

September 21, 2010

Via Hand Delivery and E-mail

Board of Supervisors
County of Monterey
168 West Alisal Street
Salinas, CA 93902
E-mail: CTTB@co.monterey.ca.us

**Re: 2007 Monterey County General Plan EIR
PLN070525, SCH2007121001**

Dear Chairman Salinas and Members of the Board:

LandWatch Monterey County has actively participated in the development and environmental review of the 2007 Monterey County General Plan ("2007 General Plan"). LandWatch now asks that the Board of Supervisors recirculate the 2007 General Plan EIR and that it provide adequate responses to each of the comments that LandWatch has made.

In its comments on the draft EIR, LandWatch raised fundamental objections to adequacy of the draft EIR's analysis of water supply-related impacts. The County has failed to respond at all to some of these objections, violating its obligation to provide reasoned, good-faith responses to comments on a draft EIR. CEQA Guidelines, § 15088.

The County's response to other objections demonstrates that the analysis in the draft EIR was so basically inadequate and conclusory that meaningful public review and comment were precluded. CEQA Guidelines, § 15088.5(a)(4). In essence, the County presented its quantitative analysis of the sufficiency of water supply for the first time in the Final EIR, denying the public the opportunity to comment, with responses, on this belated water supply analyses.

In addition, the analyses presented in the Final EIR are fundamentally inconsistent with the analyses in the draft EIR because they are based on entirely different assumptions. Given the differences in these assumptions, the fact that the Final EIR now purports to reach the same conclusions as to the sufficiency of water supplies is at best a coincidence. Viewed realistically, the coincidence apparently demonstrates that the Final EIR offers a post hoc rationalization for conclusions that the County cannot fairly defend but will not abandon. Abandonment of the conclusion that there are no significant impacts related to Salinas Valley water supply would require the County to adopt

mitigation that would actually address water supply problems, including mandatory efforts at conservation by all water users.

Set forth below are examples of the significant new information added by the County that requires recirculation and examples of comments on the draft EIR inadequately addressed in the Final EIR.

WATER BALANCE: The draft EIR failed to provide an adequate cumulative analysis of water supply because it did not project total water demand and supply for each of the County's groundwater basins. Without these projections, the conclusions regarding sufficiency of water supply in the draft EIR were simply unfounded. LandWatch DEIR comments, FEIR, pp. 7-644 to 7-638. The Final EIR implies that the County had no obligation to provide quantitative analysis of water supply. FEIR, p. 3-193. But the determination of the adequacy of water supply (and whether there will be continued salt water intrusion and overdrafting) *requires* that the County project and compare future supply and demand, and the County's belated provision of water balances for each basin demonstrates that the County is aware of this obligation.

In response to LandWatch's objections, the Final EIR released in March 2010 purported to provide water balance analyses for each groundwater basin in the County. However, the County's provision of this information for the first time in the Final EIR, and its substantial revisions to the information in the Final EIR three days before what may be the final public hearing on the matter, have both worked to deny the public a meaningful opportunity to comment and receive responses. Particularly egregious is the continually shifting bases offered for the EIR's conclusion that there will be no significant impacts related to water shortage, overdrafting, or saltwater intrusion in the Salinas Valley. For example, the EIR has now provided several inconsistent projections of both agricultural and urban water demand in the Salinas Valley. The public is entitled to comment, and receive responses to comments, on whatever the County finally settles on as the basis of its significance conclusions.

WATER DEMAND FOR NEW AGRICULTURAL CONVERSIONS: The draft EIR improperly relies on the projections of agricultural water demand in the Salinas Valley Water Project EIR ("SVWP EIR"). The reliance is improper because the SVWP EIR assumed that agricultural acreage in the Salinas Valley would decline 1,849 acres by 2030, whereas the 2007 General Plan EIR admits that agricultural acreage will increase by at least 7,329 acres by 2030. LandWatch DEIR comments, FEIR, p. 7-628. The Final EIR released in March, and relied upon by the Planning Commission, simply ignored LandWatch's comments on this issue. FEIR, p. 3-191, referencing pp. 2-65 to 2-66.

