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Via Email

Michael R. Peevey, President,  
and Members of the Commission  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Subject Coastal Water Project EIR Does Not Comply with CEQA; Illegal  
Piecemealing of Environmental Review; Potential Takings Claim

Dear President Peevey and Member of the California Public Utilities Commission:

This Office represents the Ag Land Trust, which owns property that would be affected by the proposed Regional Project. (See attached figure.) The Ag Land Trust was formerly known as the Monterey County Agricultural and Historic Land Conservancy. On the Commission's December 17, 2009 agenda, there is a request to certify the Environmental Impact Report (EIR) for the Coastal Water Project.

The Ag Land Trust urges the Commission to delay the proposed certification of the EIR for many reasons, including these:

1. If the CPUC certifies the EIR now, local public agencies plan to use it to approve one of the project alternatives, thereby taking away the authority of the CPUC to select a project based on this EIR.
2. The Public has had inadequate time to review the EIR, which is over 3,100 pages and is not available in hard copy anywhere in Monterey County. The Public was told that the EIR certification would be considered in January 2010. The certification was expedited to December 2009 with inadequate notice to the Public.
3. The EIR is deeply flawed. The public needs more time to advise the Commission as to the flaws, so the EIR can be corrected to address key issues adequately.

As Soon as the EIR is Certified, the Local Agencies Plan to  
Jump Ahead of the CPUC and Approve the Regional Project.

The Regional Project is the third of the three projects analyzed in the EIR. As soon as the CPUC certifies the EIR, the local public agencies that are the proponents of the Regional Project plan to rely on the EIR to approve the Regional Project on an

expedited basis, as the attached December 9, 2009 powerpoint documents show (see p. 5). The project proponents have already determined that the CPUC's EIR is inadequate as to specific known potential impacts, including brine disposal. Given the EIR omission, a local agency plans to issue a supplemental environmental document to address brine disposal, and the local agencies can then be under way with the Regional Project, making the CPUC's future scheduled action to select a project meaningless.

The local agencies would be able to do this because they are not subject to CPUC authority. They are seeking grant funding which would provide project financing. Once the local agencies approve the Regional Project, the CPUC would not be able to rely on its certified EIR to select either of the two projects proposed by Cal Am. The reason is that to select either of the Cal Am projects would mean the CPUC would be allowing a second project to be built, in addition to the Regional Project. The EIR does not evaluate the environmental impacts of two projects being built. It addresses the impacts of only one of three projects being built. If the local agencies approve the Regional Project first, as they plan to do, then when the CPUC in April 2010 considers selecting a project, the CPUC could not rely on its own EIR to do so because the EIR does not envision two projects being built. A second project would have significant cumulative and growth-inducing impacts that have not been analyzed in the EIR.

The CPUC cannot certify an EIR for a project over which it has no jurisdiction. Under CEQA, "lead agency" is defined as "the public agency which has the *principal* responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067, italics added.) The CPUC is not the lead agency for the Regional Project, because the CPUC would have no role in approving or carrying out the desalination plant, the source water wells and pipelines, or the brine disposal, which are the principal facilities of the Regional Project. The desalination plant would be owned and operated by the Marina Coast Water District (MCWD), a local public agency. Monterey County Water Resources Agency (MCWRA) would own and operate the wells. The brine disposal would be through facilities owned by the Monterey Regional Water Pollution Control Agency (MRWPCA). The public agencies would carry out and approve the project. The lead agency for the Regional Project should be a local agency.

As the Court of Appeal held in addressing the issue of the lead agency, "Our threshold question here is which agency . . . has the principal responsibility for the activity." (*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District* (1994) 28 Cal.App.4th 419, 427.) The specific facts of a case determine who is lead agency. (*Id.*, at p. 428.)

The Legislature enacted CEQA in 1970 as a means to force public agency decisionmakers to document and consider the environmental implications of their actions. (§ 21000,

21001; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 254-256, criticized on another ground in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896.) CEQA and its Guidelines ( Cal. Code Regs., tit. 14, § 15000 et seq.) constitute a comprehensive scheme to evaluate potential adverse environmental effects of discretionary projects proposed to be carried out or approved by public agencies. (§ 21080, subd. (a); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 437.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors*, *supra*, 8 Cal.3d at p. 259.)

The issue here is . . . [which public agency] was the public agency required under the act to evaluate potential adverse environmental effects of this activity. Or, using the applicable terms of art under CEQA, the issue is whether the District was the "lead agency."

(*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District*, *supra*, 28 Cal.App.4th 419, 426, internal parallel citations omitted.)

Under CEQA, a local agency must be lead agency for the Regional Project due to (1) the CPUC's lack of jurisdiction over the Regional Project's primary components, (2) the local agencies' ownership interests in the proposed desalination plant, source wells and pipeline, and brine disposal, and (3) the local agencies will be the first to act on the project approvals (see FEIR Figure 5-6 and presentations attached to this letter for reference).

#### EIR Discussion of "Lead Agency" is Inconsistent and Misleading.

The EIR does not clearly present this issue. Instead, the EIR discussion of agency roles under CEQA is inaccurate and fails to disclose the material facts or the issues. The EIR lacks the required comprehensive discussion of the issues to inform the public and decisionmakers. At best, the EIR creates a significant ambiguity.

The EIR repeatedly describes the CPUC as the lead agency, and the local agencies (such as the MCWD, MCWRA, and MRWPCA) as responsible agencies (e.g., FEIR Master Response 13.3). The EIR does not directly address whether those roles

would be different for any of the project alternatives. Instead, in discussing the Regional Project, the EIR merely alludes to the CPUC as not having direct authority or jurisdiction over the project proponents. The EIR never addresses a key CEQA issue: that the CPUC is not the lead agency for the Regional Project. The EIR never identifies which agency would be lead agency for the Regional Project.

The ALJ'S Draft Decision Compounds the Problems.

