

June 17, 2015

BY E-MAIL & FIRST CLASS MAIL

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Andrew Barnsdale
California Public Utilities Commission
c/o Environmental Science Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108

Re: A.12-04-019 - Documents Referenced in Draft Environmental
Impact Report for the Monterey Peninsula Water Supply Project

Dear Mr. Barnsdale:

I write to follow up on my letter to you of June 15, 2015, wherein I raised the incompleteness of the CD-rom that you provided to me on June 12, 2015, pursuant to this firm's request on behalf of Marina Coast Water District ("MCWD") for access to all documents referenced in the Draft Environmental Impact Report ("DEIR") released on April 30, 2015 for the Monterey Peninsula Water Supply Project ("MPWSP"). My letter of June 15, 2015 alerted you to our understanding that the CD-rom was missing a number of documents. Our review of the material on that CD-rom is still ongoing. However, we believe that we have compiled a reasonably complete list of the documents referenced in the Draft EIR that are missing. That list is attached to this letter. In addition, it does not appear the references in the Appendices to the DEIR are included on the CD-rom. Given the large number of documents referenced in the DEIR Appendices, we have not attached a list of missing references from the Appendices. Instead, we have attached a list of those references that we would like to review as soon as possible. Please let us know when and where these documents will be made available.

Notwithstanding MCWD's efforts to access all of the documents referenced in the DEIR, pursuant to the requirements of Section 21092, subdivision (b)(1) of the Public Resources Code as well as section 15087(c)(5) of the California Environmental Quality Act ("CEQA") Guidelines (Cal. Code Regs., tit. 14), you were required to make all of those documents available for public access and review since April 30, 2015, the date that the Commission, published its Notice of Availability ("NOA") for the MPWSP DEIR. Equally important, you were required in the NOA itself to make all parties to the proceeding and members of the public aware of the location of the documents and their access for review and copying during normal business hours. These statutory CEQA requirements are critical because they impact the ability of parties and the public to comment on the DEIR.

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In my letter of June 15, 2015, attached for reference, MCWD requested that the CPUC make all of the documents referenced in the DEIR for the MPWSP readily accessible for public inspection, then reissue the Notice of Availability for the MPWSP DEIR with the required indication of the location where the documents referenced in the DEIR may be accessed and restart the comment period so that the public has access to all referenced documents in the DEIR for the full comment period. As of today's date, I have not received a response to my letter, and we have seen no indication from the Commission that it will comply with MCWD's request to recirculate.

MCWD also encourages inclusion of the latest groundwater modeling data, as requested by the parties at the May 19, 2015 groundwater modeling workshop, when the NOA is recirculated and documents relied upon in the DEIR are made readily accessible to the public, as my June 15, 2015 letter also stated. On Monday evening, we received by e-mail a notice to all parties that the Commission's response to some, but not all, groundwater issues raised in the May 19, 2015 public workshop would be delivered to the Hydrogeology Working Group or "HWG" on June 15, 2015 and delivered to all parties later in the week. Putting aside for the moment the question of why the HWG, which is purportedly composed of representatives of the Commission and only a few parties, including the Applicant, is receiving the Commission's responses to workshop issues before other parties, MCWD does not believe that a selective response to issues raised at the workshop is an adequate substitute for public disclosure of and access to the latest groundwater modeling data.

Again, thank you for your attention to MCWD's concerns regarding the environmental review process. We renew our request for public accessibility to all documents relied upon in the DEIR, recirculation of the NOA, restart of the comment period, and public disclosure of and accessibility to the latest groundwater modeling data. Absent prompt action to meet MCWD's requests, MCWD will be forced to move the Assigned ALJ for an order providing the relief it is requesting herein, and which is required of the Commission under CEQA as lead agency.

Sincerely,



Ruth Stoner Muzzin

Attachments

cc: Mark Fogelman, Esq.
Service list (excluding Administrative Law Judges) for A.12-04-019

DOCUMENTS REFERENCED IN DEIR BUT NOT PROVIDED

1. California American Water Company (CalAm), 2014c. Proposed Water Portfolio Data plus energy spreadsheet provided to CPUC by John T. Kilpatrick on March 12, 2014. **(Referenced in Ch.s 3, 6)**