Only because LandWatch repeatedly raised this issue in additional comments to the Planning Commission did the County finally address the issue in the "Supplemental Materials to the Final EIR" released just 3 days before what may be the final public hearing. The explanation that was finally offered was essentially an admission that the SVWP EIR did in fact under-predict 2030 agricultural water use by 17,537 afy.

However, the Supplemental Materials assert that this error does not matter because, it claims for the first time, the water balance analysis presented in the FEIR *coincidentally made a compensating error in projecting urban demand*. The Supplemental Materials claims that urban water demand will actually be 17,269 afy less than the FEIR projected, based on the assumption that implementation of SBX77 will reduce urban demand by another 20%. This convenient new assumption is unreasonable and unfounded for at least the following reasons:

- Reduction May Be As Small As 5%: SBX77 does not necessarily mandate a 20% reduction in urban water use for all urban water uses in Monterey County. It announces a statewide goal of a 20% cut. Water Code, § 10608.16. The only clear mandate applicable to an individual urban retail water supplier is that per capita water use be cut at least 5%. Water Code, § 10608.22. That is, section 10608.22 permits a retail water supplier to comply with water reduction requirements by reducing its "base daily per capita water use" by only 5%. Thus, there is simply no evidence in this record to demonstrate that water use reductions greater than 5% would be mandated under SBX77.

Furthermore, the law contemplates that the state shall "provide flexibility to communities and regions in meeting the targets" after considering climate, population density, and historic conservation efforts. Water Code, § 10608.20(b)(4). This flexibility may very well result in smaller reductions for purveyors with low density, hot climates, and some record of historic conservation efforts, characteristics that apply in Monterey County. Again, there is no evidence to demonstrate that the state will require a 20% cut.

Finally, the final reductions in demand do not have to occur until 2020. Thus, there is no basis to assume that urban demand will be reduced until then. There is no evidence offered to explain why the continued urban use of water at existing rates in the interim will not aggravate existing overdraft and saltwater intrusion.

- No Evidence That FEIR's Baseline Per Capita Use Is SBX77's Baseline: SBX77 will determine compliance with reference to actual baseline per capita daily water use or with reference to a calculation referencing allowable standards for indoor use, landscaping, and industrial use. Water Code, §§ 10608.12(b), 10608.22. However, the FEIR projected urban water use based on a 181 gpd per capita water use factor derived from the 2005 California Water Plan Update for the entire Central Coast region. FEIR, p. 3-194. This per capita usage figure was not derived using either of the methods permissible under SBX77. To determine the applicable baseline, the FEIR would have had to determine baselines for each of the

water retailers in the County using the protocols identified in SBX77. Therefore, the FEIR Supplement cannot reasonably assume that any particular mandatory percentage reduction will be applicable to the Central Coast regions 2005 per capita use figure.

- Improper To Apply Reduction To Industrial Water Use: The FEIR insists that its 181 gallon per day per capita water use includes industrial uses, although the FEIR fails to identify what portion of that 181 gpd constitutes industrial use. FEIR, p. 3-194. Since SBX77 would require at most a 10% cut in industrial water use, the application of a 20% reduction factor to the industrial portion of the use is improper. Water Code, § 10608.20(b)(2)(C). Thus, there is no evidence that would justify applying the projected 20% reduction to the entire 181 gpd use factor, and there is substantial evidence that it will not in fact apply to the industrial portion of that water use factor.

Because the County has made critical last-minute changes to the basis of its water demand projections that are simply dubious and that are clearly inconsistent with the previous basis on which it projected water demand, the County must recirculate the analysis to ensure that these and other questions are addressed. The County must allow the public reasonable time to review and evaluate these claims and must address the public's concerns about their validity.

As matters stand, the FEIR in March and the Supplemental materials offered in September both make substantial changes to the analysis and assumptions in the SVWP EIR that was uncritically relied upon in the draft EIR, and both conclude that these changes do not matter because, due to offsetting errors, the bottom line demand projections are similar. The public can be excused if it wonders what other errors have not been identified.

