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May 5, 2009

Board of Directors
MRWPCA
5 Harris Court
Monterey, CA 93940

SUBJECT: MOUS TO IMPLEMENT THE REGIONAL PROJECT

Dear Board of Directors:

LandWatch Monterey County reviewed the Memorandums of Understanding (MOUs) that will be acted upon by your Board in May. We have the following comments:

While staff and others indicate these MOUs are for planning purposes only, the actions to be undertaken pursuant to the MOUs extend well beyond planning and are projects under CEQA. Approving the MOUs is a discretionary action, and the MOUs are “projects” as defined by the California Environmental Quality Act (CEQA). Several actions to be undertaken pursuant to the MOUs depend on environmental review to be conducted at a later time. CEQA does not include provisions for approving projects prior to completion of an environmental document; in fact, recent case law specifically addresses this approach and finds it inconsistent with CEQA provisions (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 and *Riverwatch v. Olivehain Municipal Water District* (2009) 170 Cal.App.4th 1186).

RUWAP MOU

Some of the activities to be undertaken are addressed in the RUWAP EIR. However, requirements that must be met by a Responsible Agency under CEQA are not identified or addressed in the MOU or any other documents made available to LandWatch.

Section 2 states, “... the MRWPCA and MCWD **will supply** recycled water equivalent to the FORA recycled water allocations of 1,427 acre-feet per year (“AFY”) with up to 300 AFY of additional recycled water for distribution ...with appropriate environmental review.” The MOU states that “subsequent project-level environmental review will be necessary prior to implementing the component to provide 300 AFY to the Monterey Peninsula” (Section 1.2).

Section 3.1 states the parties commit to “meet and confer...to plan, **develop, design and construct** a) project to use the RTP outfall...b) a ground water replenishment (GWR) project...”. These activities are addressed in the DEIR for the Coastal Water Project (CWP) for which a Final EIR has not been certified. Additionally, because GWR was assigned to Phase 2

of the Regional Project, the environmental review included in the CWP EIR is insufficient for project level action and will require subsequent environmental analysis.

Section 4 states MRWPCA will “evaluate, plan, **design and construct** the RTP addition...in accordance with CEQA...” Section 5 states, MRWPCA will “evaluate, plan, **design and construct** the backbone in accordance with...” CEQA. Section 6 states, “MRWPCA will **finance, construct, own and operate**...transmission facilities...after approved environmental review.”

As noted earlier, CEQA does not include provisions for approving projects prior to completion of an environmental document.

MOU FOR PLANNING FOR USE OF OUTFALL

Section 2 states, “Upon execution of this Planning Agreement, MRWPCA acting as lead agency...will undertake immediately and prosecute diligently to completion...analysis pursuant to the California Environmental Quality Act of using the outfall for desalination brine disposal.” Section 4 states, “MCWD and MRWPCA will meet and confer in good faith to **negotiate** the terms and conditions of MCWD’s use of the outfall for brine disposal.” As noted earlier, CEQA does not include provisions for approving projects prior to completion of an environmental document.

We urge the MRWPCA Board of Directors to delay decisions on the MOUs until requirements of CEQA have been addressed.

Sincerely,

Amy L. White, Interim Executive Director
LandWatch Monterey County

Cc: Marina Coast Water District
Monterey County Water Resources Agency
Monterey Peninsula Waste Management District