocument?id=45964>)

Cal Am's mapping of the farmland in the area is incomplete and intentionally deceptive so as to deceive (by omission) the Board of Supervisors and the public, and to wrongfully withhold the disclosure of the true nature and massive expanse of the irrigated farmlands (and the potential adverse impacts thereon) that surround the project site on three sides. The subject property is in a 40-acre minimum exclusive agriculture zoning classification. The Board of Supervisors has deemed 40 acres as the minimum sized parcel for viable agricultural uses. The General Plan (See Exhibit 1) mandates the protection of these agricultural resources. Cal Am's project results in the permanent loss of over half of the property for a completely non-agriculturally related, industrial land use that will decimate the potable drinking and irrigation groundwater supplies upon which farmland owners adjacent to the site rely. This is a solely heavy industrial use that is not allowed under the existing agriculture zoning ordinance.

Notably, Cal Am has offered NO REPLACEMENT IRRIGATION OR DRINKING WATER as mitigation to the overlying farmland owners (with the most senior groundwater rights) or the Marina Coast Water District (which holds senior appropriative groundwater rights dating back over fifty years and which received a portion of their groundwater rights from the federal government).

All of the adjacent farmlands are dependent upon the existing potable groundwater aquifers and their senior overlying groundwater rights (to which Cal Am has NO rights or entitlements), which Cal Am intends to wrongfully exploit with its desalination plant and the profits resulting there from.

Seawater Intrusion

Existing potable domestic, municipal, and agricultural irrigation wells

are visible within the affected area to anyone willing to open their eyes. Notably, for six decades, farmland owners surrounding the Cal Am desalination plant site and landowners inside of the City of Marina have all continuously assessed themselves to build, maintain, and operate supplemental water supply projects expressly to “hold back” and remedy seawater intrusion in the aquifers that Cal Am intends to illegally exploit. Importantly, SMGA specifically identifies and prohibits “significant and unreasonable seawater intrusion” as an “Undesirable Result” that must be avoided in the management of potable groundwater basins, and specifically in the Salinas Valley. (See AB 1739, SB1168, and SB1319 enacted and signed in 2014). The express legislative intent of this important legislation, in part, includes “respecting overlying and other proprietary rights to groundwater” by senior rights holders. This legislative mandate has not been addressed in the staff analysis and, of course, has been ignored by Cal Am’s representatives because it would compromise their goal of polluting the potable groundwater resources of the Salinas Valley groundwater basin for their corporate profits.

The County is a party to a settlement agreement with Cal Am, dated December 4, 2012, that was approved by the CPUC in Decision D15-03-002 on March 12, 2015. Section 8. Slant Test Well and Source Water Determination, makes this concluding statement: “The Agency and the County do not support use of the 180 foot aquifer as a source of water for use in MPWSP.” The County was correct to warn against the use of this source, and to defend against the unmitigated and massive adverse environmental impacts, violations of SGMA and the MCWRA statutes and the unlawful aggravation of seawater intrusion.

County staff has not mentioned this agreement, nor showed what steps the County took to follow up on this agreement. Meanwhile the 180 foot aquifer continues to be at the heart of water rights and litigation issues.

Data from the test slant well Hydrogeologic Working Group, which oversees data collection and reporting, is informative. Monitoring Well 4 middle, located about ½ mile from the test well site, is the threshold inland data point for tracking impacts of extraction. The final reading in January 2018 at shows the highest levels of total dissolved solids (tds) for the entire long-term test (about 30 months). Ocean water percentage rose from 52%, before the test well began operation in early 2015, to 70% at its conclusion. This fact is contrary to the claim by Cal Am that the test well has had insignificant impact

on seawater intrusion. Cal Am's wells are polluting the 180 foot aquifer with salt, yet no mitigation, or compensation **of any kind** has been identified for this previously anticipated significant adverse environmental impact that is resulting in the wrongful taking of the property rights of innocent overlying rights holders and senior appropriators.

Cal Am's project will cause a massive risk to the health and safety, and to the sole source potable water supply of thousands of residents of the City of Marina. This massive environmental threat, and the permanent loss of a public groundwater supply due to wrongfully induced seawater pollution, has not been quantified nor have mitigations been identified to provide a replacement source of water at no cost to the residents of Marina.

Groundwater Rights

Notably, California groundwater rights law is clear that "voluntary water conservation" (by land owners who intentionally reduce groundwater pumping) of groundwater supplies, as an intended consequence of the payment for and development of supplemental water supplies, DOES NOT RESULT IN AN ABANDONMENT, FORFEITURE, OR LOSS OF GROUNDWATER RIGHTS by those overlying landowners or senior appropriators WHO HAVE BEEN PAYING FOR THE SUPPLEMENTAL WATER. These required issues were inexcusably not raised or addressed by Planning staff as part of the presentations to decision makers. This is grounds to sustain this appeal.

No Cal Am Interest or Rights in Salinas Valley Groundwater Basin Issues

Cal Am has never "paid a dime" of any of the assessments for the dams at Lake Nacimiento, Lake San Antonio, the "purple valve" reclamation system, or the "rubber dam". Cal Am intends to knowingly compromise the intent and goals of these publicly paid for, comprehensive, decades-long water development, conservation and protection programs by intentionally inducing seawater pollution into protected potable groundwater aquifers.

Prohibited Exportation of Salinas Basin Groundwater

Cal Am intends to wrongfully export groundwater out of the Salinas Valley groundwater basin in violation of the express prohibition of such exports memorialized in the authorizing statute of the Monterey

County Water Resources Agency. Cal Am has offered no mitigations for its intended massive adverse environmental impacts and violations of property rights of innocent third parties. Moreover, Cal Am's intent to pollute potable groundwater supplies directly violates both the legislative intent, legal requirements, and statutory mandates of the California Sustained Groundwater Management Act (SGMA) which specifically requires the protection and preservation of on-shore aquifers against any discretionary actions resulting in increased seawater intrusion into the Salinas Valley.

