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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF MONTEREY**

KEEP FORT ORD WILD,

Case No. 18CV000883

Petitioner,

v.

**PETITION FOR WRIT OF MANDATE**

MARINA COAST WATER DISTRICT,  
MARINA COAST WATER DISTRICT  
BOARD OF DIRECTORS, and DOES 1-  
25,

(California Environmental Quality Act  
[CEQA], Pub. Resources Code, § 21000  
et seq.)

Respondents.

Petitioner KEEP FORT ORD WILD alleges as follows:

Overview

1. This case is brought under the California Environmental Quality Act (CEQA; Pub. Resources Code § 21000 et seq.) and other laws. It challenges the failure of Marina Coast Water District (Marina Coast) to comply with CEQA when the board of directors purportedly approved an annexation project in reliance on an inadequate negative declaration, inapplicable exemptions, and a claim that the annexation is not a project under CEQA.

Background on Finite and Limited Groundwater Supply in Marina and Fort Ord.

2. Marina Coast is the water provider for the City of Marina and Fort Ord. For years, Marina Coast has relied upon the Deep Aquifer as the source of most if not all of the water it provides to its customers. The Deep Aquifer is a small and finite

1 source of ancient water that is tens of thousands of years old, as stated in the 2003  
2 WRIME Deep Aquifer Investigative Study and as Marina Coast has acknowledged in its  
3 2015 Urban Water Management Plan. The age of the water shows that the aquifer is  
4 not being actively recharged. Thus, all pumping decreases the amount of remaining  
5 water in the aquifer, and the decrease is not being offset with appreciable recharge.  
6 That pumping is sometimes called “mining” water. Once the Deep Aquifer water is  
7 gone, it is gone. Overdraft pumping or mining is not sustainable. The Deep Aquifer is  
8 not a sustainable source of water supply.

9         3. Several years ago Keep Fort Ord Wild went to extraordinary lengths to  
10 uncover records about the Deep Aquifer through repeated requests under the  
11 California Public Records Act. The records produced included the 2003 WRIME study.  
12 Marina Coast had not publicized the WRIME study, had not posted it on its website,  
13 and had not revealed its contents to the public. Marina Coast had not given the Deep  
14 Aquifer study to the Fort Ord Reuse Authority (FORA), and FORA had never asked for  
15 it or referred to it. Since the time that Keep Fort Ord Wild obtained the WRIME study  
16 from Marina Coast, the issues around the Deep Aquifer have become more widely  
17 known, largely through KFOR's efforts.

18         4. Marina Coast has no reasoned estimate of how much water remains in  
19 the Deep Aquifer. The WRIME study shows that the amount of water in the Deep  
20 Aquifer is “small.” It is not disputed that the Deep Aquifer is susceptible to seawater  
21 intrusion, including from wells into the Deep Aquifer that enable leakage from the  
22 contaminated upper aquifers. According to the WRIME study, increased pumping of  
23 the Deep Aquifer would be expected to increase the rate of seawater intrusion in the  
24 middle and upper aquifers.

25         5. Marina Coast in its 2015 Urban Water Management Plan claims that  
26 “MCWD is currently the only significant user of the Deep Aquifer” but that claim does  
27 not reflect current information. In the last few years, additional wells have been drilled  
28 into the Deep Aquifer in Marina Coast Water District's existing sphere of influence.

1 Those wells pump an unknown large amount of water every year – thousands of acre  
2 feet – to irrigate berry fields newly developed on former non-irrigated grazing lands in  
3 the Armstrong Ranch area. This places an additional demand on the limited and finite  
4 water Deep Aquifer supply. Marina Coast has not researched the amount of Deep  
5 Aquifer water being pumped by those additional pumpers. The new wells overlie areas  
6 of known severe seawater intrusion. The new wells are located geographically close to  
7 Marina Coast's wells, especially to wells 10, 11 and 12. Attached as Exhibit A to this  
8 petition is an excerpt from the October 2017 report by Monterey County Water  
9 Resources Agency showing the wells in the Deep Aquifer as of August 1, 2017.

10 6. Attached as Exhibit B to this petition is Figure 2.2 from Marina Coast's  
11 2015 Urban Water Management Plan. Exhibit B shows the location of Marina Coast's  
12 wells. The Armstrong Ranch wells are in the pale blue sphere of influence immediately  
13 north of Marina Coast's well 12. Marina Coast has drilled its wells farther and farther  
14 inland as seawater intrusion has worsened. The seawater intrusion front continues to  
15 migrate inland in the vicinity of Marina and the Ord Community.

16 7. Attached as collective Exhibit C to this petition are the most recent maps  
17 from Monterey County Water Resource Agency as to the seawater intrusion in the 180-  
18 foot and 400-foot aquifers based on 2015 data. New and more current seawater  
19 intrusion maps based on 2017 data are due to be released at any time by Monterey  
20 County Water Resource Agency.

21 8. Marina Coast's own pumping records show that all of its current pumping  
22 is from the Deep Aquifer. Attached as Exhibit D is a March 1, 2018 statement by  
23 Marina Coast of the depths of its current wells. The screening depths are the depth of  
24 the water supply that is being pumped. Exhibit D shows that Marina Coast's wells are  
25 accessing the water supply in the Deep Aquifer. Exhibit D shows that Marina Coast's  
26 pumping is from a depth greater than 400 feet below ground. Exhibit D shows that  
27 Marina Coast's position is that two of its wells' pump depths are "unk[n]own."

28 9. According to the certified Fort Ord Reuse Plan environmental documents,

1 Future development on Fort Ord reflects the need to  
2 withdraw only an amount of water through Fort Ord wells  
3 which would result in a safe yield extraction from the Basin.  
4 For the purposes of this EIR, a "safe yield" water supply  
5 pertaining to Fort Ord is water extracted from the aquifers  
6 (180-foot, 400-foot and 900-foot) which will result in the  
7 1997 chloride contour lines (not yet determined) remaining  
8 stable and not moving further inland relative to the 1997  
9 conditions.

8 (Fort Ord Reuse Plan Final Program EIR, Volume II, 1997.) However, as the seawater  
9 intrusion maps show, the chloride contour lines in Marina and Fort Ord have not  
10 remained stable and instead have moved significantly further inland relative to 1997  
11 conditions. (See Exh. C to this petition.)

12 10. One scientific study has stated as follows: "If the water resources of the  
13 deep-aquifer system are to be further developed, the extent and characteristics of  
14 these resources will need to be better defined. This may require the installation of a  
15 network of additional multiple-well monitoring sites as has been completed in many  
16 other coastal aquifer systems in California. This type of network would allow the  
17 collection of water-level and water-chemistry data through time to help assess the  
18 effects of development on the water resources of the coastal aquifer systems in the  
19 Salinas Valley." (Geohydrology of a Deep-Aquifer System Monitoring-Well Site at  
20 Marina, Monterey County, California, U.S. Geological Survey, 2002, p. 34.) Marina  
21 Coast has not installed a network of monitoring sites or taken other steps to adequately  
22 monitor the Deep Aquifer resources.