Perhaps as a result of the EIR's confusing discussion, the draft decision before the CPUC to certify the EIR contains similar important ambiguities. For example, the draft decision states that Phase 2 of the Regional Project is not subject to the CPUC's approval at this time. (Draft Decision, rev. 1, p. 19.) However, the draft decision fails to clarify that Phase 1 of the Regional Project is also not subject to the CPUC's approval – either now or in the future – because the project proponents are not subject to CPUC jurisdiction. The project proponents – the local public agencies – can and plan to approve and carry out the Regional Project without CPUC involvement.

Only one week after the EIR was released, the ALJ issued a proposed draft decision certifying the EIR, which was later revised with minor non-substantive changes. The draft decision proposes that the CPUC make findings that are not authorized by CEQA, and proposes an order for which the CPUC has no authority. The Order states that the EIR is “certified for use by . . . responsible agencies in considering subsequent approvals of the project, or for portions thereof.” (Draft decision, p. 24.) The CPUC does not have authority to make that order, and no supporting reference is provided. If local agencies approve the project or project components first, before the CPUC does or can, then the first local agency to act becomes the lead agency under CEQA. (See *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960; *Citizens Task Force on Sohio v. Bd. of Harbor Commissioners of the Port of Long Beach* (1979) 23 Cal.3d 812.)

The draft decision asserts (p. 20) without legal support that “the lead agency must find that the document was (or will be) presented to the decisionmaking body for review and consideration prior to project approval.” There is nothing in CEQA that requires a finding that the document “will be” presented to the decisionmaking body, and such a finding is both misleading and confusing. Further, with regard to the Regional Project, the CPUC has no authority over what documents will be presented to the various decision-making bodies who will act on project components. As another example, the proposed finding of fact #1 fails to state that the CPUC is not the lead agency for review of the Regional Project alternative. The CPUC has no authority over the local agencies who are the proponents of that project. The draft decision is also inaccurate in key respects, including the claim that the FEIR states that the Monterey Peninsula has experienced seawater intrusion for decades. The Monterey Peninsula

has no documented problems with seawater intrusion. Throughout this proceeding, the lack of familiarity with the on-the-ground conditions has been a significant problem.

The Final EIR Is Deeply Flawed and Does Not Comply with CEQA.

The project description has changed dramatically from the Notice of Preparation to the Draft EIR to the Final EIR. This violates the basic CEQA tenet that "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. (*Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Ass'n.* (1986) 42 Cal.3d 929, 938, internal citations, quote marks and punctuation omitted.) Here, the changes from the Notice of Preparation, to the Draft EIR, to the Final EIR have violated this basic principle. As one example, a project alternative (the Regional Project) that was not proposed to be built by the project applicant (Cal Am) and was not subject to the CPUC's jurisdiction was added after the EIR was under way. Under the circumstances, the EIR's inclusion of the Regional Project was highly unusual and not adequately explained in the EIR, either substantively or procedurally. Other examples of the significant EIR flaws are provided here.

Lack of Compliance with Monterey County Code: No Alternative Water Supply:  
The EIR fails to disclose Monterey County's requirement that each desalination plant include an alternative source of water supply (Monterey County Code, Ch. 10.72). The code requires that a permit be obtained for all desalination facilities (10.72.10), and states that the permit application shall include:

a contingency plan for alternative water supply which provides a reliable source of water assuming normal operations, and emergency shut down operations. Said contingency plan shall also set forth a cross connection control program.

(Monterey County Code, § 10.72.020.F, attached for reference.) None of the three proposed projects includes a "contingency plan for alternative water supply." As proposed, the City of Marina and the majority of the Monterey Peninsula population would rely on the project for their water supply. If that supply fails, either for a short term or for a long term, the community will not have a water supply. The EIR does not analyze the projects' inconsistencies with the County requirement for an alternative water supply. In response to the comment that the project should include an operations plan and a contingency plan, the EIR merely states "comment noted." (FEIR, G-SVWC-13 and response thereto.)

The EIR omission is significant due to CEQA's requirement that in order to fulfill CEQA requirements, environmental review is mandated "at the earliest possible stage." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.) By failing to

include consideration of an alternative water supply in the project description, the EIR is piecemealing the environmental review, because such alternative supply is required.

The EIR omission is also significant due to the magnitude of the health and safety risk to the community which is the County Code intends to address. (See attached County documentation supporting the creation of Chapter 10.72.) Desalination plants have a very poor record of operations and maintenance. There is no record of any desalination plant of any size, such as proposed here, operating for any reliable period of time in the United States. The few that have been constructed have had very serious design, construction, and maintenance issues. For this reason, the success of the three proposed projects is pure speculation. If, as proposed, the vast majority of the Monterey Peninsula population and all of Marina -- including residents, industry and business -- rely on the desalination plant for their water supply, and the supply stops, or is interrupted, there would be very significant impacts and risks to public health and safety. The EIR does not address this issue.

Incorrect and Misleading Statements: The EIR contains incorrect and misleading material statements. The inaccuracies extend to basic information about the current environmental setting. For example, section 1.6 Project Setting (pp. 1-7 and 1-8) contains significant misstatements of fact. No support is provided for these misstatements which include (1) the claim that the MCWRA is a primary custodian of water supplies in North Monterey County (when in fact, MCWRA is not a water supplier and, critically, does not have appropriative rights), (2) the claim that the Salinas Valley Water Project will "stop seawater intrusion and provide adequate water supplies to meet current and future (2030) needs" (when in fact the SVWP EIR admits it may not achieve those goals), and (3) the claim that the San Clemente Dam is "the major point of surface water diversion from the [Carmel] river" (when in fact the San Clemente Dam provides no water supply because it is fully silted up and is proposed to be removed). These three examples early in the EIR set the stage for the myriad errors and misrepresentations that permeate the EIR document. There are many other problems which the public has been unable to present to the CPUC staff because of the expedited schedule, the length of the EIR, and the lack of availability of a hard copy of the EIR. The EIR preparer should correct all errors before the EIR is considered for certification.

