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July 30, 2020

Via Email Only

Board of Directors
Monterey Peninsula Water Management District
5 Harris Court, Building G
Monterey, CA 93940

Re: Marina Coast Water District's Comments on Resolution No. 2020-13 (Exhibit 1-B) adopting the Construction of a Bypass Pipeline Modification Addendum as Addendum 6 to the ASR EIR/EA.

Dear Board of Directors:

This letter supplements the Marina Coast Water District (MCWD) letter submitted by Keith Van Der Maaten on this date and follows up our July 20, 2020 letter on behalf of MCWD, our meeting and communications with MPWMD staff over the last week, and the Staff Report for Addendum No. 6 to the ASR EIR/EA for Cal-Am's proposed bypass pipeline (the "project"). MCWD again wishes to emphasize its continued support for the District's Aquifer Storage and Recovery (ASR), Pure Water Monterey (PWM), and PWM Expansion projects. These comments should not be construed in any way to suggest MCWD opposes or is not willing to work with the District to find solutions for any issues involving the ASR, PWM and PWM Expansion projects. Rather, MCWD's concerns relate solely to fact that Cal-Am's proposed bypass pipeline is designed to address obstacles to the Monterey Peninsula Water Supply Project (MPWSP) and that Cal-Am is attempting to avoid supplemental review by California Public Utilities Commission (CPUC) and the mitigation requirements imposed by the CPUC in the MPWSP EIR/EIS.

As explained in more detail below, the July 20 MPWMD Staff Presentation and Addendum reveal that the proposed bypass pipeline would connect with Cal-Am's currently useless desalination plant pipeline and that the bypass pipeline is designed and sized for the purpose of carrying "desalination" plant water – not ASR water. (See Attachments 1 and 2). Addendum No. 6 also appears to show the new pipeline would connect or interface with MCWD's potable water pipeline in General Jim Moore Blvd., which raises multiple logistical and environmental concerns that are not addressed in the Addendum or other communications with MCWD. Therefore, MCWD requests the Board delay consideration of Addendum No. 6 to allow your staff time to meaningfully consult with MCWD on these issues and those discussed below.

A. MCWD's Potential Role as Responsible Agency and Lack of Consultation to Date

Based on our review of the Addendum and supporting documents, it appears that MCWD may be a responsible agency[1] if Cal-Am's proposed bypass pipeline will tie into MCWD's potable water pipeline in General Jim Moore Blvd. As explained in MCWD's letter submitted on this date, MCWD has not been provided with sufficient information to determine how the proposed bypass pipeline, Cal-Am's proposed Desal Pipeline, the future PWM extraction wells, and the existing MCWD pipeline will be operated together. While MCWD greatly appreciates the Board delaying its initial consideration of the project to allow your staff time to consult with MCWD, MCWD's questions regarding the Project have gone largely unanswered.

Following our meeting with MPWMD staff on July 21, 2020, we sent MCWD's questions regarding the project to staff as they requested. (See Attachment 3, Questions for Dave Stoldt on Cal-Am proposed ASR Pipeline.) District staff explained that they would seek answers to our questions from Cal-Am. While staff apparently hoped answers to MCWD's questions would be provided by Cal-Am and Cal-Am's environmental consultant, MCWD has not received answers to most of its questions. Therefore, particularly given MCWD may be a responsible agency for the project, MCWD requests the Board delay further consideration of the project until your staff has adequate time to consult with and address MCWD's questions consistent with the requirements of CEQA. As we noted during our oral testimony at the July 20, 2020 hearing, MCWD received no notice regarding Cal-Am's proposed pipeline or the proposed Addendum No. 6, and only found out the District would be considering approval of the pipeline and Addendum two hours before last week's Board meeting. CEQA requires Lead Agencies to consult with responsible agencies before preparing environmental documentation for projects. (Pub. Resources Code, § 21080.3 [duty to consult with responsible agencies]; see also CEQA Guidelines, § 15063, subd. (g) [same].)

B. The proposed bypass pipeline must be analyzed as part of the MPWSP; the pipeline would connect with Cal-Am's currently useless desalination plant pipeline; it is designed and sized to carry "desalination" plant water – not ASR water.