The Planning staff's presentation of Cal Am's deceitful plan failed to properly evaluate, or even disclose, these irrefutable facts, laws, regulations, and environmental conclusions to the Agricultural Advisory Board and the Planning Commission. These facts, and the disclosure of Cal Am's illegal intentions, should have resulted in the denial of the permits. In fact, the permit application should have never been deemed complete by the Planning staff [due to the absence of the required proof of groundwater rights by Cal Am (to sustain the required finding of a sustainable long-term supply of water)]. The staff reference to Mo. Co. General Plan Policy, PS-3.1, is inapplicable because that policy does not exempt a private party from providing proof of groundwater rights as a condition of filing a complete application or from complying with CEQA. The finding by decision makers that the initial application was complete "without proof of water rights" was never made.

Moreover, since the water that Cal Am intends to sell to CCSD will go into the CCSD sewer lines and be discharged from the regional sewer plant into the ocean, this also constitutes an "illegal export of protected groundwater supplies outside of the basin", a direct violation of the prohibition in the legislatively adopted MCWRA statute mandates. The County cannot wave a requirement of a state law.

Salvage Water Misrepresentations

Cal Am's representatives have desperately held onto the archaic legal fiction that somehow they can prove that they are "salvaging water." This is a shameless effort to peddle "voodoo hydrology" to decision makers. In fact, Cal Am's representative intentionally deceived the Agriculture Advisory Board and falsely stated on the record that the issue of water rights was already litigated. Cal Am wants decision makers to believe this falsehood because Cal Am has NO groundwater rights.

First, the concept of “salvaged water” was never applied to percolated groundwater in a non-adjudicated, over-drafted groundwater basin. “Salvaged waters” only ever applied to surface waters in a stream. Cal Am has spent millions of dollars of ratepayers monies on the foolish premise that they could pollute existing aquifers and then claim that they were “just salvaging water” when the overlying landowners with senior water rights (who are paying assessments to reverse seawater intrusion) objected.

The law on this matter is clear and it is not on Cal Am’s side. There are three reported cases addressing “salvage waters” and the dates of those decisions were in 1889, 1896, and 1908. In the 1889 case, the court found that the concept of “salvaged waters” was inapplicable. There was a wholesale re-writing by the State Legislature of the California Water Code in 1913-1914. “Salvaged waters”, as a legal concept, disappeared. Cal Am’s legal case is so weak it had to go back over 100 years to find someone to even partially agree with them.

This concept was mentioned in a letter from a junior staff attorney who works for the SWRCB. Cal Am will attempt to deceive you by saying that the letter is from the SWRCB. **That letter is not from the SWRCB. The SWRC Board is a quasi-judicial agency and only acts upon matters that are scheduled for hearings before it. The Board and its members NEVER issue opinion letters.**

The letter included multiple caveats and conditions that Cal Am would have to satisfy to prove that it actually salvaged water that Cal Am could put to beneficial use in Cal Am’s service area outside of the Salinas Valley. Cal Am cannot meet those caveats and conditions. “Salvaged water” is a 19th Century concept that no longer exists under California law. Moreover, as stated definitively in “The California Law of Water Rights” by Wells Hutchins, which was published by the State of California, **“The essential feature of the right to the use of salvaged waters is that its exercise does not cause injury to any pre-existing right” (Page 385).**

Cal Am has no groundwater rights in the over-drafted groundwater basin. It cannot acquire any groundwater rights. All of the groundwater in the over-drafted basin is needed to meet the legal requirements and uses and entitlements of the overlying landowners

and senior water rights holders with pre-existing rights. Cal Am's lawyers know this. Cal Am fully intends to injure overlying landowners with senior groundwater rights and the Marina Coast Water District (the senior appropriator) by Cal Am's wrongful pumping of water for its desalination plant, thereby intentionally polluting (with salt water) the potable aquifers that the landowners and MCWD own and rely upon.

Lack of Growth Inducing Impacts Analysis and Excessive Groundwater Extractions

Notably, County staff has failed to identify the massive and permanent extractions of groundwater that the Cal Am project proposes. Clearly the amount of water to be extracted from the Basin far exceeds that which is necessary to satisfy the requirement of the State Water Resources Control Board order against Cal Am.

Cal Am is using its violation of state water laws to push for an oversized plant that is massively growth inducing and is not currently needed by Monterey Peninsula residents. It is unfair to burden current ratepayers with the \$329 million cost of a project from which they will receive no benefit. This is clearly a CEQA violation. (See Exhibit 4)

Inadequacies in Planning Commission Resolution No. 12-008

Monterey County Planning Commission Resolution No. 12-008 documents approval of Cal Am's application PLN150889 for its desal facility. The Findings reflect intentionally deceptive omissions that directly violate CEQA and lack of attention to due diligence. Such neglect is reprehensible, and should not be acceptable for such a significant project.

Not reported at all in the staff report to the Planning Commission and the decision document is any input from the Monterey County Water Resources Agency. This Agency has had decades long concern, and has financed a comprehensive government program and projects, to fight against and reverse seawater intrusion. These ongoing government programs and capital projects are funded by assessments levied by the COUNTY OF MONTEREY on property owners whose water rights are being "stolen" by Cal Am. Such omission is more than notable. It reflects an impermissible bias and

intentional acts to violate the requirements of CEQA.

Cal Am's project specifically draws from the 180 foot aquifer, where seawater intrusion is most severe. There are hydro geologic opinions that differ, but there is massive data that indicates seawater intrusion may be aggravated by Cal Am's project. By not even mentioning this issue, staff has structured the information to keep the Planning Commission away from its consideration. Yet it is key to the full project.

Regarding RESOLUTION NO. 19-008:

1. FINDING: CONSISTENCY - EVIDENCE a)

Citing evidence for consistency, staff omits review of the North County Local Coastal Plan. This Plan declares specifically that new water produced in that area shall be used for agriculture, as the highest priority. If the policy needs to change, it must be dealt with specifically. This was not done. This omission prevented the Planning Commission from considering this specific County policy. Therefore the Planning Commission was deprived of key policy information.

1. FINDING: CONSISTENCY – EVIDENCE a)

The staff report makes this preposterous statement: “No conflicts were found. No communications were received during the course of review of the project indicating any inconsistencies with the text, policies, and regulations in these documents.”

This statement completely misrepresents the numerous public letters and comments including PWN's, calling attention to numerous conflicts and inconsistencies. Such staff denial is a miscarriage of transparency and professionalism, and a dereliction of duty to the public trust.