[This document may be on the disc as "CalAm_2014" in Chapters 4.11 and 4.18 but the document itself is not well marked and the reference title doesn't match the disc title.]
2. California Coastal Commission (CCC), 2012. Water Quality Program Statewide Nonpoint Source (NPS) Program Information, 2012. Available online at:
<http://www.coastal.ca.gov/nps/npsndx.html> Accessed August 7, 2013. **(Referenced in Ch. 4.3)**
3. California Geological Survey (CGS), 2009. Tsunami Inundation Map for Emergency Planning State of California, 2009. **(Referenced in Ch. 4.3)**
4. Caraker, Elizabeth, 2014. Personal communication between Principal Planner Elizabeth Caraker and (City of Monterey) and Elijah Davidian (ESA) on May 5, 2014. **(Referenced in Ch. 4.8)**
5. Central Coast Long-term Environmental Assessment Network (CCLEAN), 2013. CCLEAN. Available online at: <http://www.cclean.org/> . Accessed August 23, 2013. **(Referenced in Ch. 4.3)**
6. Geoscience Support Services, Inc. (Geoscience), 2013. Monterey Peninsula Water Supply Project, Hydrogeologic Investigation Work Plan. November 19, 2013. **(Referenced in Ch. 7)**
(The Draft version of this document is on the disc, but not the final version cited here.)
7. Kimball, G., Smith, L., and S. Broderius, 1978. *Chronic Toxicity of Hydrogen Cyanide to the Bluegill*, Transactions of the American Fisheries Society, 107:2, 341-345. 1978. **(Referenced in Ch. 4.5)**
8. Kuehl, John, 2014. Personal communication between Building Official John Kuehl (City of Pacific Grove and City of Monterey) and Elijah Davidian (ESA) on May 20, 2014. **(Referenced in Ch. 4.8)**
9. Loeffelman, P. H., D.A. Klinec, and J.H. Van Hassel, 1991. *Fish Protection at Water Intakes Using a New Signal Development Process and Sound System*. Proceedings of the International Conference on Hydropower, Denver, Colorado: Volume 1, pp. 355-365. July 24-26 1991. **(Referenced in Ch. 4.5)**
10. McNutt, S.R. and Topozada, T.R., 1990. Seismology of the 17 October 1989 Earthquake, pp. 11-27, in McNutt, S. and Sydnor, R. (ed.) 1990, *The Loma Prieta (Santa Cruz Mountains) California Earthquake of October 17, 1989*, CDMG Special Publication 104. **(Referenced in Ch. 4.2)**
11. Monterey County Airport Land Use Commission (MCALUC), 1987. Comprehensive Land Use Plan for the Monterey Peninsula Airport. March 23, 1987. **(Referenced in Ch.s 5, 6, 7)**

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12. Monterey County Airport Land Use Commission (MCALUC), 1996. Comprehensive Land Use Plan for the Marina Municipal Airport. November 18, 1996. **(Referenced in Ch.s 5, 6, 7)**
13. Monterey County Office of Emergency Services, Emergency Response and Operations Plan, June 2011. **(Referenced in Ch. 7)**
14. National Oceanographic Atmospheric Administration (NOAA), 2012. MPA Inventory Database; NOAA's Ocean Service, National Marine Protected Areas Center (MPAC), 2012. **(Referenced in Ch. 4.3)**
15. Office of Directorate of Environmental Programs, 1993. *Historical and Architectural Documentation Reports for Fort Ord*, California. Conservation Division, Champaign, IL. Prepared by U.S. Army Construction Engineering Research Laboratory, Champaign, IL, 1993. **(Referenced in Ch. 4.15)**
16. Pooler, Charles, 2014. Personal communication between Associate Planner (City of Sand City) and Elijah Davidian (ESA) on May 16, 2014. **(Referenced in Ch. 4.8)**
17. Rehor, Jay, 2014. *Results of Cultural Resources Surveys for the former Fort Ord areas of the Monterey Peninsula Water Supply Project, Monterey County, California*. On file, URS, October 2014. **(Referenced in Ch. 4.15)**
18. Szymanis, Theresa, 2014. Personal communication between Planning Services Manager Theresa Szymanis and Elijah Davidian (ESA) on May 1, 2014. **(Referenced in Ch. 4.8)**
19. Trussell Technologies, Inc. 2015. Ocean Plan Compliance Assessment for the Pure Water Monterey Groundwater Replenishment Project. March 2015.
(The EIR disc contains the wrong document, even though the label is correct.
"TrussellTech_2015" in Chapter 4.3 links to "Ocean Plan Compliance Assessment for the Monterey Peninsula Water Supply Project and Project Variant." This is very different from the Pure Water project that is referenced in the chapter.)