As we noted in our prior comments, if Cal-Am wants to inject and extract ASR water simultaneously, it must explain the deficiencies in its system to justify the need for the bypass pipeline. Cal-Am has not. Nor have they responded to MCWD's questions on this issue. Based on MCWD's review of the Addendum and available documentation, it does not appear that the bypass pipeline would ever be needed to deliver ASR water. Rather, it appears Cal-Am has identified a constraint for using ASR pumps to deliver

[1] See Pub. Resources Code, § 21069 (definition of Responsible Agency) and CEQA Guidelines, § 15381 (same).

PWM water in the future while ASR is moving through its Monterey Pipeline.[2] However, if this constraint exists, there are likely multiple solutions that are both less expensive and would substantially lessen the environmental impacts of the constructing and operating the bypass pipeline as MWCD has discussed with MPWMD staff. Cal-Am has not explained why these less costly and environmental superior alternatives would not fulfill the purpose of the project.

Rather, as noted above and in our prior comments, the only justification for the design and sizing of the bypass pipeline is to address deficiencies in the MPWSP and to avoid mitigation requirements for these facilities required in the MPWSP EIR/EIS. While Cal-Am has not answered MCWD's questions, the environmental consultant's responses to our prior comments suggests the bypass pipeline would not remove an obstacle to implementation of the MPWSP. (MPWMD July 31, 2020 Staff Report, Exhibit 1-C ("Response"), p. 11.) The record and publicly available information demonstrate otherwise.

In fact, the Coast Commission has identified "several obstacles that may lead to delay or an inability to construct or operate" the MPWSP as proposed. (Attachment 4 – California Coastal Commission Staff Report, November 2019, p. 8.) One of the obstacles identified by the Coastal Commission is that "Cal-Am has not yet received approval to use a shared pipeline that may not have the capacity for Cal-Am's proposed use" of desalination water. (*Ibid.*) Here, it appears to be undisputed that the proposed pipeline would remove an obstacle to development of the MPWSP – i.e. the lack of pipeline capacity to move Cal-Am's desalination water in MCWD's General Jim Moore Blvd. pipeline. The July 20 Staff Presentation and Addendum itself confirm Cal-Am's proposed bypass pipeline would connect with Cal-Am's currently useless desalination plant pipeline and is designed and sized for the purpose of carrying "desalination" plant water – not ASR water. (See Attachments 1 and 2). Thus, the record reveals the bypass pipeline is actually a proposed modification to the MPWSP and the CPUC is the CEQA Lead Agency.[3]

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[2] While there may be a justification for including the proposed pipeline as part of the PWM Expansion as proposed in the SEIR for that project, Cal-Am withdrew its support for that project after this Board and the Coastal Commission determined it could be an alternative to the MPWSP. MCWD notes neither the Addendum nor Cal-Am have explained how the proposed bypass pipeline differs from the pipeline Cal-Am proposed as part of the PWM Expansion as MCWD requested in our July 20 comments.

[3] As noted in our July 20 comments, MCWD explained why the CPUC must be the lead agency for this review in its comments on the "Proposed Modifications to the Pure Water Monterey Groundwater Replenishment Project," which are incorporated by reference. Those comments can be found at https://purewatermonterey.org/wp/wp-content/uploads/Final-SEIR-Proposed-Modifications-PWM-GWR-Project-April-2020.pdf from pages 4-90 through 4-97.

While acknowledging the bypass pipeline could be used for MPWSP desalination water, the environmental consultant's responses to our July 20 comments argues that bypass pipeline is appropriately considered part of the ASR project because it has "independent utility" apart from the MPWSP and PWM Monterey expansion projects. (Response, p., 5.) Not so. The environmental consultant points to Attachment B to the Response (MPWSP April 6, 2020 Water Supply Exhibit) as evidence of the project's independent utility. The referenced April 6, 2020 Water Supply Exhibit, however, only contains conclusory statements that do not appear to have any connection to the graphs. Nor does the Exhibit or Response provide any justification sizing the bypass pipeline at 36-inch or any rationale for why it extends to and connects to Cal-Am's MPWPS desalination pipeline. The only utility for the sizing of the pipeline and its connection to the MPWPS desalination pipeline is to convey desalination water. Moreover, even Cal-Am's proposed bypass pipeline had independent utility from the MPWSP and Pure Water Monterey projects, the Addendum fails to address the project's potential growth inducing impacts as required by CEQA.