As another material example, the EIR incorrectly identifies and discusses Zone 2C in a way that is misleading to the public and to decisionmakers. (See, e.g., FEIR, p. 6.2-16.) Zone 2C is not a groundwater scheme. It is a zone created for the purposes of tax assessments, and delineates the boundary of the area that would purportedly benefit from -- and therefore be assessed for -- the Salinas Valley Water Project, which is a surface water project. The distinction is critical.

Failure to Adequately Analyze Potential Environmental Impacts of Project:  
Failure to Adequately Describe or Analyze Environmental Setting; Failure to Adequately Describe or Analyze Cumulative and Growth-Inducing Impacts: These failures take many forms. As one significant example, the FEIR fails to adequately disclose that the local agencies' hybrid Regional Urban Water Augmentation Project (RUWAP) would produce up to 3,000 AFY, which is expected to be online between 2008 and 2015. The EIR describes the RUWAP as producing only 1,000 AFY. It fails to identify or investigate the additional 2,000 AFY of RUWAP supply that is currently under active implementation, and that would be provided to the MCWD and the Peninsula. As a result, the EIR fails to adequately analyze the potential growth-inducing environmental impacts of the proposed projects, fails to adequately describe or analyze environmental setting, and fails to adequately describe or analyze cumulative impacts. (See attachments for further documentation of the hybrid RUWAP project currently under way by local agencies.)

Failure to Adequately Investigate or Disclose Brine Disposal Impacts: The EIR fails to analyze the potential impacts of the proposed ocean outfall disposal of the brine that would be produced by the desalination plan. As one material example, the Regional Project proposes to use the treated water wastewater outfall owned by the MRWPCA. Studies indicate that MRWPCA's outfall capacity may not be available for all outfall flow conditions. It is unknown whether the outfall could accommodate all outfall operating parameters if the Regional Project is built. It is foreseeable that brine discharge would exceed outfall capacity during high-flow periods. There is no analysis of the availability of wastewater for the various demands of multiple projects. It is foreseeable that if all wastewater is used for disposal and brine dispersion, that commitment would cause significant impacts on the RUWAP (which uses recycled water from the MRWPCA) and the Ground Water Replenishment project that is an essential part of the Regional Project.

The EIR fails to disclose or investigate these issues or their potential significant impacts. The EIR fails to investigate important issues including: the capacity of the existing outfall to accommodate increased brine flow; the potential sacrifice of outfall capacity allocated for future development in the area in favor of allocating unused capacity for brine; minimization of stormwater capacity in the outfall and how this might be mitigated (e.g., storage tanks, ASR well, if mitigation is even possible, etc.); or blended water quality in light of applicable water quality parameters, including NPDES discharge limits for TDS. Further, the EIR fails to adequately describe or investigate the fate of desalination-facility cleaning chemicals and other project waste streams. This is not new information. It has been openly and publicly discussed since at least early 2008. (See February 20, 2008 report to MPWMD, attached.)

The local agencies have acknowledged that the CPUC's EIR does not adequately address brine disposal through their own actions to address the omission.

Even before the comment period on the CPUC's Draft EIR closed, one agency had already begun to prepare a separate environmental review of brine issues that should have been included in the CPUC's EIR. This fractured approach to environmental review of project components is piecemealing, which is prohibited by CEQA. The local agency's work is intended to allow the local agencies to move ahead with the Regional Project without the active involvement of the CPUC, and even if the CPUC intends to select a different project of the three analyzed in the EIR.

Piecemealing of Project Review: Another example of the EIR's inadequacy and piecemealing is the project description's failure to include the known cogeneration facility that is part of the project. That facility has been proposed at least since 2008, before the Draft EIR was released. (See attached references, including March 2009 presentation by Curtis Weeks of Monterey County Water Resources Agency.) As a result of this failure, the EIR fails to analyze the potential environmental impacts of that facility. The very brief EIR discussion (FEIR pp. 5-45 and 5-46) contemplates the new facility, but defers analysis to a future date. The new facility is foreseeable and would be built as part of the Regional Project, to enable the project. The environmental analysis should not have been deferred, and should have been included in the FEIR.

Unanalyzed Impacts on Overdrafted North County Aquifers: The FEIR is claiming the "modeling" indicates there will be no impacts of pumping 24,000+ AFY out of the 180-foot aquifer. However, a review of the well locations upon which the EIR modeling is based shows that none of them are located within any of North County's hydrological subareas.<sup>1</sup> For this reason, the wells could not show impacts to North County wells, because that information was not part of the model. The Salinas Valley Water Project was approved by the voters based on claims that it would improve the North County aquifers, which are uphill from the Salinas Valley Groundwater Basin. Several times, MCWRA general manager Curtis Weeks has publicly described that claim by likening the basin to a bathtub into which North County aquifers run, and when the water level of the bathtub increases, the aquifers do not run downhill to the same extent. Here, the EIR fails to analyze whether the pumping of 24,000+ AFY – or 88,000 AFY, as is foreseeable – on the North County hydrological subareas.

EIR Relies on False Assumption: The EIR uses the modeling presented by the project proponents. According to the EIR, project proponent's Regional Project impact analysis relied on a modeling assumption that the SVWP Phase II would be in place.

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<sup>1</sup> This can be determined by reviewing the mapping of North County's subareas in relation to major roadways, and comparing that information to the figures showing well locations in the EIR appendices in relation to those same roadways.



The SVIGSM modeling used to evaluate impacts of the Regional Project was based on a future baseline condition that assume complete implementation of Phase II of the SVWP.

(FEIR, p. 14.5-145.) However, no "Phase II of the Salinas Valley Water Project" is in place, and it is unclear what the EIR means. A second SVWP phase is not proposed, approved, funded or built. The Salinas Valley Water Project EIR did not use the term "Phase II," but it did envision an expanded distribution system to address the continuing water supply challenges in the Salinas Valley (e.g., SVWP EIR, p. 2-294). Because the modeling of the SVWP indicated that the SVWP may not halt seawater intrusion, the MCWRA contemplated a future expanded distribution system. Presumably that future expanded system is what the CWP EIR means when it refers to "Phase II of the SVWP." The SVWP EIR projected a cost of more than \$40 million for this distribution system, which presumably voters would need to approve, just as voters were required to approve the initial SVWP phase currently under construction. Since then, every distribution scheme the MCWRA has discussed dwarfs the \$40 million estimate found in the EIR.