1. FINDING: CONSISTENCY – EVIDENCE I)

Staff refers to the “Settlement Agreement and Mutual Release dated December 4, 2012 among Cal Am, the County of Monterey, and the Monterey County Water Resources Agency, the County agreed not to apply Chapter 10.72 (of the County Code) to the project.”

Staff has selectively cited this agreement. Also included is this statement: “The Agency and the County do not support use of the 180-foot aquifer as a source of water for use in MPWSP.” When staff

selectively quotes from a document, it is clear evidence that staff is intentionally omitting it, or staff is negligently omitting it. Either way, the Planning Commission was deprived of key information. Such cherry picking should be assertively rejected, and then corrected.

1. FINDING: CONSISTENCY – EVIDENCE m)

Staff states the project is exempt from General Plan Policy PS-3.1, whereby proof of water supply is not required. Staff then ignores any reference to other policy that addresses the prevention of seawater intrusion. Cherry-picking policy references are a clear bias, and must not be accepted. Such selective reporting simply greases the skids for approval of Cal Am's project. The Planning Commission is expected to consider all relevant policies and facts. Staff has failed to honor its obligation to report facts.

12. FINDING: ALTERNATIVES – EVIDENCE c)

Pure Water Monterey Expansion

Staff mischaracterizes the status of the expansion Pure Water Monterey as prescribed in the CPUC approval of the CPCN for Cal Am's desal. The CPUC held evidentiary hearings on this alternative, and left it an open question. It required Cal Am to file an update as of March 30. Neither Cal Am nor the County staff reported the fact that Monterey Peninsula Water Management District, in partnership with Monterey One Water, committed \$1 million to complete an EIR for the expanded project.

Staff reported Cal Am's opinion, but not the facts. Such failure again prevented the Planning Commission from considering the full picture. It is clear to see that relevant omissions fundamentally intended to prevent Planning Commission consideration of all the facts were made.

13. FINDING: OVERRIDING CONSIDERATIONS – EVIDENCE c)

Staff states: "The project will provide local and regional benefits to the Monterey Peninsula area. Construction will boost temporary employment opportunities, increased spending on construction materials, equipment, and services."

Staff blindly reports generalities that support the project. Again staff has cherry picked. Peninsula ratepayers are already paying for the most expensive water in the USA (according to a 2015-17 national study of the 500 largest water systems, by the non-profit Food and

Water Watch). There is no other comparable survey. This cost added to paying for the most expensive desal water in the world, is totally ignored by staff. If “economic benefits” are a relevant issue, staff has omitted key and highly important facts to consider. Staff has shown bias, omission or negligence. Regardless, it must not be tolerated.

CONCLUSION

Clearly, any consideration of the Cal Am project must be continued until a full and complete analysis (Supplemental EIR) of the adverse environmental impacts and Cal Am’s proposed illegal takings of potable groundwater and aquifer storage rights (and their adverse environmental consequences to protected farmlands) are fully vetted for the public and decision makers. The Monterey County General Plan requires this comprehensive new review. Intentionally excluding such known and mandated environmental information (specifically including, but not limited to, the impacts upon potable water rights and potable aquifers), which is specifically called for in the 2010 Monterey County General Plan, will result in the knowing and intentional violation of the duties of the Board of Supervisors to the land owners of the County of Monterey and to its residents. PWN hereby appeals to have the Planning Commission approval set-aside until these issues and legal requirements are publicly identified and addressed in a Supplemental EIR.

Under the law of California groundwater rights, Cal Am is not and cannot become a senior appropriator in a non-adjudicated, percolated groundwater basin that is in overdraft. Only overlying landowners and prior senior appropriators hold groundwater rights in such a basin. Cal Am is neither. Because the basin is over-drafted, Cal Am can never gain such rights. “Overdraft” means that there is not enough groundwater available to satisfy the needs of all existing rightful groundwater rights holders. PWN hereby appeals to have the Board of Supervisors acknowledge these existing facts and laws and direct staff to incorporate these into every staff report and environmental document presented by staff to county decision makers.

It is very important to note here that Cal Am’s wrongful proposal to sell water from its proposed plant to the Castroville Community Services District (CCSD) is also illegal because Cal Am has no rights to the groundwater that it intends to sell to Castroville for new developments. This illegal conspiracy between Cal Am and CCSD is

akin to a “thief” (Cal Am) trying to “launder” stolen goods (groundwater) through a seemingly innocent (but clearly conspiratorial) “third party” (CCSD)”. **Any potential “benefit” to CCSD must be identified as resultant from illegal actions and an illegal conspiracy to effect the wrongful taking of innocent third parties’ private property rights by both Cal Am and CCSD.**

Both Cal Am and CCSD are guilty of trying to wrongfully “take” potable groundwater resources and aquifer storage capacities to which they have no legal rights or entitlements. Additionally, CCSD’s claim that it will stop pumping its wells is both unenforceable and, because CCSD is a junior appropriator, would result in CCSD’s loss of its water rights because “the basin is in overdraft” and other senior water rights holders are “first in line” for any groundwater appropriations that are abandoned by junior, non-overlying appropriators (like CCSD).

For each and all of the reasons, objections, and references incorporated herein, PWN hereby requests the granting of its appeal, the vacating of the approval of the Combined Development Permit by the Planning Commission, and the remanding of the permit application back to county staff as incomplete with direction to prepare a complete Supplemental EIR (prior to any subsequent public hearings) to fully address each, every, and all of the environmental issues, General Plan/LCP issues, legal defects and issues, objections, and remedies identified and addressed herein.

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May 19, 2019

**Supplemental Addendum to PWN Appeal of Cal Am desal project
(Additional Request for the preparation of a “Subsequent EIR” if a
“Supplemental EIR” is not deemed to be the appropriate CEQA document
to be prepared to evaluate previously unknown, severe, and new adverse
environmental impacts, effects, and information of the project).**

By this letter, Public Water Now hereby supplements its assertions and adds the contents stated herein to its filed appeal of the above referenced project (combined Development Permit PLN150889/Resolution 19-008).