23 11. According to Marina Coast's 2015 Urban Water Management Plan, its  
24 wells numbered 10, 11, 12 and 34 are in the Deep Aquifer. According to Marina Coast,  
25 these wells produce groundwater from depths of 705' to 1960,' and their pump levels  
26 are at depths of 480', 520', 500', and 460' respectively. (See Exhibit D to this petition.)  
27 Keep Fort Ord Wild alleges that the other productive Marina Coast wells, numbers 30  
28 and 35 (35 is also known as Watkins Gate), produce groundwater from depths of up to

1 535' and 648', respectively, with pump levels of 410' and 502.' Thus, the Watkins Gate  
2 well pump level of 502' is 22' *below* the pump levels of wells 10, 12, and 34, and  
3 Marina Coast acknowledges that wells 10, 12 and 34 are extracting from the Deep  
4 Aquifer.

5 12. Marina Coast claims its pumping other than from the Deep Aquifer is from  
6 the heavily overdrafted 400-foot aquifer in the Salinas Valley. To the extent that is true,  
7 that source of supply is also at extreme risk. The 400-foot aquifer suffers from  
8 seawater intrusion for more than six miles inland from the coast.

9 13. Marina Coast's actions show a policy and procedure that Marina Coast  
10 intends to pump the Deep Aquifer until it is gone. Marina Coast has no currently  
11 available backup source of potable water. Marina Coast has no alternative supply in  
12 the likely and foreseeable event that the supply from the Deep Aquifer and/or the 400-  
13 foot Aquifer is reduced, runs dry, or becomes contaminated by saltwater or from  
14 another source. In the meantime, Marina Coast continues to pump and provide water  
15 to existing customers and new customers.

16 14. The Fort Ord Reuse Plan is based on 1983 seawater intrusion  
17 information. (Fort Ord Reuse Plan Final Program EIR, Volume II, 1997, p. 28.) Since  
18 the Reuse Plan was adopted in 1997, neither Marina Coast nor the Fort Ord Reuse  
19 Authority has updated the Reuse Plan's development proposals. Thus, the Reuse Plan  
20 does not reflect the information about the Deep Aquifer revealed in 2003 or the steadily  
21 increasing saltwater intrusion into the groundwater supply.

22 15. Based on information and belief, KFOW alleges that no environmental  
23 review of the impacts of cumulative water demands of Marina and Fort Ord on the  
24 Deep Aquifer is contemplated by Marina Coast or any other agency. For the  
25 foreseeable future there is no source of potable water supply for Marina and Fort Ord  
26 other than the Deep Aquifer. No other potable supplies for Fort Ord have final  
27 environmental review or are funded. It is not foreseeable that any other potable supply  
28

1 for Fort Ord and/or Marina will be online and producing by the time the contemplated  
2 development is approved and constructed in Fort Ord and/or Marina.

3 16. In approximately October 2017, the Monterey County Water Resources  
4 Agency scientists recommended a moratorium on new wells in the Deep Aquifer and  
5 new wells in the 400-foot aquifer near to the seawater intrusion front because of the  
6 agency's concerns regarding seawater intrusion and harm to the Deep Aquifer.

7 Keep Fort Ord Wild

8 17. Petitioner Keep Fort Ord Wild (KFOR) is an unincorporated association  
9 under California law. Petitioner and its members are beneficially interested in the  
10 enforcement and application of public interest laws, open government laws,  
11 environmental laws and laws assuring public disclosure and responsible decision  
12 making by local governments. Petitioner and its members are beneficially interested in  
13 the way and manner that water and land use decisions are made and in the  
14 environmental consequences and effects of pumping water supply for development in  
15 Fort Ord and Marina, including the impacts of the development pursuant to the Reuse  
16 Plan. Petitioner's members live, work, own businesses in, and recreate in Marina,  
17 Seaside, Monterey, Del Rey Oaks, the unincorporated County, and Fort Ord. The  
18 water policies and water actions of Marina Coast affect the health and safety in these  
19 areas.

20 18. Members of Keep Fort Ord Wild have been active in Fort Ord issues for  
21 several years. Keep Fort Ord Wild through its counsel and its members regularly  
22 participate in public meetings of the Marina Coast Water District, the Fort ord Reuse  
23 Authority, the City of Seaside, the City of Marina, the County of Monterey, the  
24 Monterey County Board of Supervisors Fort Ord Committee, and more. KFOR  
25 successfully brought a California Public Records Act lawsuit that forced FORA to  
26 produce an insurance policy for which FORA had paid more than \$100 million. KFOR  
27 successfully brought a CEQA lawsuit that forced FORA to rescind its approval of a  
28 contract regarding a specific alignment of the proposed new Eastside Parkway.

1 KFLOW's lawsuit against the City of Seaside resulted in the decertification of the EIR for  
2 the Monterey Downs project, a mega-development proposed for Fort Ord with  
3 significant and inadequately studied impacts on water supply. KFLOW has also  
4 participated in several other material matters relating to Fort Ord, environmental  
5 impacts, and planning.

6 19. Petitioner and others have brought the issues raised in this petition to the  
7 attention of the Marina Coast Water District board of directors and district counsel.  
8 Petitioner has asked for relief. These requests include personal appearances and  
9 letters by KFLOW representatives and KFLOW counsel. Marina Coast has not  
10 responded to the requests or remedied the harms and violations identified by this  
11 petition, causing significant impacts to Petitioner and its members. Petitioner has given  
12 Marina Coast repeated invitations to meet, and Marina Coast has not responded to any  
13 of them. Petitioner standing in this action, and has exhausted all administrative  
14 remedies reasonably and legally available to Petitioner. This action is timely brought.

15 Marina Coast Water District.

16 20. Petitioner is informed and believes and on that basis alleges that  
17 respondent Marina Coast Water District is a public agency organized and operating  
18 under California law including the County Water District Law codified at Division 12,  
19 section 30000 and following of the California Water Code. Respondent has a  
20 five-member Board of Directors elected by voters in the Marina area. Respondent is  
21 subject to the California Environmental Quality Act (CEQA).

22 21. Respondent Marina Coast Water District Board of Directors is the  
23 governing body of the water district. The board has five members who are directly  
24 elected. The two respondents are collectively referred to in this petition at times as  
25 Marina Coast or Respondents.

26 22. Marina Coast is the water purveyor and provider for the City of Marina  
27 and for Fort Ord. Fort Ord is a former United States Army base adjacent to cities of  
28 Marina, Seaside, Del Rey Oaks, and Monterey. The Fort Ord military base closed in



1 1994, at which time the Department of Defense transferred land to governmental  
2 entities and other entities. (Gov. Code, § 67650 et seq.)

3 23. Marina Coast has argued it has a contract with the Fort Ord Reuse  
4 Authority to provide water to land on Fort Ord. However, no environmental analysis  
5 has been performed on that contract or the provision of water by Marina Coast to Fort  
6 Ord pursuant to the contract.

7 24. Marina Coast Water District has taken the position that it is the lead  
8 agency under CEQA for this annexation project that Marina Coast proposes to carry  
9 out. The Local Agency Formation Commission of Monterey County (LAFCo) has taken  
10 the position that it is a responsible agency under CEQA for the project. The LAFCo  
11 board of directors has not considered or acted upon the project.

12 Does

13 25. Keep Fort Ord Wild currently does not know the true names of DOES  
14 1-25, who may have some interest in the action such that they may be respondents or  
15 real parties, and therefore names them by such fictitious names. Keep Fort Ord Wild  
16 will seek leave from the court to amend this petition to reflect the true names and  
17 capacities of DOES 1-25 inclusive once ascertained.