The CWP EIR describes what is calls "Phase II" of the SVWP as "Increased diversion. Delivery could be directly to urban or could be expanded to CSIP with equivalent amount of pumped groundwater to urban." The CWP EIR also describes it as "urban supply." (FEIR, p. N-44.) The purported "Phase II" is also addressed at page 6.2-18. It is unclear to which Regional Project phase the CWP EIR discussion applies.

The EIR does not identify all of the assumptions used by the project proponents for their modeling, which is a significant concern. As a result, the public and the decision makers are not informed of the project proponents' assumptions, which can make a critical difference in the outcome of the modeling on which the EIR relied. The modeling and reliability is no better than the reliability of the underlying assumptions, and the assumptions are not adequately described.

Inadequate Investigation and Disclosure of Impacts to Overlying and Adjacent Properties: The EIR does not adequately investigate or discuss the impacts on overlying or adjacent properties. For this reason, the EIR fails as an informational document under CEQA.

The EIR even fails to clearly identify where the projects would be located, which is another aspect of the inadequate and changing project description. There is no reliable information as to where the wells or the pipelines would be located. Revised Figure 5-3 is the EIR's best depiction of the well and pipeline locations for the proposed seawater intake. The poster figure is a blurry generalized drawing. The figure fails to

identify the difference between the blue swath and the brown swath. The EIR does not identify property, parcels, or locations.

The EIR inappropriately defers that crucial investigation to a future date, and does not contemplate further CEQA review of that information. That was verified by Janet Brennan on December 11, 2009, in email communications with Eric Zigas, ESA (attached).

This deferred analysis is inappropriate under CEQA for several reasons. As one example, it fails to adequately address and identify the potential environmental impacts on the properties or potential property rights or taking issues. The Ag Land Trust has identified potential impacts and issues several times in its communications with the CPUC and ESA. It has not received any response other than a cursory and inadequate one in the EIR response to comments. The Ag Land Trust, which owns property underlying the blue swath on Figure 5-3, and possible the brown swath as well, has important property interests at stake, but never received notice from the CPUC, Cal Am, or the local agencies of the proposed certification of the EIR on December 17, 2009. The EIR claims that contacts were made with overlying landowners, but the Ag Land Trust was not contacted. (See the attached figures to show the Ag Land Trust properties with respect to the proposed Regional Project.)

In a related example, the EIR fails to adequately disclose or consider the projects' potential impacts on sensitive habitat. For example, the Martin Dunes property is included in the blue swath that identifies well locations and pipeline locations for the Regional Project (see FEIR Revised Figure 5-3 and figures attached to this letter).<sup>2</sup> The Martin Dunes property contains one of California's most ancient and intact dune ecosystems. It is located south of the Salinas River National Wildlife Refuge. At least six federally or state listed species are known to occur at the site, including Western snowy plover, Smith's blue butterfly, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard, as well as other special-status species. Maritime chaparral, which is also sensitive habitat, is also on the Martin Dunes site. The Martin Dunes are owned by the Big Sur Land Trust, which has made significant efforts to restore and protect the property and its resources. The North Monterey County Land Use Plan specifically addresses the site in several sections, including key policy 2.3.1, and specific policy 2.3.3.A.6, and recommended action 2.3.4.5, attached for reference. The EIR fails to identify or discuss these issues, which is a failure to adequately describe the environmental setting, as well as a failure to investigate potential

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<sup>2</sup> That figure is not specific as to parcels or properties. When mapping information was requested of the EIR preparer ESA, ESA responded was that there was no more specific information available for the project location other than as shown on Revised Figure 5-3.

impacts. The EIR mitigations do not adequately mitigate for potential impacts. There are no mitigations to potential impacts on Western snowy plover, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard. Mitigation measure 4.4.1a proposed for Smith's blue butterfly are inadequate, because it is permissive and not mandatory. Subsections (2) and (3) merely state that certain actions "should" be made, without accountability by the project applicant or public agency if they do not happen, and without identifying the potential impacts if the actions are not taken. Further, FEIR Table 7-1 states that the expansion of the Salinas River Diversion Facility would be in Phase I of the Regional Project. That is incorrect; the expansion is in phase 2 of the Regional Project. FEIR Table 5-1 clearly shows the diversion facility in Phase 2. The internal inconsistencies in the EIR, like this one, make parts of the EIR impossible to understand because the information cannot be reconciled. For this reason as well, the EIR fails as an informational document.

Separately, the EIR figures are inconsistent with project depictions presented just last week to the local cities and agencies by Jim Heitzman, General Manager of MCWD and Curtis Weeks, General Manager of MCWRA. (See attached December 9, 2009 powerpoint presentation.) These agencies are the ones who will be implementing the project. If the EIR figures are inaccurate, as they appear to be, that also causes the EIR to fail as an informational document.

The Regional Project Would Export Groundwater from the  
Salinas Valley Groundwater Basin, Which is Prohibited by Law.

The MCWRA Act prohibits groundwater exportation due to concern about the "balance between extraction and recharge" within the Salinas Valley Groundwater Basin (MCWRA Act, § 52-21; FEIR p. 4.2-28). The EIR does not dispute that the Salinas Valley Groundwater Basin is in overdraft and has been increasingly in overdraft for decades, as shown by the steady inland progression of seawater intrusion. One of the three projects reviewed in the CWP EIR – the Regional Project – would pump groundwater directly from the overdrafted Salinas Valley Groundwater Basin. Another of the projects – the Cal Am North Marina project – would pump groundwater indirectly.

