MONTEREY PENINSULA REGIONAL WATER AUTHORITY

July 30, 2015

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

RE: A.12-04-019: Response of Monterey Peninsula Regional Water Authority to the Energy Division's Notice of July 9, 2015 re Extension of DEIR Comment Period and Inviting Comments and Suggestions from Stakeholders

Dear Ms. Borak:

On July 9, 2015, the California Public Utilities Commission's Energy Division ("Commission") issued a notice ("Notice")[1] extending the comment period until September 30, 2015 on the Draft Environmental Report ("DEIR") for California American Water Company's ("Cal-Am") proposed Monterey Peninsula Water Supply Project ("MPWSP"), which is the subject of A.12-04-019. Pursuant to the Notice, the Commission is considering recirculating the DEIR as a joint DEIR/DEIS to comply with CEQA and NEPA in collaboration with the Monterey Bay National Marine Sanctuary ("Sanctuary"). The Notice invites stakeholders to provide the Commission with: (1) suggestions concerning the appropriate remedy that the Commission should undertake to address the potential conflict of interest involving Geosciences; and (2) comments on the advisability of recirculating the DEIR as a joint CEQA/NEPA document. This letter provides the Monterey Peninsula Regional Water Authority's ("Water Authority")[2] response.

[1] The complete Notice is available at http://www.cpuc.ca.gov/Environment/info/esa/mpwsp/pdf/Cal-Am_Longer_150708.pdf.

[2] The Water Authority is a joint powers authority comprised of the six cities within Cal-Am's Monterey Service District. The Water Authority was created to: (1) ensure the timely development, financing, construction, operation, repair, and maintenance of one or more water projects; and (2) ensure that the governance of such water projects includes representation that is directly accountable to Monterey Peninsula water users.

The Comment Period Extension is Justified

The Water Authority supports the Commission's decision to extend the DEIR comment period to address the potential Geosciences conflict of interest. A replacement water supply is urgently needed to address the pending cease and desist order ("CDO") issued by the State Water Resources Control Board ("SWRCB") to end the ongoing adverse impacts to the Carmel River and to replenish the Seaside Groundwater Basin. Despite these urgent needs, the present delay occasioned by the Commission's Notice is justified. A successful legal challenge to the CEQA compliance for the MPWSP could result in far greater delay. Thus, the Commission should ensure the defensibility of the CEQA compliance. Further, the MPWSP and the potential impacts to the Salinas Groundwater Basin are of essential public interest. The technical analysis of the slant wells must be unbiased and transparent.

The Water Authority encourages the Commission to carefully consider the delay that may accompany a decision to combine CEQA and NEPA compliance. Developing a joint EIR/EIS could unreasonably delay processing of a CPCN for the MPWSP. Under NEPA, alternatives typically must be analyzed and discussed to the same level of detail as the proposed project. This is a more strenuous standard than the analysis of alternatives under CEQA, which requires only enough information about the alternatives to allow for meaningful comparison. If assessments of alternatives under NEPA, or any other distinguishing standard, were to significantly delay circulation of a draft EIR/EIS, a joint document may not be the best course of action. Rather, if this is the case, the Commission should complete a peer review of the groundwater modeling (see discussion below), complete CEQA compliance as a stand-alone document, and act on the CPCN application for the MPWSP. If a CPCN is approved, permit processing could then commence for a Coastal Development Permit ("CDP") under the California Coastal Act. During this time, the Sanctuary could complete its NEPA compliance requirements without delaying issuance of a CPCN from the Commission and CDP processing. On the other hand, if, in the discretion of the Commission, a joint EIR/EIS will not significantly delay processing of a CPCN for the MPWSP, a joint EIR/EIS may be justified to ensure the most thorough environmental analysis possible and to avoid unintended discrepancies between the documents. The Water Authority supports the Commission in balancing the dual goals of achieving full legality and transparency of process with expeditious processing of the CPCN.