18 The Project at Issue in this Petition: Annexation and Sphere of Influence Amendment.

19 26. 2011 Effort: In 2011, Marina Coast Water District considered a service  
20 area annexation and sphere of influence amendment. Marina Coast prepared a CEQA  
21 document -- a draft initial study/negative declaration -- which considered expanding the  
22 service area to include all of the former Fort Ord. Marina Coast proposed to annex all  
23 Fort Ord land, including the permanent open space lands and habitat areas, and  
24 including the area now known as the Fort Ord National Monument. Marina Coast  
25 circulated this CEQA document for public review from approximately October 31, 2011  
26 through December 15, 2011, and Marina Coast held a public hearing to receive oral  
27 comments on January 10, 2012. Marina Coast received written comments on the  
28 CEQA documents from Keep Fort Ord Wild and approximately a dozen other



1 organizations, individuals and agencies. Based on the comments received, Marina  
2 Coast did not pursue its 2011 annexation proposal.

3 27. 2017 Effort: In 2017, Marina Coast tried again. In December 2017,  
4 Marina Coast released a revised CEQA document on a revised proposal for an  
5 annexation and sphere of influence amendment. The revised proposal is to annex  
6 portions of Fort Ord land, but not all of it. The revised annexation proposal does not  
7 include areas of approved and planned future development, such as, for example, the  
8 Seaside East development, the Del Rey Oaks developments, and the City of Monterey  
9 development areas, to name a few. The revised CEQA document circulated by Marina  
10 Coast was an initial study and proposed negative declaration.

11 The January 22, 2018 Marina Coast Water District Board Meeting.

12 28. On January 22, 2018, the Marina Coast board of directors regular  
13 meeting agenda included item 9.A, described as follows:

14 9. Public Hearing

15 A. Public Hearing for the Public Draft Initial Study/Negative  
16 Declaration for the Ord Community Sphere of Influence  
17 Amendment and Annexation

18 29. The agenda item description was solely on the CEQA documents –  
19 specifically the draft initial study and proposed negative declaration. The agenda item  
20 did not mention project approval as an action item.

21 30. At its January 22, 2018 meeting, the board took action later reported by  
22 Marina Coast as follows: “Following the public hearing the Board directed staff to  
23 prepare written responses to public comments before considering taking further action  
24 on the Public Draft IS/ND.” (Feb. 20, 2018 Marina Coast staff report, item 10.A.)

25 The February 20, 2018 Marina Coast Water District Board Meeting.

26 31. The February 20, 2018 Marina Coast board meeting agenda item 10.A  
27 was as follows:

28 A. Consider Adoption of Resolution No. 2018-09 to Adopt the Public  
Draft Initial Study/Negative Declaration for the Ord Community

1 Sphere of Influence Amendment and Annexation; Find that the Ord  
2 Community Sphere of Influence Amendment and Annexation is not  
3 subject to CEQA and is exempt from CEQA under CEQA  
4 Guidelines sections 15301 (Existing Facilities), 15319  
5 (Annexations of Existing Facilities and Lots for Exempt Facilities),  
6 and 15061, subd. (b)(3) (the “common sense” exemption); and  
7 Direct Staff to File an Application with the Local Agency Formation  
8 Commission

9 Action: The Board of Directors will consider adopting the Public  
10 Draft Initial Study/Negative Declaration for the Ord Community  
11 Sphere of Influence Amendment and Annexation find that the Ord  
12 Community Sphere of Influence Amendment and Annexation is not  
13 subject to CEQA and is exempt from CEQA under CEQA  
14 Guidelines sections 15301 (Existing Facilities), 15319  
15 (Annexations of Existing Facilities and Lots for Exempt Facilities),  
16 and 15061, subd. (b)(3) (the “common sense” exemption); and  
17 direct staff to file an application with the Local Agency Formation  
18 Commission.

19 32. The February 20, 2018 agenda item did not describe any action to  
20 approve the annexation project. The agenda item did not describe any changes to the  
21 project description.

22 33. At the February 20, 2018 Board meeting, KFW’s legal counsel spoke  
23 publicly on the record to the board, its general manager, and district counsel. KFW  
24 spoke in opposition to the proposed project approval. KFW also provided written  
25 materials providing argument and evidence as to the annexation. The KFW letter  
26 also offered to meet with Marina Coast to resolve the controversies, and pointed out  
27 that Marina Coast controls the calendar, not KFW. KFW pointed out that the  
28 approval of the project was not on the agenda and thus the project could not be  
approved legally at the meeting. KFW provided copies of the letter for each of the  
board members and district counsel. Later that evening, the board purported to  
approve the project by approving a resolution.

1           34.     It is not clear what project the board “approved.” There were numerous  
2 last-minute changes to the project description that were different from the project  
3 description in the circulated environmental document. The changes were not clearly  
4 and adequately stated by Marina Coast, and thus KFOW and others were not able to  
5 evaluate the potential environmental impacts of the changes.

6           The February 21, 2018 Notice of Determination and Notice of Exemption.

7           35.     On February 21, 2018, Marina Coast Water District filed with the County  
8 Recorder a CEQA Notice of Exemption and a CEQA Notice of Determination. On each  
9 of the filed notices, the “Project title” is described by Marina Coast as “Ord Community  
10 Sphere of Influence Amendment and Annexation.” The two notices appear to be  
11 designed to trigger the CEQA statutes of limitations in which litigation must be filed.  
12 The statutes of limitations have short time frames.

13          36.     A notice of determination is properly filed by an agency “*after* deciding to  
14 carry out or approve the project.” (CEQA Guidelines, § 15075, subd. (a), italics  
15 added.) Similarly, a notice of exemption is properly filed after the project has been  
16 approved. “When a public agency decides that a project is exempt from CEQA ... , the  
17 agency may file a notice of exemption. *The notice shall be filed, if at all, after approval*  
18 *of the project.*” (CEQA Guidelines, § 15062, subd. (a), italics added.) “A notice of  
19 exemption may be filled out and may accompany the project application through the  
20 approval process” but it “*shall not be filed ... until the project has been approved.*” (*Id.*  
21 at subd. (b), italics added; see CEQA Guidelines, § 15061, subd. (d).) (*San Lorenzo*  
22 *Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified*  
23 *School District* (2006) 139 Cal.App.4th 1356, 1374.) By filing the notice of  
24 determination and the notice of exemption, Marina Coast has indicated its position that  
25 it has approved a project.  
26  
27  
28

1           The February 20, 2018 Action by Marina Coast Was a Project Approval.

2           37.     The CEQA Guidelines define approval as the agency's "*earliest*  
3 commitment" to a project. (CEQA Guidelines, § 15352, subd. (b), italics added.) Just  
4 as the CEQA statute requires environmental review before a project's approval, not  
5 necessarily its final approval (Pub. Resources Code, §§ 21100, 21151), so the  
6 guideline defines "approval" as occurring when the agency first exercises its discretion  
7 to approve the project in all or in part, or execute a contract, or grant financial  
8 assistance, not when the last discretionary decision is made. (CEQA Guidelines,  
9 § 15352, subd. (b); *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134.)

10          38.     KFOW alleges the February 20, 2018 vote was Marina Coast's first  
11 commitment to the project, and Marina Coast was required to comply with CEQA prior  
12 to its actions. The actions by Marina Coast board relied on an inadequate  
13 environmental document and on inapplicable CEQA claims of exemption. Marina  
14 Coast improperly found that no exceptions to the CEQA exemptions applied, and that  
15 the project was not a project under CEQA. Each action was a prejudicial abuse of  
16 discretion and a failure to proceed in the manner required by law.