These two projects would violate the MCWRA Act because the project would extract groundwater and not recharge the basin. Instead, the groundwater would be put to use. The EIR claims that the amount of groundwater pumped would be returned in the same volume to the basin, either by providing the water for irrigation through CSIP (the Cal Am North Marina project) or for consumptive use by MCWD customers (the Regional Project). However, use of the "returned" water for irrigation would allow only 50% of that amount to recharge the basin. The County uses a 50% return water factor for irrigation in its standard water calculations. Both of these two methods – irrigation and consumption – would violate the Act's requirement for a "balance between extraction and recharge" because any recharge of the basin would be much less than

the amount extracted from the basin. Use of the pumped groundwater for MCWD connections would also violate the MCWRA Act, because such use results in far less than a 50% return to the basin, because much water is lost through irrigation and sewers. The EIR fails to adequately discuss these issues, impacts and inconsistencies.

The proposed desalination project would export Salinas Valley groundwater to the Monterey Peninsula. The proposed way around the prohibition on groundwater exportation is to "return" an "annual average" to the Salinas Valley Groundwater Basin by placing it in the 80-AF CSIP pond for irrigation of Salinas Valley agricultural lands. There are multiple problems with the EIR's analysis.

There is no question that Salinas Valley Groundwater would be exported to the Monterey Peninsula. Such groundwater would be pumped "at unspecified volumes" (FEIR, pp. 4.2-50, 6.2-16), desalinated, and sent through the Cal Am pipes to the Peninsula. It is misleading for the EIR to claim that the groundwater would stay in the basin. The groundwater would be mixed with the seawater as it comes up the pumps, through the pipelines, and through the treatment plant. The groundwater molecules cannot be separated from the seawater molecules. The treated water would be a blend of both kinds of water, and that blended water would be exported to the Monterey Peninsula.

The EIR does not describe how the "annual average" will be calculated, or who will verify it. The proposed use of an "average" means that in some years more water will be exported to the Peninsula than "returned" to the Salinas Valley basin, which means that in those years the basin would be further imbalanced (causing attendant harm) through the operation of the proposed project. The EIR fails to analyze this inconsistency with the MCWRA prohibition, and fails to analyze the potential environmental impacts of the scheme.

The EIR repeatedly uses the 85% seawater/15% groundwater proportions, although those proportions are projected only for the first 10 years (FEIR, Appendix Q, p. 24). The EIR fails to adequately discuss or investigate whether the proposed actions are feasible or effective in future project years, when the proportions change significantly to 60% seawater and 40% groundwater, or what potential impacts those actions may have. For example, in the years when the 24,870-AFY of pumped water is 40% groundwater, that 40% would be 9,947 AFY of desalinated water that must be returned to the SVGB. The desalination plant is intended to produce 10,700 AFY, under full operating conditions. The Monterey Peninsula (Cal Am system) will be depending on receiving 8,800 AFY of that amount during normal weather years. If 9,947 AF are returned to the SVGB, and Marina takes its 1,700 AF, that leaves only 553 AF for the Monterey Peninsula, far less than it would be depending on. Even if Marina decides to pump from its unsustainable Deep Aquifer during that year, and thereby does not use its 1,700, that would leave only 2,253 AF for the Monterey

Peninsula system, which is only a small fraction of Cal Am's needs under Order 95-10 and the Seaside Basin adjudication. This is a foreseeable scenario which the EIR fails to address.

The EIR states that Salinas Valley groundwater extracted by the Cal Am North Marina project would be returned using the CSIP 80-AF pond (FEIR p. 13.6-8). The EIR fails to investigate or explain whether the proposed "return" method can be accommodated by the 80-AF pond in all years through the life of the project, for all volumes of foreseeable water, both in wet and dry years, and what the environmental impacts would be. The water "returned" to the Salinas Valley would be surface water, and the recipients of that surface water may not have rights to that water.

For the Regional Project, the EIR states that the pumped Salinas Valley groundwater would be delivered to the MCWD service area within the Salinas Valley basin (FEIR p. 13.6-8). The EIR fails to discuss how the water in excess of the 1,700 AF required for use within the MCWD would be returned to the SVGB. In some years, the volume of the water to be returned would far exceed 1,700 AF. The EIR omits any analysis of whether adequate water rights are held by the proposed appropriator of the Salinas Valley groundwater for such actions.

Under the predicted 60% seawater/40% groundwater scenario, in order to provide the 8,800 AF to the Monterey Peninsula (Cal Am system), the intake wells would have to pump 88,000 AFY. Of that 88,000 AFY, the 40% to be returned to the Salinas Valley Groundwater Basin would be 35,200 AFY. Of that 88,000 AFY, the desalination plant would produce 44,000 AF of desalinated water. The proposed "return" to the Salinas Valley Groundwater Basin would be 35,200 AF. Assuming the MCWD 1,700 AF is part of the amount returned to the Salinas Valley Groundwater Basin, that would leave 8,800 AF for the Monterey Peninsula. The EIR fails to investigate this foreseeable scenario, or what the impacts would be of 88,000 AFY of pumping, or the fact that the desalination plant is not designed to process 88,000 AFY of untreated water or to produce 44,000 AF of desalinated water. And there is no discussion of whether returning 35,200 to the Salinas Valley Groundwater Basin is feasible, or how it would be done. There is no question this foreseeable scenario would cause significant impacts, none of which has been addressed in the EIR.

