

October 28, 2020

VIA U.S. MAIL & E-MAIL: [COMMENTS@MPWMD.NET](mailto:COMMENTS@MPWMD.NET)

Board of Directors  
Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Monterey, CA 92940

Mr. David Stoldt, General Manager  
Monterey Peninsula Water Management District  
5 Harris Court, Building G  
Monterey, CA 92940

Re: **PUBLIC COMMENT ITEM #2: CERTIFICATION OF FINAL EIR  
FOR THE POTENTIAL ACQUISITION OF MONTEREY WATER  
SYSTEM AND DISTRICT BOUNDARY ADJUSTMENT**

Board of Directors and Mr. Stoldt:

This letter is submitted on behalf of California-American Water Company (“Cal-Am”), the owner and operator of the Monterey Water System (“MWS”), in relation to the above-referenced matter that is scheduled for consideration by the District at a Special Meeting to occur on October 29, 2020.

On behalf of Cal-Am, we previously submitted a July 31, 2020 letter commenting on the draft EIR, and an October 19, 2020 email concerning the administrative record. Our October 19, 2020 email forwarded three documents for inclusion into the record. Those were:

- (1) Agenda Report entitled: “Consider Adoption of Proposed Operations Plans for Rule 19.8 Acquisition of Monterey Water System,” dated October 19, 2020;
- (2) Monterey Peninsula Water System Operations Plan, dated October 9, 2020 (“Operations Plan”); and

(3) Monterey Water System Contract Management Plan, dated September 2020 (“Contract Management Plan”).

Each of these documents is relevant to the District’s proposed certification of the Final EIR for acquisition of the Monterey Water System and District Boundary Adjustment (“Project”). Specifically, the Operations Plan and Contract Management Plan indicate a future change in operations of the MWS if the District assumes ownership and control—directly contrary to the Final EIR’s repeated contention that there will be no changes to the manner of operation of the MWS as a result of the Project. These two operational documents were publicly released for the first time on October 15, 2020, barely 72 hours before the previously-scheduled October 19 meeting on certification of the EIR.

Some of the MWS operations changes the District is now scheduled to adopt, but which are nowhere reflected or analyzed in the EIR, include:

- The Operations Plan specifies a new level of hydraulic performance for the system: “*storage tanks must have the ability to refill the entire pressure zone capacity within 8 hours to have the tanks full at the start of the next day.*” (Operations Plan at p. 47). Achieving that level of water supply and pumping capacity would require infrastructure improvements throughout the system.
- The Operations Plan states: “*All [fire] hydrants shall be Dry Barrel and have an isolation valve on the bury.*” (Operations Plan at p. 57). Converting all of the system’s fire hydrants to Dry Barrel would require replacing thousands of fire hydrants. Dry Barrel hydrants are used in areas where freezing occurs regularly, and are unnecessary in Monterey.
- The Operations Plan specifies that all storage tanks in excess of one million gallons capacity must undergo dry inspections – i.e., with the tank completely drained – every three years. (Operations Plan, Table 12-6) The MWS includes numerous tanks with a capacity in excess of one million gallons. Just in Pebble Beach, there are three tanks with a capacity of five million gallons each, meaning that every year in Pebble Beach alone a large tank would be drained, unnecessarily wasting a substantial volume of water.

These are just some examples of changes in operations that would have potentially significant environmental impacts that were not analyzed or even acknowledged in the EIR. Because the District released the operational documents at the eleventh hour, there are likely to be even more examples of the EIR's failure to review the significant changes in planned operation of the MWS, and Cal-Am reserves the right to raise any and all evidence of future operational changes found within the Operations Plan and Contract Management Plan should litigation be necessary.

By bisecting consideration of the Project and its Final EIR from consideration of the Operations Plan and Contract Management Plan, the District has committed impermissible segmenting and piecemealing of a single, whole, project. Under CEQA Guidelines, § 15378, "'project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Emphasis added.)

CEQA requires that the entire action considered by a lead agency be described in the EIR. In *Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 396, the Supreme Court explained: "We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects"; see also *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 [a lead agency may not split a single project into smaller, separate pieces so as to avoid identifying all of the environmental impacts].)

Here, instead of analyzing the environmental impacts of the acquisition and the changes in operation *together*, as required by CEQA, the District's EIR looks solely at an acquisition where no operational change is acknowledged, and, on that basis, conveniently claims no significant impacts will occur. Separately, the District proposes to approve an Operations Plan and Contracts Management Plan that do, in fact, alter future operations, and notably, the District does not consider CEQA at all in that proposed approval. The District's Agenda Report for the Operations Plan and Contract Management Plan does not even mention CEQA, let alone explain how the actions proposed therein will affect the environment. This is classic impermissible piecemealing, the result of which is a failure to proceed in the manner required by law and a failure to

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evaluate the full range of the Project's potential environmental impacts. (See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.)

Finally, by basing an entire EIR on a Project Description that ignores operational changes, the EIR's environmental analysis is based on a fallacy, and rendered essentially meaningless.

Should the District certify the EIR under these circumstances it would be doing so in violation of the California Environmental Quality Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "George M. Soneff".

George M. Soneff