INCONSISTENCIES WITHIN SVWP EIR: The draft EIR also improperly relies on the projection of agricultural water use in the SVWP EIR because the SVWP EIR contains inconsistent projections of the reduction in agricultural water use. The SVWP EIR inconsistently projects that agricultural water use will decline by 60,000 afy in section 7.2.1, but by only 51,700 afy in section 3.2.4. LandWatch DEIR comments, FEIR, p. 7-627. Even though LandWatch raised this issue in its comments on the draft EIR, the Final EIR fails to address it. FEIR, pp. 3-191 to 3-192. Nor do the Supplemental materials address it.

COASTAL WATER DEMAND: LandWatch objected that the DEIR's analysis did not make clear whether water supply and demand for coastal areas is included. FEIR, p. 7-637. In response, the FEIR references Master Response 1, but that response says nothing on this topic. FEIR, p. 3-195. Master Response 11 states that the water resources analysis "has a countywide scope" but this does not answer the specific

question posed by LandWatch: whether supply and demand from coastal areas were included in the draft EIR's analysis.

SVWP EIR 1995 BASELINE: As LandWatch pointed out to the Planning Commission, the 1995 agricultural water use baseline in the SVWP EIR is substantially lower than the actual 1995 baseline water use reported in the draft EIR for the 2007 General Plan. Just three days before what may be the final public hearing, the County now claims in the Supplemental Materials to the Final EIR that the 1995 baseline in the SVWP EIR represents an "average" historical water use, and is not in fact the 1995 baseline use. No details of the calculations are provided. No explanation is provided as to why the 1995 baseline figure in the SVWP EIR for agricultural pumping, 418,000 af, is less than actual pumping from Zones 2, 2a, and 2b for every year from 1995 to 2009 except 1998, or why it is less by 71,956 afy than the average groundwater pumping since 1995. No explanation is provided as to why reported pumping from *parts* of the Salinas Valley basin included in the annual groundwater pumping reports – Zones 2, 2a, and 2b – are larger than the purported historic average use for the *entire* basin that the SVWP EIR purports to address, *i.e.* Zone 2c. (CSIP water accounts for at most 13,300 afy of the 1995 baseline, but the Supplemental Materials show that the average pumping has been 489,956 afy on average since 1995, which is 71,956 afy more than the purported historic baseline. Compare SVWP EIR, Table 1-2 to Supplemental Materials to the Final EIR, Table W-2.)

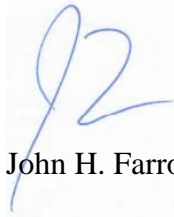
As noted in other comments, the County has not provided the model used to develop the SVWP EIR, and the September 13, 2010 memorandum from MCWRA purporting to explain the matter contains absolutely no details on the data used. In essence, the public has been provided no information that would enable it to understand the basis of the baseline calculation or to relate this calculation to actual groundwater pumping data.

DEFINITION OF SUSTAINABLE LONG TERM WATER SUPPLY AND POLICY PS 3.2: The draft EIR relies on Goal PS 3 and Policy PS 3.2 as a substantial basis for its conclusions about the significance of water supply-related impacts, including impacts to overdrafted aquifers and salt water intrusion. However, any such reliance is vitiated by the subsequent changes made to the definition of "long term sustainable water supply" and the provisions of Policy PS 3.2, which is supposed to guide formulation of an ordinance that in turn is to guide the determination of adequate water supply. The FEIR put great weight on the specifics of the definitions used in the draft EIR and the then-current draft 2007 General Plan. FEIR, pp. 2-50 to 2-51. Here, the "project" for purposes of CEQA analysis is the 2007 General Plan itself, including its policies and definitions. It is simply unreasonable for the public not to know what these policies and definitions will be during the public comment period. Thus, when the County settles on relevant definitions and the provisions of Policy PS 3.2, it must recirculate the EIR so that the public can comment on the actual project at issue.

Thank you for your consideration of these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to be 'JH Farrow', is written over a light blue rectangular background.

John H. Farrow

JHF: am