The EIR fails to analyze any potential impacts for the times when the EIR indicates that the proportions of the pumped water will be approximately 60% seawater and 40% groundwater. (FEIR Appendix E and Appendix Q [modeling shows TDS concentrations of from 21,300 mg/L to 34,500 mg/L over a 56-year period].) The EIR fails to investigate whether the project would be able to pump or deliver sufficient water to provide 12,500 AFY to the Monterey Peninsula every year under the foreseeable scenario requiring a "return" of up to 40% of the pumped water to the CSIP or requiring the distribution of up to 40% to the MCWD service area within the Salinas Valley basin

for years at a time. There is no evidence that there is current demand for 40% of the pumped water within that MCWD service area. Thus, at times, only 60% of the water would be available for export to the Monterey Peninsula, when that area requires – and is planned to receive under the proposed project – 85% of the desalinated water, assuming perfect and uninterrupted plant operations. The EIR fails to investigate or explain how the difference between the available desalinated water and the area's water demand will be met over the life of the project, and the potential impacts over time. The evidence is that the current MCWD demand within the Salinas Valley Groundwater Basin is less than the 40% of the pumped water that would be delivered to that MCWD area. The EIR has failed to investigate or disclose the impacts of the forced delivery of that amount of water to that area. That forced delivery would foreseeably cause growth which has not been analyzed in the EIR.

Another significant issue is the lack of accountability for the amount of groundwater pumped. As one example, for the North Marina project, the EIR assumes that Cal Am will keep track of the amount of water pumped, and the salinity of that water. There are no requirements with regard to frequency of monitoring, and no provision or mitigation requiring Cal Am to report its pumping and water quality information to any public agency. Therefore, Cal Am would not be accountable to any public agency, and could keep its number secret and unverified by the public and the government.

The Project Proponents' Assumption of Continuous Pumping  
Is Unsupported and Unreasonable.

The EIR uses only modeling scenarios that assumed continuous pumping. (See, e.g., p. E-31, Appendix E, Appendix Q.) The models were prepared and submitted by the project proponents. The EIR claims that the applicants' models of continuous pumping of the desalination intake wells show the creation of an underground trough in the water level due to the volume of water being pumped. The EIR claim is that over time the pumping will decrease and/or halt the progression of inland seawater intrusion because the pumps will be sucking up seawater faster than the seawater intrudes. There was no modeling for anything other than continuous pumping, or cessation, including any scenario for the likely interruption of pumping (at any time, including at end of the project's lifetime).

An assumption of continuous pumping is not reasonable. Desalination facilities simply are not reliable. There are very poor track records of the two similarly sized plants in the United States (the Tampa Bay desalination plant and the Yuma Desalter). Large desalination plants as proposed here have proved to be unreliable and have been non-operable for long periods of time, and none has ever operated at full capacity. The EIR fails to investigate or disclose this information, or what would happen if the

proposed plant is non-operable for long periods of time (or even for short periods), and if it never operates at full capacity.

In addition to failing to adequately investigate the potential environmental impacts of non-continuous pumping throughout the life of the project, the EIR also fails to discuss the potential environmental impacts that may occur at the end of the plant's useable life, which the EIR anticipates to be approximately 50-56 years.

Groundwater has several unknowns. Unknown variables require assumptions to be made in each analysis. The unknowns and assumptions can be reduced through testing the groundwater system through pumping and monitoring wells. This has not been done here to the level that would provide usable data for reliable conclusions. The testing that was done for the EIR was minimal and based on an insufficient number of wells and locations. For that reason, the EIR conclusions are not reliable or adequate information. Even after test wells are used to validate assumptions, there remains the variable of time. Things change over time, yet the EIR does not recognize that basic fact of nature.

If water is removed from the aquifer by wells, then an equivalent amount of water will move in from one side or the other to fill the vacated space. Given the proximity of the ocean to the location of the wells, it is far more likely that the vacated space will be filled in by seawater than by groundwater. If the replacement water comes from off shore, that means increased seawater intrusion. The EIR claims that the replacement water will come from inland, which will halt or reverse seawater intrusion. However, that scenario can only occur if there is already a net flow of water from inland to offshore in the vicinity of the wells. Based on over 50 years of data (the seawater intrusion figures presented by Monterey County), that will not be the case unless either it is a temporary condition that occurs only in very wet years or the wells are located in an area that does not already have seawater intrusion. The EIR acknowledges that the wells will be located in an area that has seawater intrusion. Accordingly, the only time that the EIR claim would be valid would be during very wet years, when there is a net flow of water from inland to offshore in the Salinas Valley Groundwater Basin. In the vast majority of years – in other words, all years that are not “very wet” – the EIR claim would not be valid. The EIR fails to disclose or discuss these issues, and draws its conclusions based on its flawed assumption of continuous operations.

The EIR claim of a “trough” that would halt seawater intrusion is inconsistent with the theory behind the Castroville Seawater Intrusion Program (CSIP). The CSIP goal is to reduce pumping by coastal agricultural property owners because by doing so, the theory goes, seawater intrusion will be slowed. That theory is opposite to the one proposed in the CWP EIR, which is that significant continuous pumping at the coast will halt seawater intrusion. Both theories cannot be correct, and the EIR has failed to address the inconsistencies.

Critically, the EIR does not use any model runs that assumed a multi-year drought, which is a foreseeable scenario in the semi-arid Central Coast. The project impacts on the aquifers may be very different under those scenarios. The rigid assumptions used by the models relied upon by the EIR are not reasonable under the circumstances and the known likely variables.

It appears that the EIR uses only modeling runs presented by project proponents. For example, the July 25, 2008 model run was prepared by Geoscience, Cal Am's consultant. The June 5, 2009 and September 11, 2009 reports were prepared by RMC Water and Environment, which represents the Regional Project proponents. CEQA requires independent investigation and review of materials submitted by project proponents, to rest their validity and reliability. It appears that was not done here.

#### The EIR Responses to Comments Are Inadequate.

The responses to comments do not meet the requirements of CEQA for good faith, reasoned responses. There are many examples of this violation of CEQA mandates. For example, the response to L-PSMCSD-2(b) fails to answer the issue and question clearly raised, and instead uses a semantic pretense about dates. As another example, the response to L-PSMCSD-2(a) merely regurgitates the testimony of an attorney for a project proponent for more than two pages, without a reasonable independent investigation or discussion of the issues. In that response, the claimed legal basis is highly suspect and has not been confirmed under California law.