The Commission Should Obtain an Independent Peer Review of the Groundwater Modeling and Potentially Recirculate the DEIR

To remedy the potential conflict of interest involving Geosciences—whether actual or not—the Commission should retain a third-party hydrogeologist to peer review the hydrogeologic modeling performed by Geosciences. The peer reviewer should be competent in groundwater modeling and should review and comment on all aspects of Geoscience's modeling. The Water Authority retained the consulting and engineering firm, Geosyntec Consultants, to perform a peer review of the source water analysis in the MPWSP DEIR, including Geosciences' modeling. A report prepared by Geosyntec concerning its peer review is enclosed with this letter. Geosyntec concluded that the groundwater modeling provides reasonable predictive simulations of the pumping impacts of the slant wells on groundwater supplies within the Salinas Groundwater Basin. Nonetheless, the Water

Authority believes that the Commission should retain its own third-party peer review of the Geoscience work in the interest of neutrality and transparency. If desired, the Water Authority will make Geosyntec available to consult with the hydrogeologist retained by the Commission.
Based upon consultation with Geosyntec, the Water Authority recommends the following in conjunction with the Commission's peer review:

1. All model input and output files and data and GIS files used by Geosciences for the model design should be made available to the other parties.
2. The Commission's consultant should generally review the design properties of both the North Marina Groundwater Model ("NMGWM") and Cemex Model ("CM"), including model layering, boundary conditions, and assigned values and distribution of properties (storage coefficient and hydraulic conductivity). The consultant should perform an in-depth review of the distribution of hydraulic conductivity values, both horizontal (Kh) and vertical (Kv), assigned to model layers in both the current and refined CM and NMGWM. In particular, the Kv values assigned to model layers between the perforations of the slant wells and the ocean have a significant influence on the modeled hydraulic connection between the slant wells and the ocean.
3. Prior to making potential revisions and additional predictive model runs with the NMGWM, the Commission's consultant should re-calibrate the CM to the pumping data obtained from the test slant well installed on the Cemex site by Cal-Am.
4. Refinements to the assigned NMGWM properties should then be made based on the CM calibration and review of the model's properties (No. 2 above).
5. The consultant should use the refined NMGWM to re-assess potential impacts of MPWSP pumping and re-calculate the predicted contributions of sea water and inland fresh groundwater to the slant wells.
6. If some of the Kh and Kv values assigned to the model layers in the NMGWM are determined <u>not</u> to be conservatively low, additional model simulations with revised more conservative (i.e. lower) values of hydraulic conductivity should be conducted as a sensitivity analysis.
7. We also recommend sensitivity analyses of the model results to the location of the model slant wells relative to the ocean margin (the consultant could vary both depth and lateral distance based on range of potential slant well locations).
8. An explanation of the procedures and findings of the peer review should be provided in the DEIR/DEIS.

The Water Authority also encourages the Commission to direct its consultant to work collaboratively with the Hydrogeologic Working Group ("HWG"), which includes hydrogeologic experts on behalf of Cal-Am and the Salinas Basin stakeholders. While CEQA requires that the Commission exercise independent discretion in evaluating the work performed by Geoscience, it is reasonable and appropriate for the consultant to seek consensus on its technical evaluation with similar review performed by the HWG.

If, after performing its independent peer review, the Commission confirms that the DEIR's analysis and findings concerning the groundwater modeling are technically correct and justified, and that the Commission has applied independent judgment consistent with the

requirements of section 15804 of the CEQA Guidelines, it may determine to close the comment period on the DEIR, consistent with the Energy Division's Notice, and proceed with the development of a FEIR. If, however, the Commission determines that the DEIR's analysis and findings concerning the groundwater modeling are technically incorrect, the Commission must recirculate the DEIR for public comment on the revised analysis.