Said appeal by Public Water Now is based upon substantial factual data and new information related to the project’s massive and substantially more severe adverse environmental impacts on potable percolated groundwater resources that were not previously evaluated nor available to the Lead Agency. The appeal is also based upon the availability of new information and the availability both of significant new mitigation measures to eliminate legislatively-deemed unacceptable seawater intrusion of groundwater resources, and of mitigation measures identifying the availability of viable alternative supply projects that will be immediately available before the Cal Am desal project can be constructed.

Public Water Now hereby requests that, in the alternative, if the preparation of a “Supplemental EIR” is an inappropriate remedy to fully complete an environmental review of the newly available environmental information and newly identified mitigations necessary to reduce the massive and severe adverse impacts of the project, that the Board of Supervisors direct the preparation and circulation of a “Subsequent EIR” to fully and completely evaluate each and all of the new facts, new mitigations, and PWN’s grounds for appeal of the approval of the combined development permit. PWN also herewith re-iterates each and all of its statements, facts, legal arguments, and grounds for appeal included in the original appeal documents filed with the County of Monterey.

All of the Above To Be added to the PWN Appeal,
Respectfully,

Melodie Chrislock
Managing Director, Public Water Now

EXHIBIT 1

VIOLATION OF MONTEREY COUNTY GENERAL PLAN

The 2010 Monterey County General Plan mandates proof of groundwater rights as a necessary element to conclude the required finding of a sustainable long-term water supply for the project because the project is subject to a Use Permit. **(See Mo. Co. G.P. Policies PS-3.1-3.2)** The RMA staff has failed to identify these legal prohibitions to the processing of the Cal Am application, has failed to demand evidentiary proof of required groundwater rights from Cal Am, and has failed to identify mandatory mitigations for the resultant significant adverse environmental impacts, if any such mitigation could be conceptualized.

The prime and productive “coastal farmlands” owned by the Ag Land Trust, which are proximate to the groundwater wells that Cal Am proposes to use as its “feed water” supply, were identified and purchased with federal funds expressly for the federally adopted and implemented purposes of protecting and preserving their agricultural productivity and their coastal habitat areas. The U.S. Government owns reversionary rights to those prime farmlands and the aquifers and groundwater resources and supplies there under. Documentation of the federal government’s ownership interests in the federally protected farmlands are recorded in county records and the County of Monterey participated as a partner in securing the grant funding to purchase these farmlands for permanent preservation and protection of their federally recognized productivity in conjunction with the U.S. Department of Agriculture, the State of California, and the Ag Land Trust. The RMA staff has failed to identify these legal prohibitions to the processing of the Cal Am application as “complete”, and has failed to identify mandatory mitigations for these significant adverse environmental impacts that the project will cause.

Cal Am, a wholly owned subsidiary of a private for-profit New Jersey company (American Water), has no rights (and can acquire no rights) to “take” or exploit these federal real property resources which were paid for with public funds (federal grants) for express federal governmental purposes and for the governmental mandated protection of identified and protected coastal agricultural lands and

environmental resources.

The archaic and invalid concept of “salvaged water”, which has never been endorsed by the State Water Resources Control Board, may not be invoked against assets of the federal government. Nor may Cal Am use this disfavored state law concept from the 19th Century to frustrate expressly authorized and funded federal programs wherein Congressional directives have mandated the protection and preservation of coastal agricultural resources, including its groundwater aquifers, for the protection and perpetuation of food production and environmental resources protection. (In fact, the Porter-Cologne Act specifically denied the SWRCB authority over groundwater rights absent a full adjudication of the groundwater basin, and the Sustained Groundwater Management Act ONLY allows the SWRCB to intervene when local groundwater agencies have failed to do their legislatively mandated job.) These issues of law and fact have not been identified and, as such, the County cannot legally act upon these permits until these major adverse environmental shortcomings are addressed and mitigated, and the legal and procedural deficiencies are cured. This justifies the sustainment of this appeal.

The following mandates of the Monterey County General Plan were either ignored or “missed” by the Planning staff reports which were presented to the Agriculture Advisory Committee and the Monterey County Planning Commission:

AGRICULTURE ELEMENT (2010)

GOAL AG-1 PROMOTE THE LONG-TERM PROTECTION, CONSERVATION, AND ENHANCEMENT OF PRODUCTIVE AND POTENTIALLY PRODUCTIVE AGRICULTURAL LAND.

Policies AG–1.1 Land uses that would interfere with routine and ongoing agricultural operations on viable farmlands designated as Prime, of Statewide Importance, Unique, or of Local Importance shall be prohibited.

Policy AG–1.4 Viable agricultural land uses, including ancillary and support uses and facilities on farmland designated as Prime, of Statewide Importance, Unique, or of Local Importance shall be conserved, enhanced and expanded through agricultural land use designations and encouragement of large lot agricultural zoning,

except as provided in a Community Plan. Agriculture shall be established as the top land use priority for guiding further economic development on agricultural lands.

(*Clearly, Cal Am’s proposed desalination plant, that relies upon the intentional inducement of seawater intrusion into potable regional aquifers that are used for irrigation by multiple farming operations and which are protected by historic and existing assessment projects to control and reverse seawater intrusion, falls into the category of “prohibited uses” under AG-1.1. Moreover, Cal Am’s project is not ancillary or supportive of agricultural activities, hence it violates AG-1.4.)**

GOAL AG-3 ASSURE THAT THE COUNTY’S LAND USE POLICIES DO NOT INAPPROPRIATELY LIMIT OR CONSTRAIN “ROUTINE AND ONGOING AGRICULTURAL ACTIVITIES.”

Policy AG-3.3 In lands with a Farmlands, Permanent Grazing, or Rural Grazing land use designation, farming and ranching activities that are “Routine and Ongoing Agricultural Activities” should be exempted from the General Plan policies listed below to the extent specified in those policies, except for activities that create significant soil erosion impacts or violate adopted water quality standards.

(* Cal Am’s project intends to wrongfully induce seawater pollution into potable aquifers. The massive cones of depression created by the Cal Am wells for the desalination plant’s feed water (by Cal Am’s own admission) pull potable water from on-shore aquifers that lie beneath privately owned farmlands and prime coastal farmlands in which the federal government holds interests in that real property for express, federally funded, federally designated legislative purposes and programs. Cal Am’s intentional pollution of designated potable aquifers (as recognized by the CCRWQCB and the SWRCB, and SGMA, and USDA) directly violates adopted water quality standards.)**

GOAL AG–5 ENSURE COMPATIBILITY BETWEEN THE COUNTY’S AGRICULTURAL USES AND ENVIRONMENTAL RESOURCES.