17          39.     An action to certify or approve an environmental document or  
18 determination is different from an action to approve a project. Each separate action  
19 must be stated on an agenda. The Brown Act states that "[n]o action or discussion  
20 shall be undertaken on any item not appearing on the posted agenda." (Gov. Code,  
21 § 54954.2, subd. (a)(2); see *San Joaquin Raptor Rescue Center v. County of Merced*  
22 (2013) 216 Cal.App.4th 1167 1170.) KFOW and its members did not have meaningful  
23 or adequate legal notice the Marina Coast Board intended to approve an annexation  
24 project. KFOW and its members intended to submit information to Marina Coast for its  
25 review prior to project approval, and KFOW and its members were actively gathering  
26 its evidence and preparing its arguments to submit, but was not able to do so  
27 adequately or gather all of the pertinent and important evidence before the Marina  
28

1 Coast board acted illegally. Thus KFOW has been materially prejudiced by the Board's  
2 action to approve the project without first complying with the Brown Act.

3 40. The Brown Act, also known as the California open meeting law, has a  
4 clear and forcefully stated purpose: "In enacting this chapter, the Legislature finds and  
5 declares that the public commissions, boards and councils and the other public  
6 agencies in this State exist to aid in the conduct of the people's business. It is the  
7 intent of the law that their actions be taken openly and that their deliberations be  
8 conducted openly. "The people of this State do not yield their sovereignty to the  
9 agencies which serve them. The people, in delegating authority, do not give their  
10 public servants the right to decide what is good for the people to know and what is not  
11 good for them to know. The people insist on remaining informed so that they may  
12 retain control over the instruments they have created." (Gov. Code, § 54950.)

13 Government Code section 54954 subdivision (a) sets forth the agenda requirements  
14 for regular meetings: "At least 72 hours before a regular meeting, the legislative body  
15 of the local agency, or its designee, shall post an agenda containing a brief general  
16 description of each item of business to be transacted or discussed at the meeting,  
17 including items to be discussed in closed session . . . . No action or discussion shall be  
18 undertaken on any item not appearing on the posted agenda . . . ." Government Code  
19 section 54954(b) makes an exception to the general agenda requirements set forth in  
20 section 54954(a); none of the exceptions are applicable here or were claimed by  
21 Marina Coast in any event. The Brown Act agenda requirement "serves to facilitate  
22 public participation in all phases of local government decisionmaking." (*San Joaquin*  
23 *Raptor Rescue Center v. County of Merced* (2013) 216 Cal.App.4th 1167, 1176.)

24 41. Petitioner alleges that Respondents abused their discretion and failed to  
25 proceed in a manner required by law when Respondents approved the project in  
26 reliance on inadequate environmental review, an inadequate negative declaration,  
27 inapplicable exemptions, improper conclusion that no exceptions applied, an improper  
28 conclusion that the annexation is not a project, and failure to provide the notice

1 required by law. There is a fair argument that an environmental impact report is  
2 required. Petitioner alleges that the violations include, inter alia, the illegal  
3 piecemealing of the environmental review by omitting consideration of the cumulative  
4 impacts of water pumping in order to serve water to undeveloped areas of Fort Ord that  
5 are planned for development and even include approved projects. Cumulative impacts  
6 is one of the exceptions that defeat the use of a CEQA exemption.

7 42. To enhance protection of the environment, CEQA defines "project"  
8 broadly to encompass "the whole of an action, which has a potential for resulting in  
9 either a direct physical change in the environment, or a reasonably foreseeable indirect  
10 physical change in the environment." (CEQA Guidelines, § 15378, subds. (a), (c).)  
11 The definition precludes "piecemeal review which results from 'chopping a large project  
12 into many little ones—each with a minimal potential impact on the environment—which  
13 cumulatively may have disastrous consequences.' " (*Rio Vista Farm Bureau Center v.*  
14 *County of Solano* (1992) 5 Cal.App.4th 351, 370, quoting *Bozung v. Local Agency*  
15 *Formation Com.* (1975) 13 Cal.3d 263, 283-284.)

#### 16 JURISDICTION AND VENUE

17 43. This Court has jurisdiction over this action pursuant to Code of Civil  
18 Procedure sections 1085 (traditional mandate) and 1094.5 (administrative mandate),  
19 Public Resources Code sections 21168 and 21168.5 (judicial review under CEQA), and  
20 other law. The Court has jurisdiction to issue injunctive relief pursuant to Code of Civil  
21 Procedure section 525 et seq. Venue is proper in this Court in the first instance,  
22 because both the Respondent public agency, Respondent board of directors, and the  
23 land at issue in the annexation are located in the County of Monterey.

#### 24 STANDING

25 44. Petitioner has a direct and beneficial interest in Marina Coast's full and  
26 complete compliance with CEQA and other legal requirements applicable to the project  
27 and to the actions of Respondents.  
28

45. Marina Coast has a mandatory duty to comply with CEQA and other legal requirements applicable to the annexation project. Petitioner has a right to enforce these mandatory duties.

46. Petitioner has no other plain, speedy and adequate remedy at law, and will suffer irreparable injury unless the Courts grant the relief requested in this petition.

47. An actual controversy has arisen and now exists between the Petitioner and Marina Coast relating to the legality of the manner in which Marina Coast has proceeded in approving the project and the CEQA analysis and in proceeding to approve the submittal of the project to Monterey County Local Agency Formation Commission for approval. Petitioner contends that Marina Coast has violated CEQA and other legal requirements. Petitioner is informed and believes, and based thereon alleges, that Marina Coast disputes these contentions and contend that Marina Coast's actions were given in compliance with all such legal requirements.

## EXHAUSTION

48. Representatives of Keep Fort Ord Wild have raised the issues in this petition by speaking at public meetings of the Marina Coast Board of Directors and writing letters to the Marina Coast Board of Directors, pointing out the problems and offering to meet in an effort to resolve the concerns before the Marina Coast Board acted, and before the Board actions and the Marina Coast filing of the CEQA notices triggered the short CEQA statutes of limitations.

49. On February 28, 2018 and on March 6, 2018, Keep Fort Ord Wild wrote letters to Marina Coast asking Marina Coast to cure and correct the Brown Act violation, and offering to meet with Marina Coast to settle the controversies. On March 7, 2018, Keep Fort Ord Wild faxed both previous letters to Marina Coast. Later on March 7, 2018, Marina Coast published its agenda for what Marina Coast calls a regular meeting of the Marina Coast Board of Directors on March 12, 2018. The agenda does not include an item to cure and correct the Brown Act violation.



1           50.     Petitioner performed all required conditions precedent to filing this action  
2 by complying with the requirement of Public Resources Code section 21167.5 by  
3 sending the letters described above, and also by on March 8, 2018 providing written  
4 notice by email, facsimile and United States Postal Service to the Marina Coast Water  
5 District that Keep Fort Ord Wild intended to initiate litigation under CEQA, and sending  
6 the same notice again by mail on the morning of March 9, 2018. Proof of service of  
7 that notice is incorporated herein as Exhibit E to this petition.

8           51.     As of the signing of this petition, Keep Fort Ord Wild has not received a  
9 response from Marina Coast and files this petition out of an abundance of caution due  
10 to the potential running of the CEQA statutes and the lack of response by Marina Coast  
11 to repeated entreaties from Keep Fort Ord Wild.

12          52.     This petition timely challenges the February 20, 2018 Marina Coast  
13 approvals of the project and the February 21, 2018 filing by Marina Coast of the CEQA  
14 notice of exemption and CEQA notice of determination.