Request for Commission Coordination with the SWRCB

While necessary, the delay in procuring a replacement water supply occasioned by the Commission's Notice creates additional challenges for the Monterey Peninsula community. In particular, the Water Authority, the Monterey Peninsula Water Management District ("MPWMD"), and others have been discussing an extension of the CDO with the SWRCB to allow for the additional time to bring the MPWSP online before the community suffers the severe curtailments of Carmel River diversions set forth in the CDO.[3] We had intended that a petition for modification of the CDO would be processed following the certification of a final EIR for the MPWSP, which is a significant milestone toward successful project implantation. The present delay will render this impossible and the modification to the CDO will need to be processed this fall and into the first quarter of 2016 without the benefit of a final EIR. The Monterey Peninsula community and public agencies on the Monterey Peninsula, including the Water Authority and MPWMD, were not the cause of the delay and yet the CDO, if not modified, will impose great harm on our communities. The Water Authority respectfully requests that the Commission coordinate with the SWRCB and explain the basis for the present delay. The Water Authority also respectfully requests that the Commission support the petition for modification of the CDO once it is filed.

Commission Comparison of Project Alternatives

The Commission's Notice explained that the extension of the DEIR comment period will also allow the Commission to perform a more detailed analysis of several possible alternatives to the MPWSP, including the People's Moss Landing Water Desalination Project and the Monterey Bay Regional Water Project (commonly known as the Deepwater Desal project). In 2013, the Water Authority commissioned an analysis by Separation Processes Inc. ("SPI"), an engineering consulting firm that specializes in desalination, to compare the MPWSP, People's Project, and Deepwater Desal Project, for feasibility, cost-effectiveness, and timeliness. Based upon SPI's analysis, the Water Authority determined that the MPWSP had progressed the furthest in the planning and design and possessed the greatest advantages among the three proposed projects, including the potential for successful permitting of the source water supplies.[4] Since then, the Water Authority has worked with MPWMD, Cal-Am, and other stakeholders to modify the MPWSP in the interest of the Monterey Peninsula. These changes include public oversight through a "Governance Committee," obtaining Cal-Am's commitment and state legislation to use "securitization" to lower the project's cost, promotion of the Groundwater Replenishment Project to reduce the necessary size of the desalination plant, and various other community interests reflected in the settlement agreement reached with the majority of parties to A.12-04-019.

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[3] The CDO presently requires that all unauthorized diversions from the Carmel River cease at the end of 2016.

[4] See Testimony of Jason Burnett available at http://www.mprwa.org/wp-content/uploads/2013/02/SB-637640-v7-Testimony_of_Jason_Burnett.pdf.

At this time, the Water Authority believes that the MPWSP remains the most feasible, expeditious, and cost-effective project, although the Water Authority continues to monitor the progress of the other projects. From the available information, including the peer review performed by Geosyntec, it appears increasingly like that the use of slant wells at the Cemex site will be feasible and is the most likely project to be permitted by the California Coastal Commission ("CCC") and the Sanctuary. We are not aware of any information that suggests that the conclusions reached from the modeling of the test wells impacts are materially incorrect. In fact, based on the peer review performed by Geosyntec and the results of the test well, we believe the modeling may be conservative. However, the Water Authority supports the Commission's independent analysis of the feasibility (cost-effectiveness, timeliness, and ability to receive the necessary permits) of the three above- mentioned possible desalination projects, provided that such evaluation does not add further delay to the processing of the MPWSP application. We encourage coordination with the State Water Resources Control Board and the California Coastal Commission regarding the ability to permit source water intake systems.

Water Authority's Efforts During MPWSP Delay

The Water Authority will continue to take all appropriate actions to foster progress toward a timely and cost-effective water supply solution. We have reached out to the CCC and are supporting efforts to recommence testing of the test slant wells. We are also discussing opportunities for further collaboration and agreement among the Settling Parties in A.12-04-019 and other stakeholders on essential issues, including brine discharge and source water. We hope to obtain further agreement on disputed issues that may be reported to the Commission.

We also encourage the Commission to hold the previously-rescheduled public workshop to on the MPWSP on the Monterey Peninsula reasonably soon to foster a transparent community discussion concerning the merits of the MPWSP in relation to the water supply challenges facing the Monterey Peninsula.

Thank you for the opportunity to submit the Water Authority's comments and suggestions on these important issues.

Sincerely,

Jason Burnett

Jason Burnett, President

Enclosure-Geosyntec Technical Memorandum

cc: Barbara Evoy, SWRCB