Policy AG–5.2 Policies and programs to protect and enhance

surface water and groundwater resources shall be promoted, but shall not be inconsistent with State and federal regulations.

(* Cal Am's proposed desalination plant Use Permit, not only DOES NOT promote and enhance GROUNDWATER RESOURCES, it intentionally pollutes protected groundwater aquifers and resources and it is inconsistent with administratively and legislatively adopted state and federal regulations that expressly protect existing water quality and potable water resources and aquifers, specifically, but not limited to, the Clean Water Act, the Safe Drinking Water Act, and the Porter-Cologne Act, SGMA, and the SWRCB Non-Degradation Rules.**)

PUBLIC SERVICES ELEMENT (2010)

LONG-TERM WATER SUPPLY GOAL

GOAL PS-3 ENSURES THAT NEW DEVELOPMENT IS ASSURED A LONG-TERM SUSTAINABLE WATER SUPPLY.

Policies PS-3.1 Except as specifically set forth below, new development for which a discretionary permit is required, and that will use or require the use of water, shall be prohibited without proof, based on specific findings and supported by evidence, that there is a long-term, sustainable water supply, both in quality and quantity to serve the development.

Policy PS-3.2 Specific criteria for proof of a Long Term Sustainable Water Supply and an Adequate Water Supply System for new development requiring a discretionary permit, including but not limited to residential or commercial subdivisions, shall be developed by ordinance with the advice of the General Manager of the Water Resources Agency and the Director of the Environmental Health Bureau. A determination of a Long Term Sustainable Water Supply shall be made upon the advice of the General Manager of the Water Resources Agency. The following factors shall be used in developing the criteria for proof of a long term sustainable water supply and an adequate water supply system:

a. Water quality;

b. Authorized production capacity of a facility operating pursuant to a permit from a regulatory agency, production capability, and any adverse effect on the economic extraction of water or other effect on wells in the immediate vicinity, including recovery rates;

c. Technical, managerial, and financial capability of the water purveyor or water system operator;

d. The source of the water supply and the nature of the right(s) to water from the source;

e. Cumulative impacts of existing and projected future demand for water from the source, and the ability to reverse trends contributing to an overdraft condition or otherwise affecting supply; and

f. Effects of additional extraction or diversion of water on the environment including on in-stream flows necessary to support riparian vegetation, wetlands, fish or other aquatic life, and the migration potential for steelhead, for the purpose of minimizing impacts on the environment and to those resources and species.

g. Completion and operation of new projects, or implementation of best practices, to renew or sustain aquifer or basin functions. The hauling of water shall not be a factor or a criterion for the proof of a long-term sustainable water supply.

(*Any assertion by Cal Am that the mandates of these policies have even been mentioned, let alone addressed or mitigated, is laughable. Cal Am’s “piecemeal” project directly violates multiple provisions of these mandatory requirements. The researchers from Stanford University have decidedly repudiated the “made as instructed” findings of Cal Am’s paid consultants. Cal Am has made no effort to address the mandates of the General Plan. Neither Cal Am nor Planning staff have demanded the factual evidentiary information that is mandated to be produced prior to this Use Permit application having been deemed complete. It is clearly incumbent upon the Board of Supervisors, pursuant to this appeal, to cause the permits to be continued and held in abeyance until a full, certified**

Supplemental EIR is prepared, circulated, and certified to address these issues.)

The Combined Development Permit for Cal Am's proposed desalination plant is required by CEQA and the mandates of the County General Plan to identify the water rights that are proposed to provide a long term sustainable supply of water. The County has admitted that it holds no groundwater rights in the Salinas Valley (see exhibit 3). Inasmuch as the lack of water rights has not changed since 2010, the Monterey County General Plan policies and CEQA mandate that the proposed source of Cal Am feed water be evaluated. The proposed "feed water" will come from on-shore wells, which by Cal Am's own admission will be pumping massive amounts of groundwater from on-shore due to the huge cones of depression created by Cal Am's massive industrial pumps. Pursuant to exhibits presented to the CA Coastal Commission, Cal Am's cones of depression will be drawing groundwater from beneath farmlands and protected coastal resource lands that lie within the jurisdiction of the North Monterey County Local Coastal Plan.

Hence, in order to fully comply with the County's General Plan and Local Coastal Plan, the RMA staff should have reviewed and evaluated Cal Am's Use Permit application pursuant to the mandates of those county plans. This was not done.

North Monterey County Local Coastal Plan

On June 4, 1982, the North Monterey County Local Coastal Plan was certified by the California Coastal Commission. It was the first LCP to be certified in the County of Monterey. A review of the action by the Coastal Commission will show that the Coastal Commission made the appropriate findings pursuant to the CA. Code of Regulations when it found that the plan was consistent with the legislatively adopted requirements of the Coastal Act for the protection and preservation of identified coastal resources. **THERE ARE SPECIFIC MANDATES REGARDING GROUNDWATER AQUIFERS AND RESOURCES IN THE LCP, WHICH HAVE NEVER BEEN AMENDED AND REMAIN IN FULL FORCE AND EFFECT.** These applicable mandatory LCP policies prohibit Cal Am's wrongful taking and use of the affected groundwater and groundwater aquifers. The applicable underlined mandates herein follow:

2.5.1 Key Policy The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.

2.5.3 Specific Policies A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.

2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining build out as specified in the LCP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order.

3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources.