15                   INADEQUATE REMEDY AT LAW, STAY/INJUNCTION

16          53.     Petitioner seeks a temporary and permanent injunctions and/or stays of  
17 the effect of the approvals of the project and activities authorized under the project  
18 approvals during the pendency of these proceedings. The injunctive relief sought by  
19 Petitioner is intended to avoid harm to the environment. Petitioner and its members  
20 will continue to suffer adverse and irreparable environmental harm from Respondents'  
21 failure to comply with CEQA and other laws in approving and carrying out the project,  
22 as described herein, until and unless this Court provides the relief prayed for in this  
23 petition. Petitioner has no plain, speedy or adequate remedy at law for this harm.

24          54.     This Court has authority to issue an order to Marina Coast to suspend all  
25 project related activities until Marina Coast has fully complied with CEQA and other  
26 applicable laws. This Court has authority to issue preliminary relief on a showing of  
27 greater harm to Petitioner and likelihood of success on the merits. This Court further  
28 has authority to issue temporary or permanent injunctive relief to suspend project

1 related activities pending compliance with a writ. (Pub. Resources Code, § 21168.9,  
2 subd. (a)(2); *Laurel Heights Improvement Ass'n v. Regents of University of California*  
3 (1988) 47 Cal.3d 376, 424.)

4 PRIVATE ATTORNEY GENERAL

5 55. This proceeding involves enforcement of important rights affecting the  
6 public interest. Compliance with the mandatory duties under CEQA helps protect the  
7 environment and reduce environmental impacts. This action will convey a substantial  
8 benefit on the public and a large class of persons who do not have the resources or  
9 ability to bring this lawsuit to vindicate their rights. Issuance of the relief requested in  
10 this petition will confer a substantial benefit on the public. Petitioner brings this action  
11 as a private attorney general pursuant to Code of Civil Procedure section 1021.5.  
12 Petitioner and its members do not have a substantial financial interest in the subject  
13 matter of this petition and Petitioner brings this lawsuit in the public interest.

14 WHEREFORE, Petitioner prays for entry of judgment as described below.

15 PRAYER – CALIFORNIA ENVIRONMENTAL QUALITY ACT

16 WHEREFORE, Petitioner prays for relief as follows:

17 1. A peremptory writ of mandate directing Respondents: (a) to invalidate and  
18 vacate its February 20, 2018 action finding that the project is not a project under  
19 CEQA; (b) to invalidate and vacate its February 20, 2018 action finding that the project  
20 is exempt from CEQA; (c) to invalidate and vacate its February 20, 2018 action  
21 adopting an initial study/negative declaration for the project; (d) to invalidate and  
22 vacate its February 20, 2018 action authorizing staff to submit an application for the  
23 Ord Community Sphere of Influence Amendment and Annexation to the Local Agency  
24 Formation Commission of Monterey County until Respondents have taken action  
25 necessary to bring its approval of project into compliance with CEQA; (e) to rescind the  
26 notice of determination and notice of exemption filed on February 21, 2018; (f) to  
27 refrain from taking any action that relies upon any of Respondents' actions of February  
28

1 20, 2018 and February 21, 2018 set forth in this petition; and (g) to comply with CEQA  
2 in any subsequent action or actions taken to approve the project.

3 2. Other relief that prevents Respondents' actions, determinations, and  
4 approvals for the project from taking effect and/or that requires Respondents to  
5 rescind, modify, or invalidate its actions related to the project;

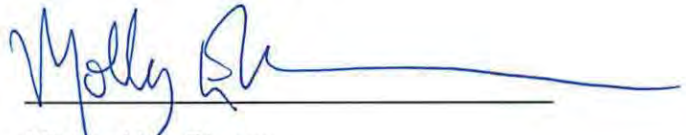
6 3. Temporary and permanent injunctive relief.

7 4. An award of attorney fees and costs to Petitioner as permitted by law,  
8 including Code of Civil Procedure section 1021.5 and the catalyst theory.

9 5. Such other and further relief that the Court may consider just and proper and  
10 in the interests of justice.

11 Dated: March 9, 2017

STAMP | ERICKSON

12   
13

14 Michael W. Stamp  
Molly E. Erickson

15 Attorneys for Petitioner  
16 Keep Fort Ord Wild

17  
18 Table of Exhibits to Petition

19 Exhibit A: Monterey County Water Resources Agency map of wells as of August 1,  
20 2017 in the Deep Aquifer, October 2017 report

21 Exhibit B: Figure 2.2, Marina Coast Urban Water Management Plan, 2015

22 Exhibit C: Seawater intrusion maps based on 2015 data, Monterey County Water  
23 Resources Agency, published 2017

24 Exhibit D: Well pumping information produced by Marina Coast Water District, 2018

25 Exhibit E: Proof of service of Keep Fort Ord Wild's letter of intent to initiate litigation  
26  
27  
28



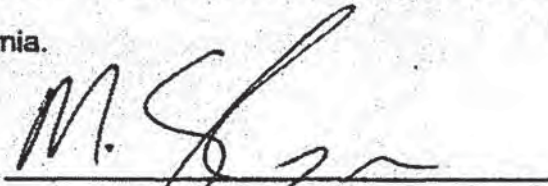
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**VERIFICATION**

I, Michael Salerno, declare as follows:

I am the authorized representative of Keep Fort Ord Wild, petitioner in the above matter. I have read the petition in this matter, and know the contents thereof. The same is true of my own knowledge, except as to matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed this 9<sup>th</sup> day of March, 2018, in Marina, California.

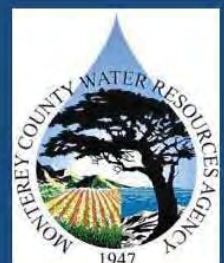
  
Michael Salerno

# RECOMMENDATIONS TO ADDRESS THE EXPANSION OF SEAWATER INTRUSION IN THE SALINAS VALLEY GROUNDWATER BASIN

Monterey County  
Water Resources Agency

Special Reports Series 17-01

October 2017





#### 5.2.4 Wells in the Deep Aquifers

The use of the Deep Aquifers for groundwater production has been driven by the need to drill deeper in order to avoid seawater intrusion, with wells being installed to subsequently deeper elevations with fresh-water-bearing materials (Feeney and Rosenberg, 2003). Most available hydrogeologic data on the Deep Aquifers have been obtained through well drilling activities and related well or aquifer testing rather than through an intentional aquifer-wide study. Wells of all types have been installed in the Deep Aquifers, including production wells for agricultural purposes; domestic, industrial, and municipal water supply wells; and monitoring wells.