As another example, the responses to The Open Monterey Project (TOMP) comments are nonresponsive. For example, a TOMP comment is that future expansion of project facilities would be easier. The FEIR response (p. 14.5-201) states, "Therefore, construction of the plant would not substantially alter the character of the areas and any future expansion would required additional permitting and review." This inadequate response fails to address the ease of expansion from a technical, environmental and financial perspective, and the related growth-inducing impacts. Desalination plants are very costly to construct. Once the initial expense is invested, the expansion of the plant to accommodate increased production is relatively much less costly. This also means that the Peninsula ratepayers would be subsidizing growth for other areas in Monterey County.



The EIR Discussion of Water Rights is Inadequate under CEQA.

On November 6, 2006, and again on April 15, 2009, the Ag Land Trust notified the Public Utilities Commission of certain key flaws in the Coastal Water Project EIR. Specifically, the first full paragraph on page two of the Trust's November 6, 2006 letter (identified as "G\_AgLTr-3" in the FEIR) states that Cal-Am, a water appropriator under California law, has no groundwater rights to appropriate water from the overdrafted Salinas Groundwater Basin. In an overdrafted, percolated groundwater basin, California groundwater law clearly and definitely holds that the doctrine of correlative overlying water rights applies (*Katz v. Walkinshaw* (1903) 141 Cal. 116), whereby no surplus water is available for new groundwater appropriators.

The FEIR response claims that an analysis of water rights is not necessary because "CalAm claims no rights to groundwater" and that "no Salinas Valley groundwater will be exported from the Basin." The FEIR attempts to bypass a central issue – the EIR's failure to analyze legal water rights – by claiming that the issue does not exist. On the contrary, the issue of legal water rights exists and should be analyzed.

Because the extracted water would be composed of both saltwater and groundwater, Cal-Am (under the North Marina project) or Monterey County (under the Regional Project) would be extracting groundwater from the overdrafted Salinas Valley Groundwater Basin. Those actions would represent an illegal appropriation of water. The EIR claims that water can be appropriated from under privately owned land in the overdrafted basin, so long as it promises to return the same amount of pumped groundwater to the basin. That claim is not enforceable, not subject to oversight and does not change the fact that the extraction of the water would be an illegal appropriation. In essence, the Cal Am North Marina desalination project and the Regional Project would rely on illegal extraction and appropriation of groundwater from the basin. The EIR does not analyze the significant impact of an illegal taking of groundwater from overlying landowners. Instead, the FEIR accepts as unquestionably true the flawed rationale that a purported return of a portion of the water somehow allows the illegal extraction of groundwater from the overdrafted basin. This deficiency in the EIR must be addressed, and the EIR should identify mitigations for the adverse impacts and proposed illegal actions and takings.

The principle is established that the water supply in a source may be augmented by artificial means. (See *Pomona Land & Water Co. v. San Antonio Water Co.* (1908) 152 Cal. 618.) We do not question that general statement of law.

However, when getting to the specifics of the abilities and limitations in regard to the augmented or developed water proposed for the Project, the EIR defaults on the necessary discussion. Instead of addressing the entire doctrine of water rights

applicable here, the FEIR (14.1-94, n. 4) defers entirely to the MCWD's legal counsel for the discussion of the essential factors. From page 14.1-94 to 14.1-96, MCWD's legal argument is presented without critical analysis or further comment as the FEIR's discussion. There is no independent review of the legal argument.

California law on the ability of an agency to claim the right to salvage any or all of any developed water in the circumstances here, and any limits on that claim, has not yet been defined by the Courts. The citations in the FEIR overstate the situation, and do not point to any California court case where the analysis presented in the FEIR has been upheld by the Court. The two cases relied upon by the MCWD's counsel (and therefore the FEIR) are cited in footnote 10 of FEIR page 14.1-96: *Pajaro Valley Water Mgt. Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1370 and *Lanai Company, Inc. v. Land Use Commission* (S. Ct. Ha. 2004) 97 P.2d 372, 376. The citations in both cases are to portions of the introductory factual recitations in the cases, and not to Court holdings or legal analysis, and thus are not fairly considered precedents or statements of settled law. Other FEIR citations are to legal claims asserted in a staff report by the head of the Monterey County Water Resources Agency, who is not an attorney.

At the very least, the FEIR was required to evaluate the claims of MCWD and MCWRA, test them analytically, and provide the decisionmakers and the public with the analysis. Without the reasoned good faith analysis, the EIR fails as an informational document. (See, e.g., *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722.) "It is not enough for the EIR simply to contain information submitted by the public and experts." In particular, water "is too important to receive such cursory treatment." (*Id.*) CEQA requires a detailed analysis of water rights issues when such rights reasonably affect the project's supply. Assumptions about supply are simply not enough. (*Id.*, at p. 721; *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 131-134, 143 [EIR inadequate when it fails to discuss pertinent water rights claims and overdraft impacts]; see also, *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 94-95 [groundwater contamination issues].) The reasoning of the Court in *Cadiz* would also apply to the proper analysis of the rights associated with the overdraft here.

At the very least, the determinations of safe yield, surplus, the rights of the MCWRA, and of "persons with land in the zones of benefit for the projects" must be identified, discussed and analyzed. The analysis must be independent, and cannot simply be "extracted" (FEIR, p. 14.1-94, n. 4) from the argument of the attorney for the MCWD, a proponent of the Regional Project and potential owner of the desalination plant component of that project. Whether the project may take salvaged or developed water originating from onsite supplies depends on whether injury will result to existing

lawful users or those who hold vested rights. The FEIR response to comments does not fairly consider or investigate the actual on-the-ground issues.

Recirculation of the EIR Is Required.

Under CEQA Guidelines section 15088.5, the EIR should be recirculated because it contains significant new information. The Final EIR contains significant newly identified impacts and new information that leads to new unanalyzed impacts. Several examples of the unanalyzed impacts are identified throughout this letter.