C. The Addendum fails to analyze the effects of growth-inducement.

The Addendum did not analyze impacts from growth inducement or the effects of unplanned population growth. Instead, the Addendum states that the project would not induce population growth because water generated by the ASR system serves to replace diversions from the Carmel River, seemingly implying that it is irrelevant that the pipeline could be used for anything other than ASR. The response to MCWD's comment states that the bypass pipeline would not induce growth and would not remove an existing obstacle to development because its purpose is merely to ensure that the ASR Project and PWM can operate simultaneously under certain conditions. This conclusion, like the brief discussion in Addendum No. 6, completely ignores the fact that the pipeline will be used to convey desalinated water from the MPWSP. What other reasons exist to connect it to the bypass pipeline and to the MPWPS desalination pipeline?

As noted above, the Coastal Commission has recognized the lack of a pipeline is a major obstacle to the MPWSP. Although Cal-Am coyly acknowledged that this pipeline could help the MPWSP (despite claiming it was not necessary), the fact is that Cal-Am has no other viable option. Approving the pipeline will remove an obstacle to the MPWSP, and thus would remove a significant obstacle to development.

Moreover, as the MPWMD Board has found on several occasions, the MPWSP would provide far more water than needed to meet future demand. Thus, by facilitating development of MPWSP, the proposed pipeline would remove an existing obstacle to future development and induce growth beyond what has been contemplated and analyzed in other panning documents. This is the epitome of growth inducement. (CEQA Guidelines, §§ 15126.2, subd. (e); 15358, subd. (a)(2).) Because Cal-Am admits it plans to utilize the pipeline for the MPWSP, MPWMD's approval of the pipeline

would be a major catalyst for growth. (See e.g., *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1337 [construct of a road and sewer line would result in growth-inducement because it would "provide a catalyst for further development in the immediate area."].) The failure to analyze growth inducing impacts before approving the project would violate CEQA.

D. The Addendum fails to analyze whether the Proposed Modification would result in any new significant impacts when combined with the rest of the ASR Project.

The environmental consultant's responses to our prior comments further states that the Addendum does not consider impacts caused by the Proposed Modification in isolation from the impacts caused by the rest of the ASR Project. That is false. As the response correctly notes, "the only way to effectively determine whether a project would increase the severity of a previously identified impact is to consider the incremental effects associated with a modification in combination with the effects associated with the original project." (Response, p. 7.) But whether the modifications would result in a substantial increase in the severity of a previously identified significant impact is only one part of the test under CEQA Guidelines section 15162, subdivision (a)(1). The second part of the test is whether the entire project, with the modifications, would result in any significant impacts that were not identified in the EIR. (Guidelines, § 15162, subd. (a)(1).)

To answer this question, the Addendum must *add* the impacts from the additional components to the impacts of the original project to determine whether there would be a significant impact. For example, if an impact for the original project analyzed in the EIR was below the threshold of significance by 5 units (and thus was determined to not result in a significant effect in the EIR), and the addition components added 5 units, that would be a new significant impact and a supplemental or subsequent EIR would be required. The Addendum does not perform that analysis or provide the information necessary to do so. Instead, the Addendum only considers whether the Proposed Modification would result in a significant impact by itself without adding the impacts to those caused by the rest of the project to determine whether the entire project, as modified, would result in a new significant impact that was not identified for the project as it was originally analyzed in the EIR.