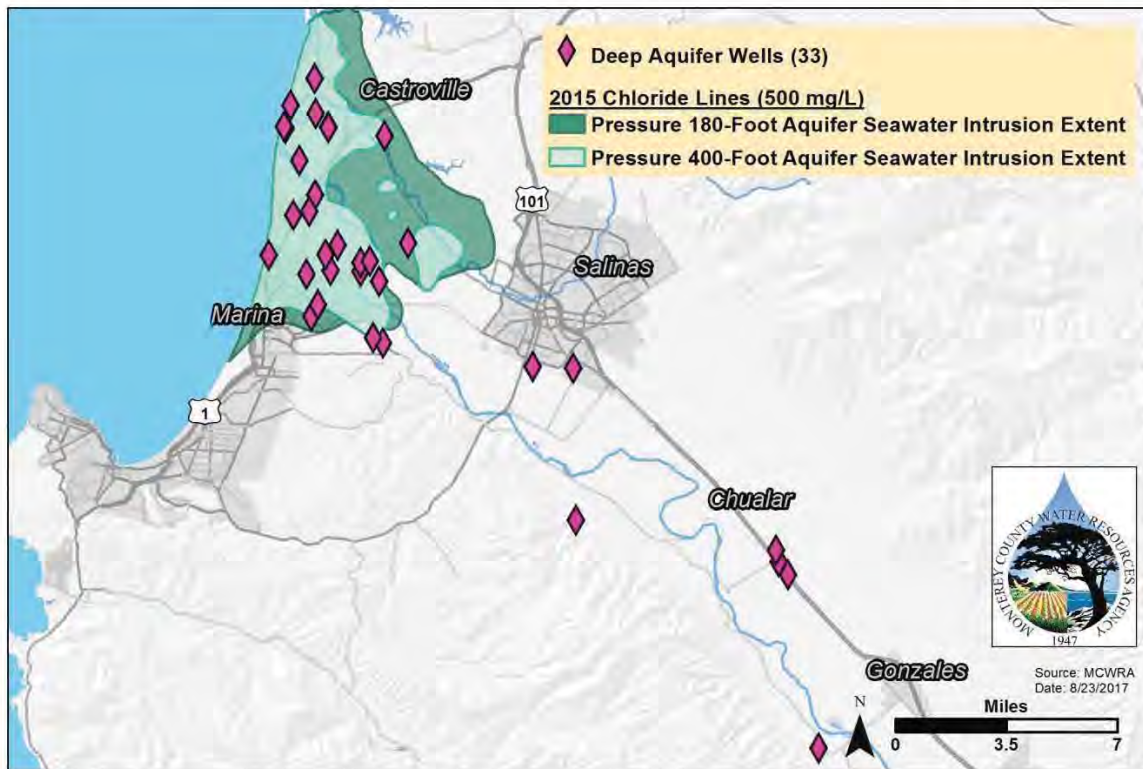
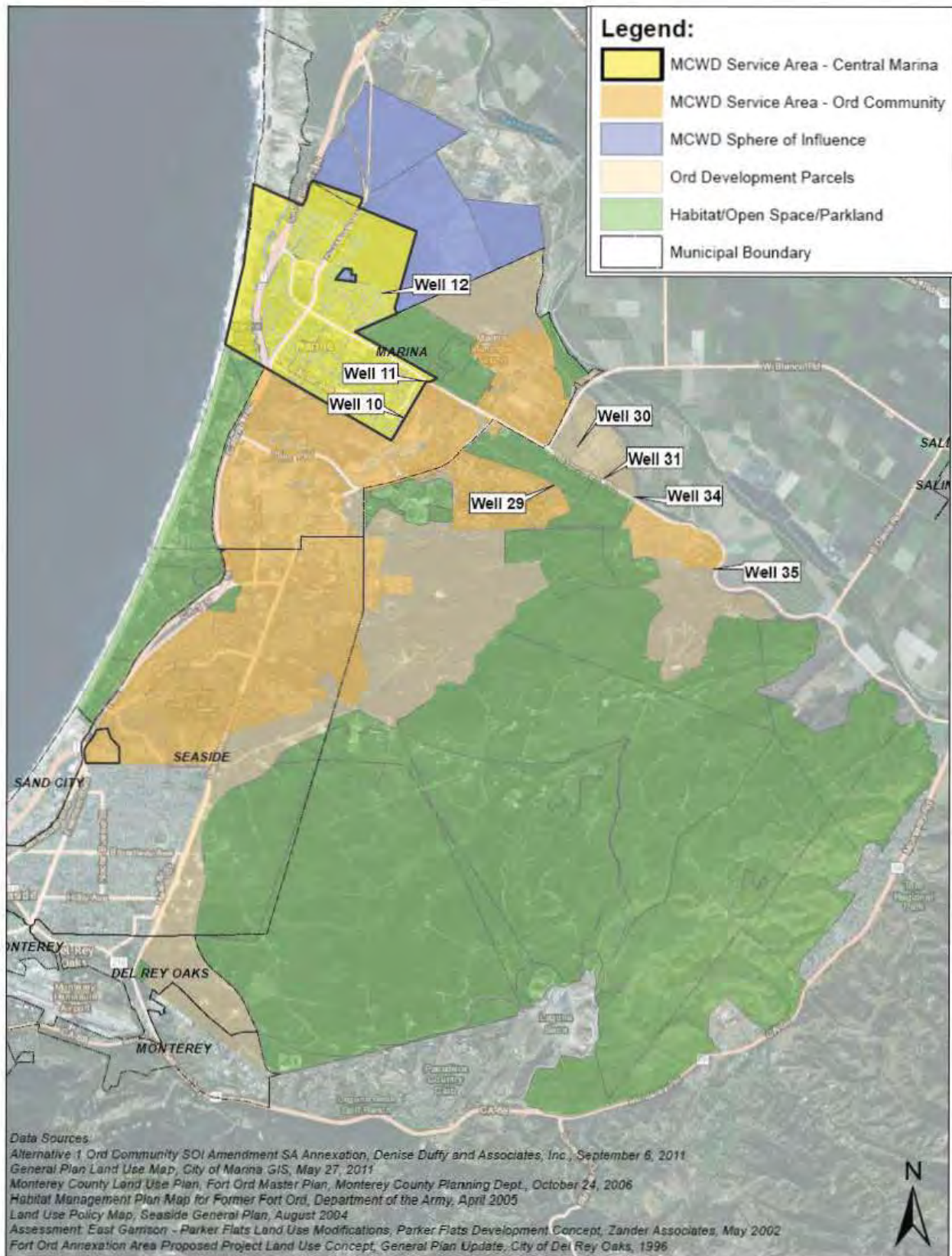