**DOCUMENTS REFERENCED IN DEIR APPENDICES
REQUESTED BY MCWD FOR IMMEDIATE REVIEW**

Appendix E-2:

1. Durbin, T., 2013, Conaway Ranch Groundwater Model – Power-Law Averaging of Hydraulic Conductivity. Draft Technical Memorandum, November 2013.
2. Emcon, 1991. Monterey Regional Waste Management District, Marina Class III Landfill Geologic and Hydrogeologic Study, Monterey County, California.

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3. Geoscience Support Services, Inc. (Geoscience), 2013. Monterey Peninsula Water Supply Project, Hydrogeologic Investigation Work Plan, December 2013.
4. Hanson, R.T., Everett, R.R., ...et al... 2001. Geohydrology of a Deep-Aquifer Monitoring Well Site at Marina, Monterey county, California. Prepared in cooperation with the Monterey County Water Resources Agency. USGS Water Resources Investigations Report (WRIR) 021-4003
5. Harding Lawson Associates (HLA), 2001. Final Report: Hydrogeologic Investigation of the Salinas Valley Basin in the Vicinity of Fort Ord and Marina, Salinas Valley, California.
6. Ludorff and Scalmanini, Consulting Engineers (LSCE), 2015. Hydrologic Modeling of the Monterey Peninsula Water Supply Project using the Salinas Valley Integrated Ground and Surface Water Model. Prepared for GEOSCIENCE Support Services, Inc.
7. MACTEC, 2005. Operable Unit Carbon Tetrachloride Plume Groundwater Remedial Investigation/Feasibility Study – Former Fort Ord, CA. Volume I – Remedial Investigation. Draft prepared for United States Army Corps of Engineers. April 29, 2005
8. Rosenberg, L.I., and Clark, J.C., 2009. Map of Rinconada and Reliz Fault Zones, Salinas River Valley, California. U.S. Geological Survey Scientific Investigations Map 3059.
9. Staal, Gardner, and Dunn, Inc. 1991. Feasibility Study-Seawater Intake Wells Marina County Water District Wastewater Treatment Facility, Marina, California.
10. Tinsley, John III, 1975. Quaternary Geology of the Northern Salinas Valley, Monterey County, California.
11. WRIME, 2008. Groundwater Modeling Simulation of Impacts for Monterey Regional Water Supply Project (Draft). Prepared for RMC. Dated May 30, 2008

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Re: A.12-04-019 - Documents Referenced in Draft Environmental
Impact Report for the Monterey Peninsula Water Supply Project

Dear Mr. Barnsdale:

Thank you for providing to me last Friday afternoon, June 12, 2015 a CD-rom, pursuant to the request of Mark Fogelman of this firm on behalf of our client, the Marina Coast Water District ("MCWD"), made on the preceding day. You stated to me at that time that the CD-rom contained all of the documents referenced in the Draft Environmental Impact Report ("DEIR") released on April 30, 2015 for the Monterey Peninsula Water Supply Project ("MPWSP"); and you requested that I sign a receipt for the CD-rom. We are still in the process of reviewing the documents on that CD-rom; however, it appears to us that not all documents referenced in the DEIR and Appendices thereto are on the CD-rom that we were provided. We will endeavor to get you a complete list of the missing documents within the next day or two. Nonetheless, all of the documents referenced for review in the DEIR should have been available for public access and review since April 30, 2015.

In that regard, this letter follows up on our telephone calls and email correspondence in attempting to gain access to those documents. Our requests were made pursuant to the requirements of Section 21092, subdivision (b)(1) of the Public Resources Code as well as California Environmental Quality Act ("CEQA") Guidelines (Cal. Code Regs., tit. 14), section 15087(c)(5), both of which require that "all documents referenced in the environmental impact report" be available for review and "readily accessible." The existing comment period on the DEIR for the MPWSP expires on July 1, 2015, as set forth in the Notice of Availability ("NOA") published by the California Public Utilities Commission ("CPUC") for the MPWSP DEIR.

It has become apparent to MCWD that the CPUC's NOA for the MPWSP DEIR is inadequate and must be recirculated. Public Resources Code section 21092, subdivision (b)(1) requires that the CEQA NOA for an EIR must include "the address where copies of the draft

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environmental impact report and all documents referenced in the draft environmental impact report ... are available for review.” As of the date the DEIR is released, all such referenced documents shall be available at a location “readily accessible to the public during the lead agency’s normal working hours.” (CEQA Guidelines, § 15087(c).) The CPUC’s April 30, 2015 NOA fails to meet this requirement in both procedure and substance.