For example, in the Air Quality section, the Addendum compares emissions caused by the "Proposed Modification" against the MBARD's thresholds of significance and concludes that impacts caused by the Proposed Modification would be less than significant because those emissions alone would be below the threshold. (Addendum, p. 10-12.)[4] But the Addendum fails to analyze whether the applicable thresholds would be

[4] There is also an inconsistency for checklist question (b). The addendum states that the Proposed Modification would not cause any long-term adverse air quality affects "due to the lack of operational emissions[.]" (Addendum, p. 10.) But elsewhere in same section,

exceeded if emissions from the Proposed Modification are added to emissions caused by the rest of the project, including the prior five addendums to the project. In fact, the environmental consultant's responses to our prior comments seems to acknowledge that the Addendum does not analyze impacts that will be caused by the project as a whole to determine whether impacts previously determined to be less than significant for the original project would be significant with the addition of the new components. (Response, p. 8.) Thus, the decision-makers and the public cannot tell if the modified project with the additional components would result in a significant impact that was not identified in the EIR.

Similarly, for GHG emissions, the Addendum compares emissions from the Proposed Modification against MBARD's threshold of 10,000 metric tons per year (MT/yr) CO2e, and concludes that because emissions from the additional components alone would be "well below" the 10,000 MT/yr threshold, the Proposed Modification would not result in a new significant impact. But again, the relevant question is not whether the additional components would result in a significant impact by themselves but whether the ASR Project would result in a new significant impact with the addition of new components. The Addendum does not answer that question.

Using the approach under the Addendum, an agency would be able to continually add components on to a project without ever triggering the need for mitigation so long as each additional component did not cause a significant impact by itself, despite the fact that the impacts would continue to snowball as each new component is added and would exceed the threshold of significance if considered together. That is not something CEQA permits. This problem permeates the entire Addendum, and the environmental consultant's responses to our prior comments do not address this shortcoming.

E. <u>The Addendum fails to adequately address traffic and circulation-related impacts.</u>

As noted in our previous comments, the Addendum does not provide an adequate analysis of traffic impacts. Although the Addendum acknowledges that temporary lane closures could adversely affect the existing circulation system and affect existing emergency access, it does not analyze the extent of the disruption or the amount of traffic the Proposed Modification would cause. Instead, the Addendum concludes in half-a-sentence that the Proposed Modification would include traffic control measures to ensure that potential temporary impacts during construction would not adversely affect existing traffic operations. There is no analysis or data provided to support that conclusion, and

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the addendum identifies operational emissions for the Proposed Modification. (Addendum, p. 12, see also p. 9.)

the reader has no idea what the traffic control measures might entail, much less whether they would be adequate to ensure impacts are less than significant.

The environmental consultant's responses to our prior comments does not cure these problems. Although the Response refers to "Project Environmental Commitments" and mitigation measures in the EIR, it does not quantify traffic or vehicle trips and there is still no analysis regarding the *extent* of impacts. Additionally, the environmental commitments and mitigation measures are not sufficient to reduce the potential impacts. As noted in the Response, the traffic control plan states that its purpose is to reduce the number of vehicles "to the extent feasible" and reduce interactions between construction equipment and other vehicles "to the extent feasible." (Response, p. 10-11, Attachment C.) That does not provide adequate assurance that impacts will in fact be reduced to a less than significant level. The measure also constitutes improper deferral of mitigation because it only requires preparation of a plan, without identifying performance standards that will ensure the plan is effective.

F. Additional flaws.

The Addendum has additional flaws that must be corrected before the project can be approved. First, the Addendum seems to rely on mitigation measures to reduce numerous impacts, but it is not always clear what mitigation measures will apply or how they will be effective. For example, the discussion of biological impacts seems to rely on surveys and other mitigation to reduce impacts, but it is not clear from the analysis what mitigation measures apply. It is not sufficient to simply state that the mitigation measures in the EIR will apply. If the Addendum is relying on mitigation measures from other documents (either the EIR or a prior addendum) to reduce impacts, the measures must be clearly identified in the Addendum and the Addendum must explain how those measures will be effective at reducing impacts.

Second, the Addendum's discussion of energy impacts is woefully deficient. The Addendum states that energy use for the ASR Project was not specifically analyzed in the EIR and the Addendum does not quantify energy use for the Proposed Modification. It is therefore impossible to tell whether the project, with the Proposed Modifications, would result in significant impacts and whether mitigation should be required. Under CEQA, the analysis of energy impacts must address vehicle trips, equipment use, location, and other relevant factors. (See CEQA Guidelines, § 15126.2, subd. (b); CEQA Guidelines, Appendix F.)