(*These policies effectively prohibit Cal Am's devious plans. Inducing seawater intrusion into on-shore aquifers, by definition, intentionally exceeds the "safe yield" of the protected aquifers. Cal Am will come to the County RMA for well permits, yet Policy 3 above has not been addressed in the EIR or in the Planning staff's presentation. Moreover, none of the water from the plant will benefit agriculture. In fact, Cal Am intends to exploit and pollute the agricultural groundwater resources and potable aquifers that farmers and the residents of the City of Marina are paying to protect and recharge, and Cal Am intends to sell that water, to which they have no legal entitlements, for massive profits. Cal Am's service area on the Monterey Peninsula is the most expensive water in the United States, according to a 2015 / 2017 national study of the 500 largest water suppliers in the country done by Food & Water Watch.)**

Cal Am's has sought to hide the truth about its broader, massively destructive project. The potable groundwater aquifers, in the North County Local Coastal Plan area that Cal Am intends to wrongfully exploit, are mandatorily protected by adopted state and federal laws, and the certified Local Coastal Plan, expressly so as to preserve and guarantee that those groundwater aquifers are prioritized and used for agriculture, and not for Cal Am's corporate profits. Moreover, the County is mandated and required to enforce these policies so as to prohibit Cal Am's wrongful exploitation of the groundwater supplies to which Cal Am has no legal rights.

Cal Am has tried to hide the applicability of these mandates (and the facts that require the application of the mandates by the County) so as to deceive decision makers as to the true, terrible, adverse legal consequences and unmitigated environmental impacts of Cal Am's desalination plant upon the existing farming operations, protected prime farmlands, and public water supplies of the Salinas Valley.

Finally, PWN asserts that granting the permit would violate Monterey County Code Chapter 10.72.030B (Regulations of Desalination Facilities), which states that the County shall "provide assurances that each facility will be owned and operated by a public entity." Cal Am is not a public entity and the Board of Supervisors may not waive the mandates of the ordinance, particularly without full notice and public hearings. The fact that the County initiated "clarification" hearings on the ordinance and then stopped (for fear of the public's fury) is evidence of the wrongful relationship between Cal Am and County staff.

For these reasons and others, PWN and its 3,500 members hereby appeal the approval of the Combined Development Permit and respectfully request of the Board of Supervisors that said permits approved by the Planning Commission be deemed incomplete, vacated, held in abeyance, and tabled.

PWN further requests the preparation of a fully circulated and complete Supplemental EIR, which fully addresses each and all issues, deficiencies, and objections raised herein, including the General Plan and LCP mandated issues, adverse environmental impacts to water supplies and private groundwater rights, adverse

impacts to groundwater aquifers and aquifer storage rights, and the loss of protected agricultural resources. PWN requests that the full supplemental EIR be prepared, certified and made available to the public for hearings prior to any final decision.

Melodie Chrislock
Managing Director Public Water Now

Exhibit 2 – Ag Land Trust Exhibits

Maps

A. Map of North Monterey County LCP area (yellow) and Ag Land Trust farm (Armstrong Ranch zoned “Coastal Agricultural Preserve” CAP) outlined in red. The Cal Am Test Well site is shown in black. The Ag Land Trust Big Well is shown in black.

B. The Cal Am map misrepresents the location of the Test Well and the drawdown contours of the cone of depression from the Test Well. The map fails to identify the Ag Land Trust Big Well west of Highway 1 and within the cone of depression and subject to seawater contamination from Cal Am’s proposed pumping.

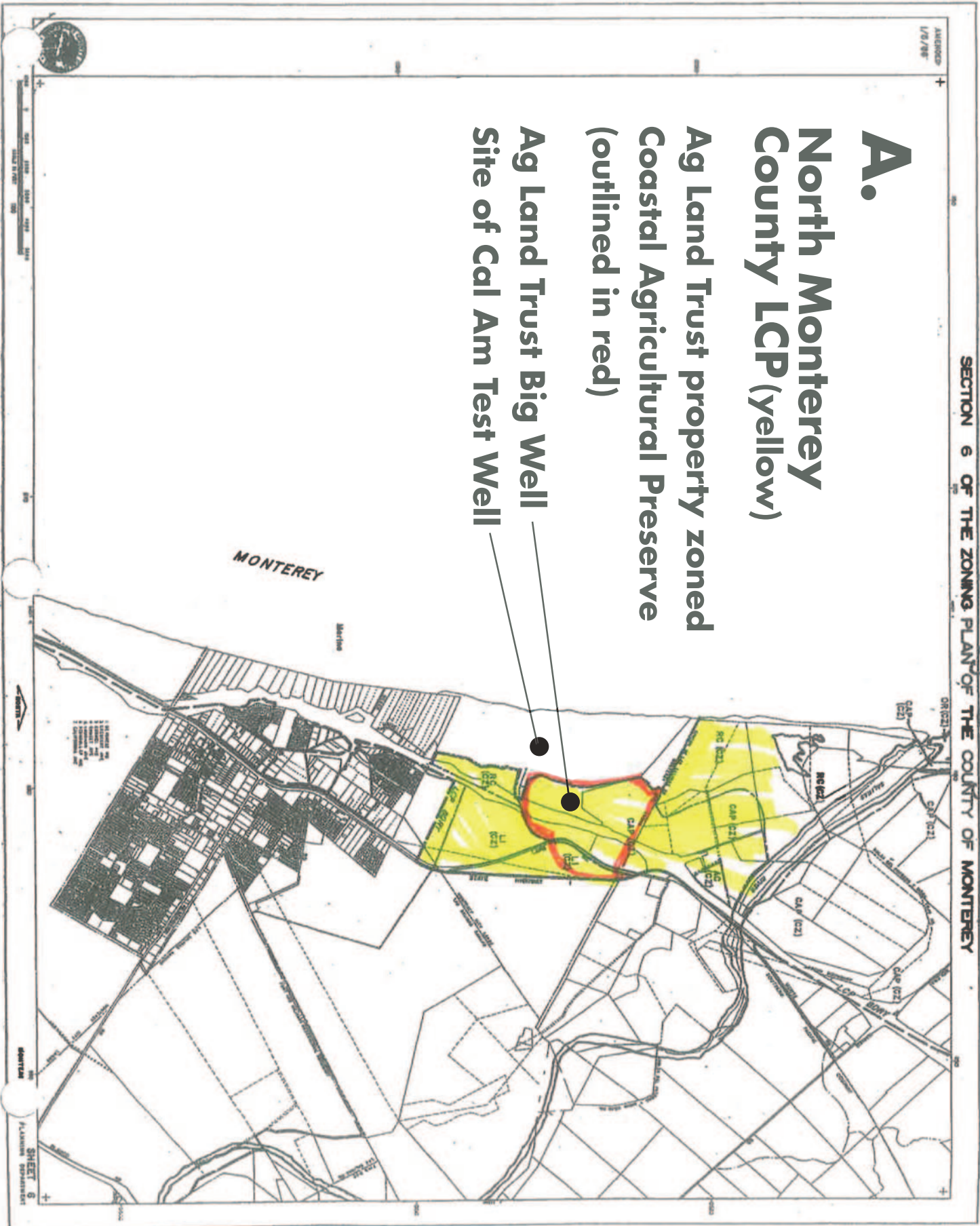
C. The Cal Am map with notation of corrected location for Test Well and location of Ag Land Trust Big Well. Adjusted cone of depression covers 75% of the Ag Land Trust property and shows seawater intrusion into the Big Well.