First, the April 30, 2015 NOA issued by the CPUC, the lead agency for the MPWSP, failed to comply with required procedure because it does not indicate where any of the documents referenced in the DEIR are available for review, either in Monterey County or at the CPUC. Hence, the Notice of Availability for the MPWSP DEIR does not provide the public the required information about the location of all documents referenced in the DEIR, and which must be readily available as of the date of the NOA.

Second, the NOA failed to comply in substance with the requirement to provide ready public access to the documents referenced in the DEIR. In the process of completing MCWD’s review of the entire DEIR and its Appendices and preparing to submit comments on the DEIR, MCWD took steps to gain access to the documents referenced in the DEIR. Because no location for access was set forth in the NOA, beginning on June 11, 2015 MCWD’s counsel made multiple telephone calls, sent multiple emails and on the morning of June 12, 2015 I waited in person at the CPUC’s offices at 505 Van Ness Avenue in San Francisco for over an hour, all without gaining access to the documents. When I returned to 505 Van Ness that afternoon after 4 p.m., met with you and signed for the CD-rom that you provided, you informed me that there was no other way to gain access to the documents referenced in the MPWSP DEIR. So, although MCWD did eventually gain access late last Friday afternoon, the public – including the public in Cal-Am’s Monterey service district – and the other parties to A.12-04-019 appear to be lacking the ready accessibility that is required by the statute and the CEQA Guidelines. Therefore, they also lack the ability to immediately access and begin review of all documents referenced in the DEIR as required by CEQA.

As noted by leading CEQA commentators, Remy and Thomas:

The above-referenced requirement in section 21092 to notify the public of the address at which “all documents referenced in a draft EIR” can be found (and presumably read) . . . seems to require agencies to make available for public review all documents on which agency staff or consultants expressly rely in preparing a draft EIR. In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions (*see, e.g., Emmington v. Solano County Redevel. Agency*, 195 Cal.App.3d 491, 502-503 (1987)), agencies should ensure that they comply literally with this requirement.

Remy, Thomas and Moose, *Guide to the California Environmental Quality Act*, p. 342-43 (Solano Press, 2007). California courts have held that the failure to provide even a few pages of

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a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process. *Ultramar v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689.

Therefore, we request that the CPUC make all of the documents referenced in the DEIR for the MPWSP readily accessible for public inspection, and then reissue the Notice of Availability for the MPWSP DEIR with the required indication of the location where the documents referenced in the DEIR may be accessed and restart the comment period so that the public has access to all referenced documents in the DEIR for the full comment period. The Revised Notice of Availability should also accurately state whether the documents referenced in the DEIR can be reviewed at all locations where the DEIR and Appendices are available, as referenced in the April 30, 2015 NOA, or whether these documents are only available at a single location.

In addition, it appears from our review of the CD-rom that you provided to me last Friday afternoon that a number of documents referenced in the DEIR and Appendices are not included on that CD-rom. Thus, these documents are not available and "readily accessible to the public" or MCWD at this time. As our review is ongoing, we will provide you with our list of the documents referenced in the DEIR and Appendices that were not included on the CD-rom provided last Friday when we complete that list over the next day or two.

Finally, the internet addresses for a number of documents referenced in the DEIR and Appendices that are purportedly available online appear to be invalid. (*See, e.g.* reference in DEIR § 4.5 to <http://www.coastal.ca.gov/desalrpt/dchap3.html>.) Such documents are therefore equally unavailable and not "readily accessible to the public" or to MCWD at this time. Moreover, even with a valid URL, those documents would not be "readily accessible" to members of the public who are without sufficient internet access to retrieve them. When the CPUC recirculates its NOA for the MPWSP, the CPUC must ensure that such documents are included in full within the complete set of documents referenced in the DEIR and Appendices when those documents are made "readily accessible to the public" upon NOA re-circulation.

Thank you for your attention to our concerns and for your anticipated continuing cooperation in compliance with the requirements of the CEQA statutes and Guidelines. When the NOA and DEIR are recirculated, we would encourage inclusion of the latest groundwater modeling data, as requested by the parties at the May 19, 2015 groundwater modeling workshop.

Sincerely,


Ruth Stoner Muzzin

cc: Mark Fogelman, Esq.