Finally, the Addendum, does not address cumulative impacts for the MPWSP or other project as noted in our July 20 comments. The environmental consultant's response suggests the Addendum evaluated potential cumulative impacts and appropriately determined that these effects "would be less-than-significant through the incorporation of Mitigation Measure Cume-1, which requires MPWMD to coordinate with local agencies to develop and implement a phased construction plan to reduce potential cumulative traffic, air quality, and noise related effects." The conclusory response as well as the

Addendum, however, fail to explain how referenced mitigation will ensure the project's cumulative impacts will remain less than significant as required by CEQA. Moreover, the referenced mitigation measures lack any specified performance standards or specific criteria for success and fail to commit to any specific future mitigation measures. (See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 195-196; *Endangered Habitats League, Inc. v. County or Orange* (2005) 131 Cal.App.4th 777, 794.)

G. Conclusion.

MCWD hopes these comments assist the MPWMD in evaluating the project and compliance with CEQA. Please contact me or Keith Van Der Maaten if you have any questions on our comments or need additional information. As noted above, MCWD looks forward to continuing to work with MPWMD in advancing regional goals through implementation of the ASR, PWM, and PWM Expansion projects.

Very truly yours,

Howard F. Wilkins III

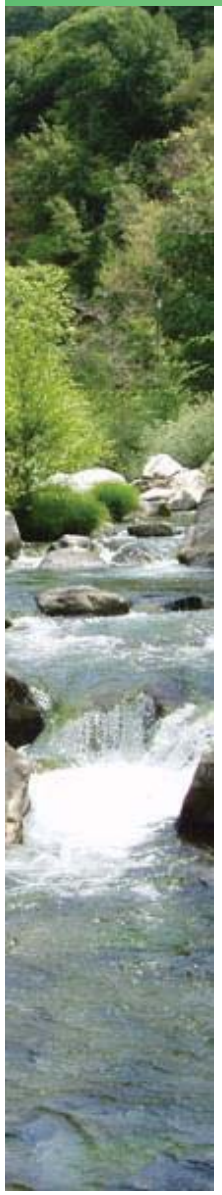
cc:
David Stoldt
David Laredo
Keith Van Der Maaten

Attachment 1 -- MPWMD July 20 Presentation - Page 7 (highlighting added)
Attachment 2 - Addendum No. 6 to ASR EIR-EA - pages 105 and 106 (highlighting added)
Attachment 3 - Questions for Dave Stoldt on Cal-Am proposed ASR Pipeline (7-24-20)
Attachment 4 – California Coastal Commission Staff Report (November 2019, p. 7.) (highlighting added)