Figure 18- Wells in the Deep Aquifers

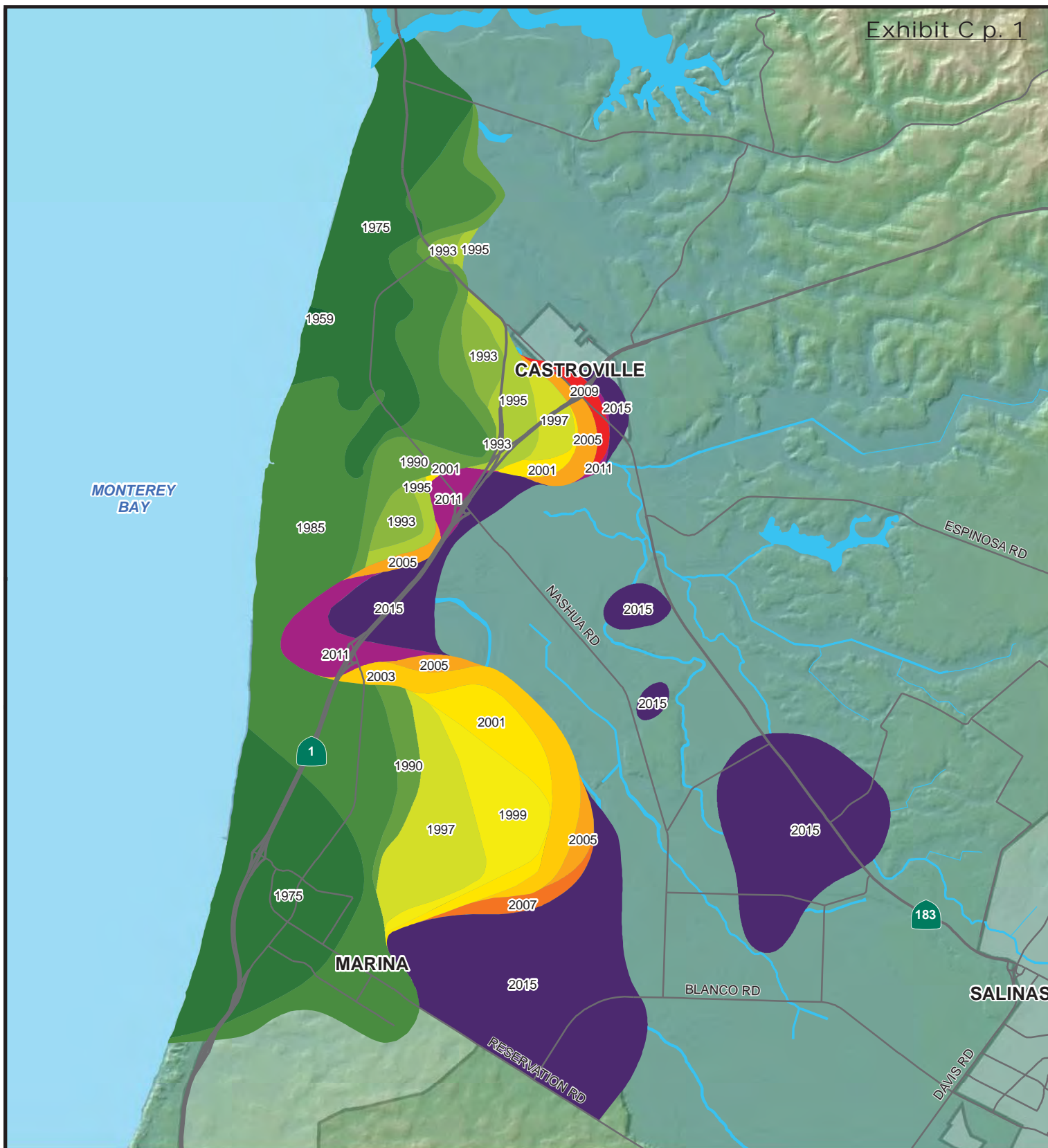
#### 5.2.5 Well Installation History in the Deep Aquifers

The first production well in the Deep Aquifers was installed in 1974. As of August 1, 2017, a total of 41 wells have been installed in the Deep Aquifers: 33 production wells and 8 monitoring wells (Figure 19). One of the production wells was destroyed in 2004, so 40 wells remain in the Deep Aquifers at present. Of the 32 existing production wells, 18 are agricultural wells, 7 are municipal wells, 3 are residential wells, 3 are industrial wells, and one has an unknown usage.

Well Completion Reports for wells in the Deep Aquifers are provided in Appendix E and a table detailing installation dates, depths, and well types for the Deep Aquifers can be found in Appendix F.

**Figure 2.2 MCWD Service Areas**





## Historic Seawater Intrusion Map

Pressure 400-Foot Aquifer - 500 mg/L or Greater Chloride Areas

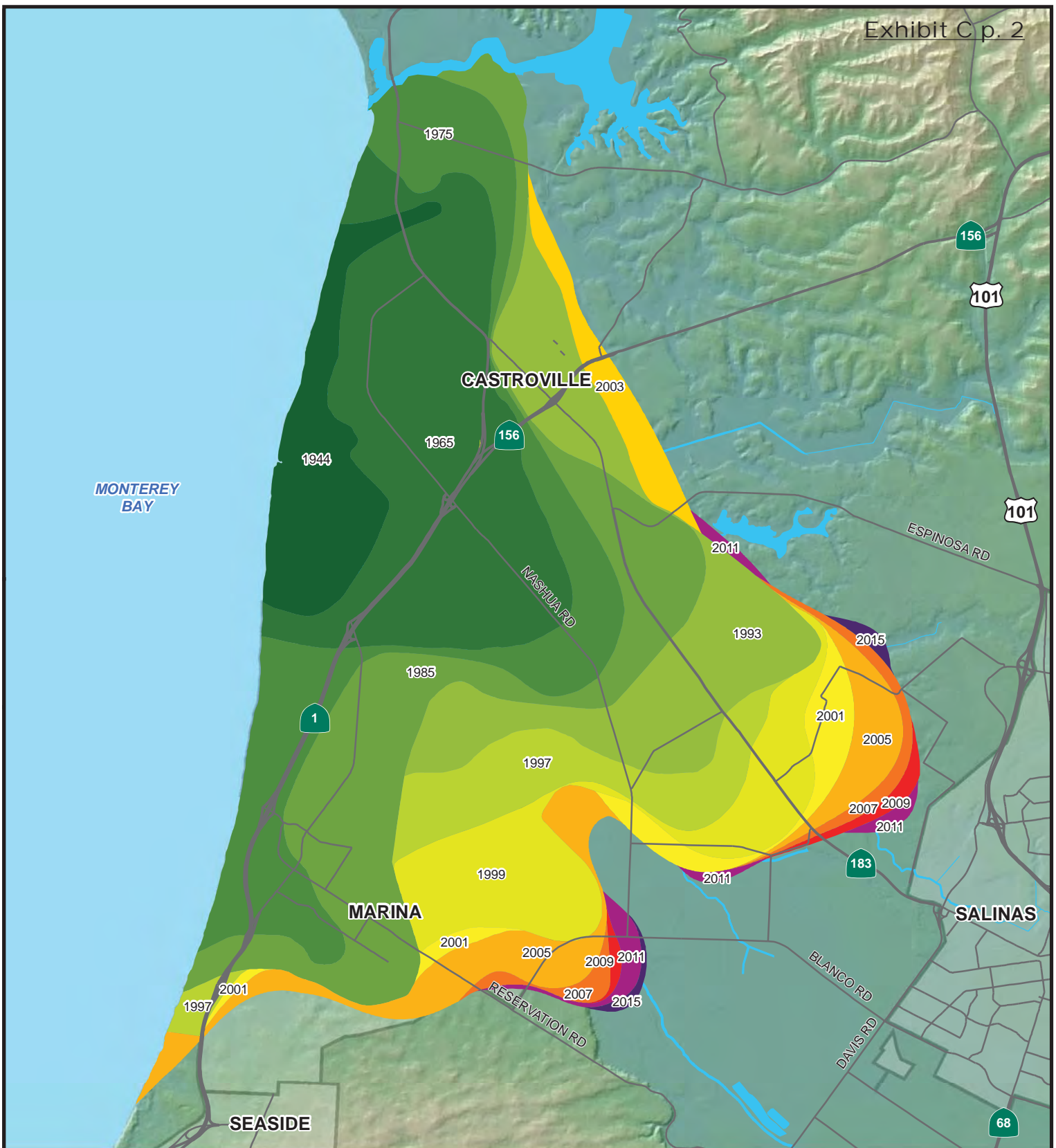
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|--|--|---|
| <ul style="list-style-type: none"> <li>■ Cities</li> <li>■ 1959</li> <li>■ 1975</li> <li>■ 1985</li> <li>■ 1990</li> </ul> | <ul style="list-style-type: none"> <li>■ 1993</li> <li>■ 1995</li> <li>■ 1997</li> <li>■ 1999</li> <li>■ 2001</li> </ul> | <ul style="list-style-type: none"> <li>■ 2003</li> <li>■ 2005</li> <li>■ 2007</li> <li>■ 2009</li> <li>■ 2011/2013</li> <li>■ 2015</li> </ul> |
|--|--|---|



The scale and configuration of all project boundaries and information shown are not intended as a guide for design or survey work.