APPROVED
1/8/88

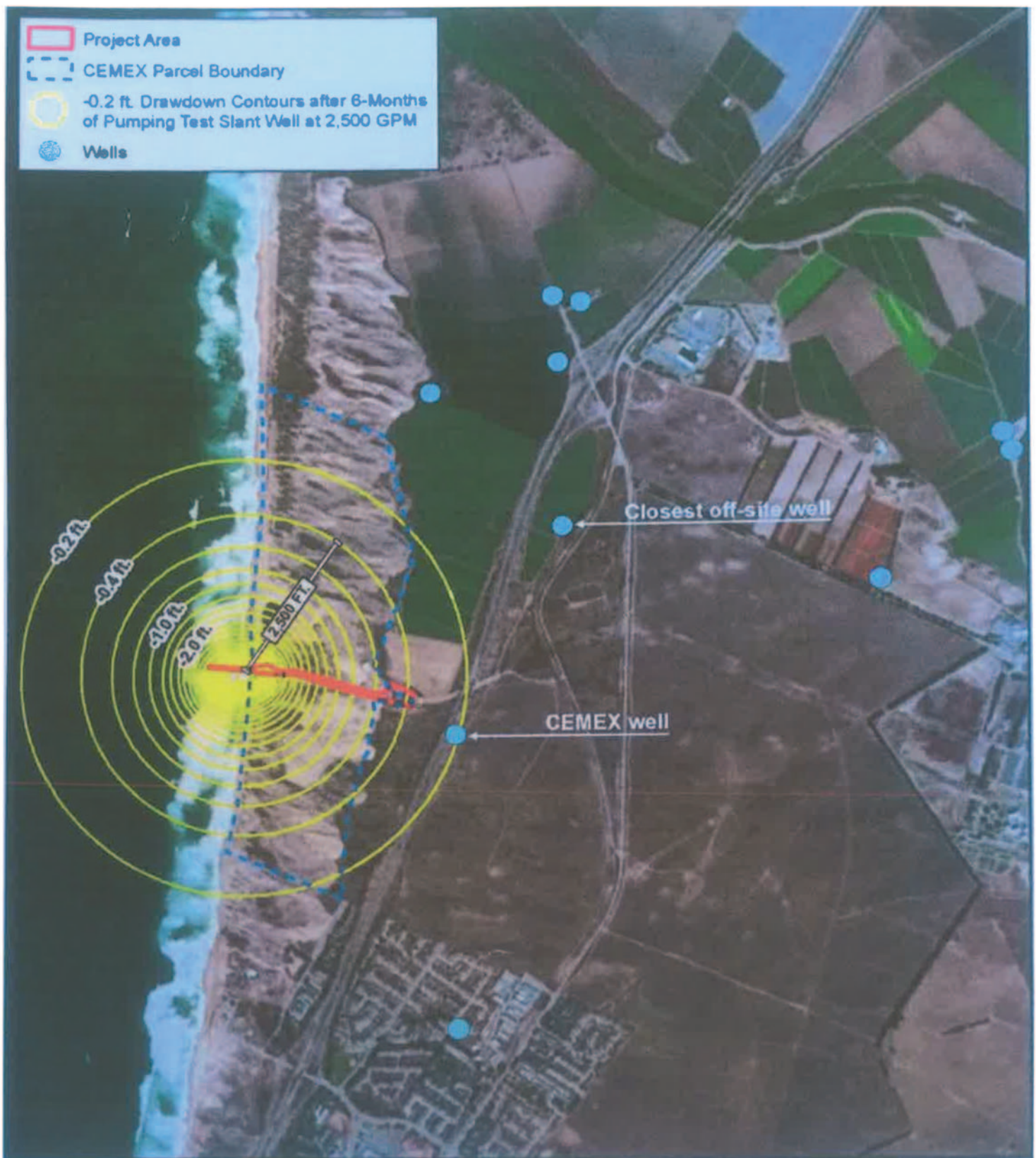
A. North Monterey County LCP (yellow)

Ag Land Trust property zoned Coastal Agricultural Preserve (outlined in red)