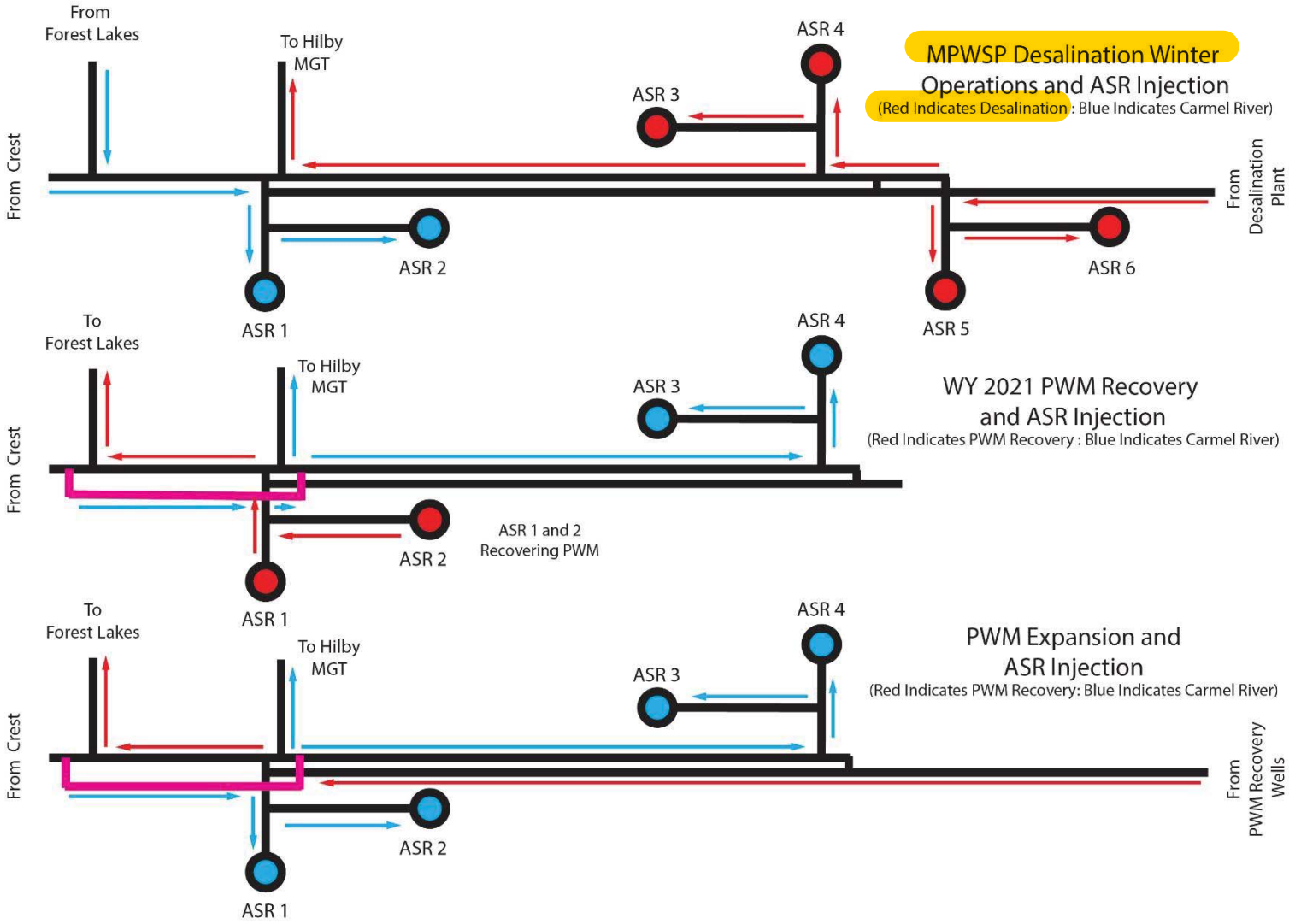
CORRESPONDENCE FROM MARINA COAST WATER DISTRICT TO MONTEREY PENINSULA WATER MANAGEMENT BOARD OF DIRECTORS

ATTACHMENT 1

Parallel Pipeline Functionality



Functionality of Proposed Pipeline



CORRESPONDENCE FROM MARINA COAST WATER DISTRICT TO MONTEREY PENINSULA WATER MANAGEMENT BOARD OF DIRECTORS

ATTACHMENT 2

ASR Bypass Pipeline Addendum
Special Status Plant Species
Survey Results

Date: 6/25/2020

Scale: 1 inch = 300 feet

Project: 2020-15

Monterey | San Jose
Denise Duffy and Associates, Inc.
Environmental Consultants Resource Planners
947 Cass Street, Suite 5
Monterey, CA 93940
(831) 373-4341

Figure 1a

ASR Bypass Pipeline Addendum
Special Status Plant Species
Survey Results

Date: 6/25/2020

Scale: 1 inch = 200 feet

Project: 2020-15

Monterey | San Jose

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Figure 1b

CORRESPONDENCE FROM MARINA COAST WATER DISTRICT TO MONTEREY PENINSULA WATER MANAGEMENT BOARD OF DIRECTORS

ATTACHMENT 3

Questions Regarding Pipeline Details and Specifications:

(1) How is the footprint of the proposed new Cal-Am bypass pipeline different than the pipeline that was analyzed in the Pure Water Monterey (PWM) Expansion project SEIR?

(2) Are there any technical drawings that show Cal-Am's existing pipelines, whether currently in service or not, north and south of the proposed new bypass pipeline?

(3) What pipeline and what is the diameter of the pipeline that the proposed new 36-inch pipeline would connect to at the northern end?