Map Date: 6/7/2017

\* Seawater Intruded Areas By Year



## Historic Seawater Intrusion Map

Pressure 180-Foot Aquifer - 500 mg/L or Greater Chloride Areas

- |        |      |           |
|--------|------|-----------|
| Cities | 1993 | 2005      |
| 1944   | 1997 | 2007      |
| 1965   | 1999 | 2009      |
| 1975   | 2001 | 2011/2013 |
| 1985   | 2003 | 2015      |



0 0.5 1 1.5 2 Miles



The scale and configuration of all project boundaries and information shown will not be intended as a guide for design or survey work.

Map Date: 6/7/2017

\* Seawater Intruded Areas By Year

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**Subject:** RE: request for Marina Coast well information

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**From:** Paula Riso (priso@mcwd.org)

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**To:** erickson@stamplaw.us;

---

**Date:** Thursday, March 1, 2018 11:02 AM

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Ms. Erickson,

Per your request, please see the attached information regarding the MCWD Wells. There is also more information to be found in 2015 Urban Water Management Plan (see link).

Thank you,

Paula

[http://www.mcwd.org/docs/engr\\_files/MCWD\\_2015\\_UWMP\\_Final.pdf](http://www.mcwd.org/docs/engr_files/MCWD_2015_UWMP_Final.pdf)

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**From:** Molly Erickson [mailto:erickson@stamplaw.us]  
**Sent:** Monday, February 26, 2018 6:15 PM  
**To:** Paula Riso <priso@mcwd.org>  
**Subject:** request for Marina Coast well information

Ms. Riso:

I seek access the information that shows the following current information for each Marina Coast well: Well 10, 11, 12, 29, 30, 31, 34, and 35 (Watkins Gate)

1. The depth that the pump is set.
2. The depths where each well is screened/perforated.

When I asked a similar question before, Marina Coast simply provided the information in an email. If Marina Coast can do that again, there is no need for Marina Coast to produce the responsive records under the California Public Records Act. Or feel free to send me the records. Please contact me if you have any questions about this request. Thank you.

Regards,

Molly

Molly Erickson  
**STAMP | ERICKSON**  
479 Pacific Street, Suite One  
Monterey, CA 93940  
tel: 831-373-1214, x14

---

## Attachments

- Well Log 10-WG.pdf (171.61KB)

well #	Completed Depth	Screen Locations	Pump Depth
10	1550'	930'-970' 990'-1010' 1040'-1080' 1190'-1210' 1500'-1540'	480'
11	1660'	970'-1100' 1540'-1570' 1610'-1650'	520'
12	1970'	1410'-1440' 1500'-1550' 1680'-1720' 1800'-1830' 1850'-1900' 1920'-1960'	500'
29	557'	315'-535'	Unkown
30	552'	315'-405' 440'-485' 525'-535'	410'
31	490'	285'-471'	Unkown
34	1095'	705'-1085'	460'
Watkins Gate	658'	430'-450' 460-473' 548'-563' 576'-588' 613'-648'	502'



1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF MONTEREY**

3 I am employed in the County of Monterey, State of California. I am over the age  
4 of 18, and not a party to the within action. My business address is 479 Pacific St., Suite  
One, Monterey, California 93940. My email address is erickson@stamplaw.us.

5 On March 8, 2018, I served the attached one-page document described as  
6 follows:

7 **LETTER STATING "KEEP FORT ORD WILD NOTICE OF INTENT TO SUE"**

8 ( X ) via my email and no error message was received, via facsimile and no error  
9 message was received, and via mail through the United States Postal Service as  
stated below.

10 Emailed to all district  
11 directors (Moore, Shriner,  
Gustafson, Lee and Cortez),  
12 district counsel Roger  
Masuda, and general  
13 manager Keith Van der  
Maaten at approximately  
4:50 PM on March 8, 2018

To: Tom Moore <directormoore@mcwd.org>;  
"directorshriner@mcwd.org";  
<directorshriner@mcwd.org>;  
"hgustafson@outlook.com";  
<hgustafson@outlook.com>;  
"directorlee@mcwd.org";  
<directorlee@mcwd.org>;  
"directorcortez@mcwd.org";  
<directorcortez@mcwd.org>  
Cc: "kvandermaaten@mcwd.org";  
<kvandermaaten@mcwd.org>;  
"rmasuda@calwaterlaw.com";  
<rmasuda@calwaterlaw.com>;  
Paula Riso <priso@mcwd.org>

14  
15  
16  
17 Faxed to 831-883-5995 at  
18 approximately 4:50 PM on  
March 8, 2018

Facsimile number for Marina Coast Water  
District

19 Mailed on March 8, 2018 by  
20 delivery to the U.S. Post  
Office and again on the  
21 morning of March 9, 2018 out  
of an abundance of caution

Tom Moore, President  
Board of Directors  
Marina Coast Water District  
11 Reservation Road  
Marina CA 93933

22  
23 Emailed, faxed and mailed on March 8, 2018, and mailed again on March 9,  
2018. Executed on March 9, 2018 at Monterey, California.

24 I declare under penalty of perjury under the laws of the State of California that  
25 the above is true and correct.

26 

27 Molly Erickson



Michael W. Stamp  
Molly Erickson

**STAMP | ERICKSON**  
Attorneys at Law

479 Pacific Street, Suite One  
Monterey, California 93940  
T: (831) 373-1214  
F: (831) 373-0242

March 8, 2018

Via email, U.S. Postal Service, and facsimile to (831) 883-5995

Tom Moore, President  
Board of Directors  
Marina Coast Water District

Re: Keep Fort Ord Wild notice of intent to sue

Dear Marina Coast Water District President Moore and directors:

On February 27, 2018, we sent you and your legal counsel a "cure and correct" letter identifying actions taken by Marina Coast on February 20, 2018 that appear to be in violation of the Brown Act. On March 6, 2018, we sent you and your legal counsel a follow up letter. On March 7, 2018, we faxed you the two letters. We have not heard back from you on any of these. Since then, Marina Coast has released its agenda for its regular board meeting on March 12, 2018. The agenda does not include an item that would cure and correct the Brown Act violations.

The Brown Act violations by Marina Coast led to the filing on February 21, 2018 by Marina Coast of a CEQA notice of determination and a CEQA notice of exemption. The filing of those notices potentially started the running of short CEQA statutes of limitations. Again, the CEQA filings were based on Marina Coast actions taken in violation of the Brown Act, which may invalidate or void the actions taken thus far. The CEQA and Brown Act issues are intertwined.

This is written notice that Keep Fort Ord Wild intends to file a petition under the California Environmental Quality Act and other laws to challenge the actions of the Marina Coast Water District Board of Directors on February 20, 2018 to approve an annexation project in reliance on a negative declaration, exemptions, and a claim that the project was not a project under CEQA. (See Pub. Resources Code, § 21167.5.)

Once again, we offer to meet with you in an effort to settle these controversies. Please let us know if you would like to meet. Thank you.

Very truly yours,

STAMP | ERICKSON

  
Molly Erickson

cc by email: Marina Coast Water District counsel and general manager  
LAFCo Monterey County