Ag Land Trust Big Well Site of Cal Am Test Well



B. Cal Am Map

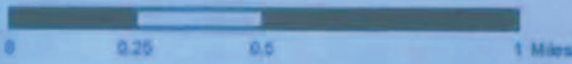
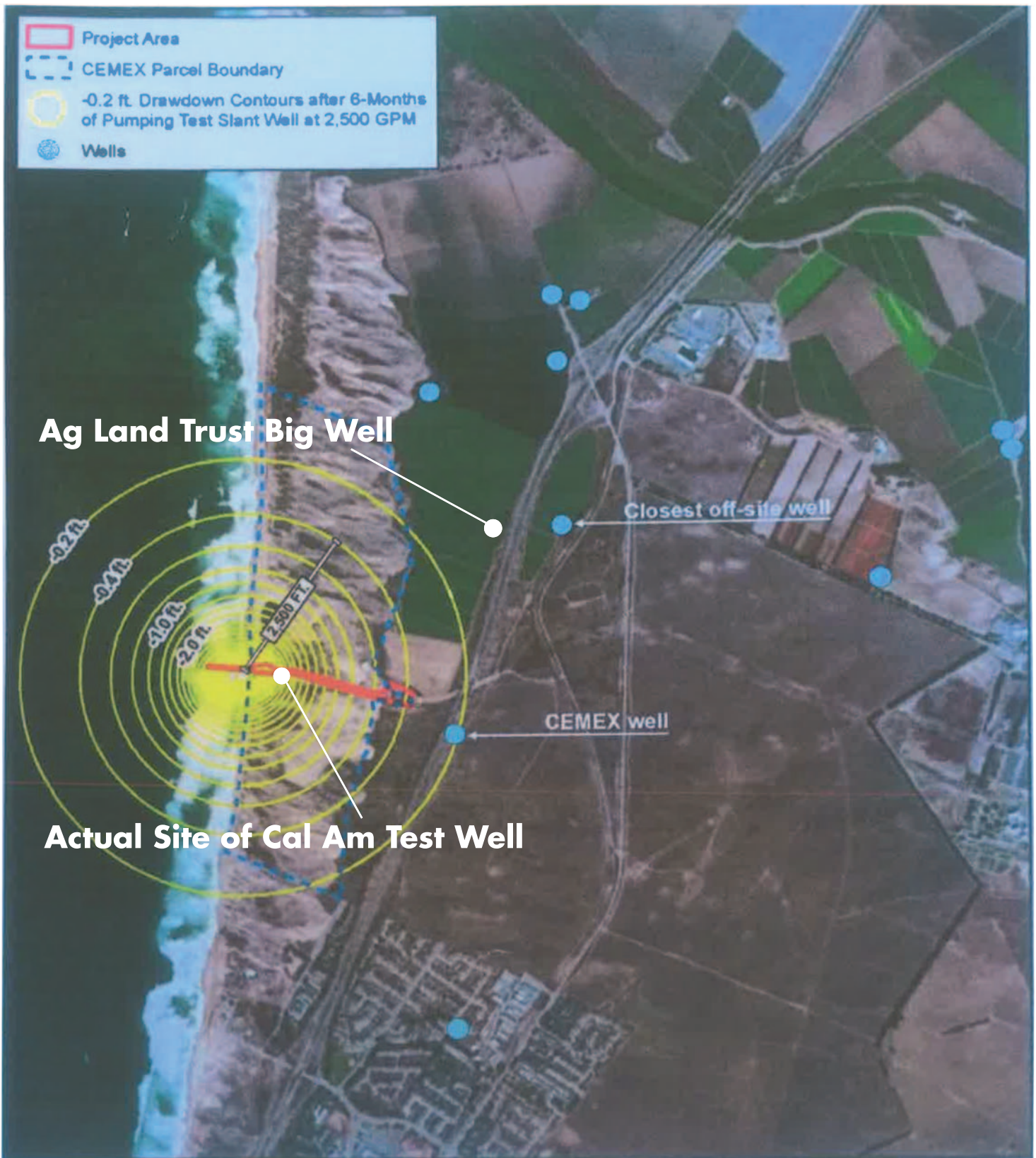


SWCA
ENVIRONMENTAL CONSULTANTS

**Drawdown Contours Map
California American Water
Slant Test Well Project**

Source: GEOSCIENCE Support Services, Inc.
Basemap: ESRI, DigitalGlobe, GeoEye, iSat, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

C. Corrected Map



Source: GEOSCIENCE Support Services, Inc.
Basemap: ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

SWCA
ENVIRONMENTAL CONSULTANTS

Drawdown Contours Map
California American Water
Slant Test Well Project

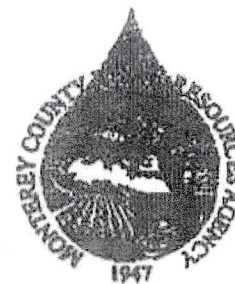
Exhibit 3 – MCWRA Letter

MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
SALINAS, CA 93802
(831) 765-4860
FAX (831) 424-7196

CURTIS V. WEEKS
GENERAL MANAGER



STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93801-4456

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.

* Monterey County has NO groundwater rights!!

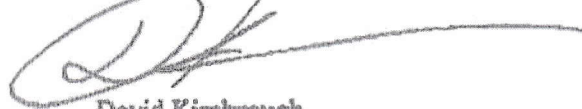
As to MCWD, it was previously annexed into Zones 2 & 2A and as such has a right to ground water. These documents are hereby attached PDF files.

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

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

Exhibit 4 – Future Water Demand



How Much Water Does the Peninsula Need?

Cal Am claims we need 14,000 acre-feet, but historic numbers predict much less water is needed for growth.

The Peninsula uses 10,000 acre-feet currently. According to the Water Management District, in the 10 years between 1997 and 2006 (before the moratorium and before the recession) the Peninsula only used an average of 12.6 acre-feet a year for all new development.

Pure Water Monterey will begin producing 3,500 acre-feet this fall. When this new supply is added in January 2020, our legal water supply and our demand will be very close to balance.

The expansion of Pure Water Monterey would add an additional 2,250 acre-feet at about one third the cost of desal. The expansion would give the Peninsula approximately 1,500 acre-feet, beyond what we use now.

This is enough water to meet the Peninsula's needs for decades to come. The expansion of Pure Water Monterey is a much better water supply solution than Cal Am's proposed desal plant.

Please see the attached numbers from the Water Management District.

Water Production Monterey Peninsula 2018 (MPWMD)

6,328 AF Carmel River Aquifer
2,240 AF Seaside Basin
1,218 AF ASR (Aquifer Storage and Recovery)
190*AF Sand City Desal
9,976 AF Total 2018

The Peninsula's 5 year Average Use is 9,924 acre-feet

Water Available with PWM (MPWMD)

3,500 AF (legal) from the Carmel Valley Aquifer (Carmel River - 3,376 AF with additional rights from the River called Table 13 rights which can amount to 200-500 AF annually)
1,300 AF (average) from ASR
774 AF from Seaside Groundwater Basin (Seaside basin limited to 1,474 in 2021 and Cal Am wants to pay back its past overdraft by leaving 700 AF unpumped for 25 years, leaving 774 AF)
190*AF from Sand City Desal
3,500 AF from Pure Water Monterey
9,264 AF Available as of January 2020

PWM Expansion Can Meet the CDO Deadline Dec. 2021

10,000 AF Current Demand
9,264 AF Available as of Jan 2020
736 AF needed to get us off the river

Water Available with PWM Expansion

9,264 AF
2,250 AF additional from Pure Water Monterey Expansion
11,514 AF Total with PWM Expansion

*Sand City desal could be more or less. Long term 100 AF is set aside for new development in Sand City.