Questions Regarding Pipeline Justification:

(4) What specific months would ASR injection be limited during the December through May ASR injection period if the bypass pipeline is not built?

(5) Do you agree that diverting water for ASR injection can only occur when steelhead bypass flow conditions are met?

(6) Since 2011, how often and in what AF amounts was ASR water diverted for injection during each month specified in your response to #4?

(7) What is the maximum daily capacity of the Segunda/Crest pipeline? Is it 700 gpm and 3.09 AF per day?

(8) In your response to #6, how much of the ASR water diverted for injection was conveyed each month to the ASR injection wells via the Segunda/Crest pipeline as opposed to "around the horn" via Pacific Grove?

(9) For what specific customer areas within Cal-Am's service area would the recovered PWM or ASR water be needed to meet demand during each month specified in response to #4?

(10) Could all of those customers actually be served if the proposed new Forest Lake Pump Station is not built?

(11) How much ASR injection water could not in fact be injected, i.e., "lost", in each of the #4 months if the bypass pipeline is not built?

(12) What is cost of the project? What would be the cost per AF of the ASR water injected and not lost if the bypass pipeline is built at a comparative cost of the project?

(13) Would any ASR injection water be lost if all of that ASR injection water could instead be legally delivered for direct use within Pebble Beach, Pacific Grove, and Monterey?

(14) If Cal-Am petitioned the SWRCB to amend Permit 21330 to have the same authorized place of use as the ASR permits (i.e., within the boundaries of the entire MPWMD) wouldn't this eliminate the need for the bypass pipeline? If not, why not?

Questions Regarding Pipeline Environmental Review and Public Review Process:

(15) How would the environmental impacts associated with the proposed new bypass pipeline differ from those identified in the PWM Expansion project SEIR for Cal-Am proposed pipeline for that Project?

(16) Where is the Addendum's analysis of traffic safety impacts?

(17) Where does the Addendum address growth inducing impacts from the proposed 36-inch pipeline?

(18) Where is the Addendum's analysis of cumulative impacts with Cal-Am's proposed MPWSP project?

(19) Could Cal-Am construct a shorter and smaller diameter pipeline or pipelines directly connecting Seaside Watermaster-approved PWM extraction wells with the new Monterey pipeline?

(20) What CPCN would cover the proposed pipeline? If none, does Cal-Am intend to apply to the CPUC for one? If so, when? If not, does Cal-Am agree to absorb the full cost of the pipeline and not seek rate recovery?

CORRESPONDENCE FROM MARINA COAST WATER DISTRICT TO MONTEREY PENINSULA WATER MANAGEMENT BOARD OF DIRECTORS

ATTACHMENT 4

proposed project would result in adverse effects to coastal water quality, but those effects, and the measures needed to avoid or minimize them, are not yet known.

In addition to there being a feasible and less environmentally damaging alternative to the proposed project, Cal-Am's proposed project has several obstacles that may lead to delay or an inability to construct or operate the facility as proposed. Cal-Am has not yet received approval to use a shared pipeline that may not have the capacity for Cal-Am's proposed use. Cal-Am's project would also rely on another entity designing and installing a two mile-long outfall liner that needs to be in place before Cal-Am can operate, but that liner has not yet been fully designed or evaluated, may result in additional adverse impacts that have not yet been addressed, and would need to be separately permitted since it is currently not part of Cal-Am's proposal.

Conclusion

Based on the analysis in these Findings, staff recommends that the Commission find substantial issue and **deny** the project due to its inconsistency with the LCP's habitat protection and hazards policies, its failure of the three tests of Coastal Act Section 30260, and its failure of the alternatives consideration of Section 30233. With this denial, Cal-Am would also be required to remove its existing test well at the CEMEX site, pursuant to **Special Condition 6** of CDP 9-14-1735 / A-3/MRA-0050, as amended.[2] The motions for denial of both the de novo and retained jurisdiction portions of the proposed project are on pages 9 and 10.

[2] That Special Condition requires, in part, that Cal-Am remove portions of the existing test slant well to a depth of at least 40 feet below the ground surface and remove all other temporary facilities no later than February 28, 2020.