The FEIR identifies new significant and unavoidable impacts that had not been disclosed in the Draft EIR. These impacts include greenhouse gases and air quality (PM10). The FEIR finds that PM10 construction emissions would exceed the local Air District thresholds. Greenhouse gas emissions and construction PM10 impacts of the Regional Project would be outside of the CPUC's jurisdiction. Both impacts would be significant and unavoidable. However, the EIR treats the two impacts differently and inconsistently. The EIR inappropriately pre-determines that the local agencies might find that the Regional Project's PM10 mitigation measures would be infeasible because of the "potential need to accelerate the construction schedule" for the project (e.g., p. ES-19). The EIR attempts to place mitigations on the Regional Project which are unenforceable, because the CPUC has no jurisdiction over the Regional Project. (E.g., FEIR p. 6.8-4, Mitigation Measure 6.8-11a.) The EIR approach is confusing and inconsistent, and misleads the public and decisionmakers as to which mitigations it can enforce and which it cannot enforce. This confusion continues in the EIR discussion of the environmentally superior alternative, where the EIR makes unsupported assumptions about mitigations and mitigation monitoring in order to affect its determination of the superior alternative. (FEIR p. 7-67.) Further, the EIR's announcement of new significant and unavoidable impacts is inconsistent with its response to the League of Women Voters' comments that there are no significant project impacts.

As a separate reason for recirculation, the FEIR reduced the DEIR's conclusions about the RUWAP project production from 1,700 to 1,000 AFY. That is significant new information, because it significantly affects the determination of the Regional Project water supply. In fact, the selected project now under way, the hybrid RUWAP, will produce 3,000 AFY. The FEIR used an incorrect 1,000-AFY figure to analyze cumulative and growth-inducing impacts, and the EIR analysis is incorrect. As another reason for recirculation, the EIR fails to include the planned cogeneration plant in the project description, or to analyze its impacts.

SWRCB Antidegradation Policy; CRWQCB Basin Plan.

The EIR fails to adequately investigate and disclose the extent of the proposed projects' violation of the State Water Resources Control Board's Antidegradation Policy. This policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters. The policy protects water bodies where existing quality is higher than necessary for the protection of beneficial uses. Under the Antidegradation Policy, any actions that can adversely affect water quality in all surface and ground waters must (1) be consistent with maximum benefit to the people of the State, (2) not unreasonably affect present and anticipated beneficial use of the water, and (3) not result in water quality less than that prescribed in water quality plans and policies. Any actions that can adversely affect surface waters are also subject to the Federal Antidegradation Policy (40 Code of Federal Regulations [CFR] section 131.12) developed under the Clean Water Act. The Central Regional Water Quality Control Board's Basin Plan implements the antidegradation policy. The EIR also fails to adequately investigate and disclose the proposed projects' violation of the Basin Policy.

Potential Takings Claims.

In comments to the DEIR, it was pointed out that it is reasonably possible that the proposed project, if approved, would result in the deterioration in, or elimination of, valuable water rights of the Armstrong Ranch property owned by the Ag Land Trust. Such action would result in a compensable taking of the Ag Land Trust's property. On a related point, the stripping of the water rights from this productive agricultural land is a physical change to the environment which must be addressed in the FEIR and, when feasible, mitigated to a level of insignificance or considered as part of the alternatives analysis of the FEIR. The FEIR fails to fairly consider and address these impacts. To the best the public can discern from the MCWRA's seawater intrusion depictions, the Ag Land Trust property overlies a part of the 400-foot aquifer that is not seawater intruded. (See attached figure.) The Regional Project could significantly affect the water quality in the 180-foot and 400-foot aquifer. The Ag Land Trust would lose valuable property rights if its ground water rights were affected.

The EIR fails to identify the potential eminent domain authority or actions that could be used to implement the project, or even to present the fact that eminent domain may be used or necessary for project implementation. For example, the FEIR (p. 5-50) states merely that private landowners may be affected by sale or lease of their property for project purposes. In fact, the public agency proponents of the project have eminent domain authority, and may choose to exercise it to implement the project. An eminent domain action is a "project" under CEQA (Pub. Resources Code, § 21065) and must be reviewed at the earliest possible stage for potential impacts. Because such eminent domain action is foreseeable, it should be disclosed and evaluated in the EIR.

Michael R. Peevey, President,  
and Members of the Public Utilities Commission  
December 16, 2009  
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Problems with Access to Final EIR.

CEQA states that draft EIRs for proposals of unusual scope or complexity should normally be less than 300 pages. (CEQA Guidelines, § 15141.) Here, the Draft EIR was approximately 1,500 pages, and the Final EIR is over 3,100 pages and contains significant new information. The Final EIR is not available in hard copy anywhere in the Monterey County. The local agencies, including Monterey County and Marina Coast Water District, have the FEIR available on disk only. For these reasons, it has been extremely difficult for the public to access and review the over 3,100 pages, much of which contained complex and interrelated new information, within the available time.

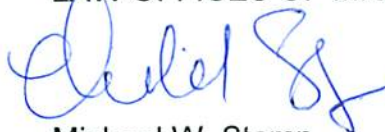
Efforts to Obtain and Provide Further Information.

Last week we contacted the project manager for the Coastal Water Project EIR<sup>3</sup> and requested a return call, hoping to share these concerns with regard to the Coastal Water Project EIR. We did not receive a return call. On December 30, 2009, our Office made a records request to the CPUC, in accordance with the records request guidelines on the CPUC website. Our clients sought access under the California Public Records Act (Gov. Code, § 6250 et seq.) to the records for the Coastal Water Project EIR. The CPUC was required to respond to our request within ten days. (Gov. Code, § 6253, subd. (c).) We did not receive a response, and were not provided with an opportunity to inspect or copy documents.

Thank you for the opportunity to comment on the Coastal Water Project EIR.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

A handwritten signature in blue ink, appearing to read "Michael W. Stamp", is written over the typed name.

Michael W. Stamp  
Molly Erickson

Attorneys for Ag Land Trust

cc: Andrew Barnsdale

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<sup>3</sup> Years ago, when the CPUC took over as lead agency, our Office was informed that the CPUC had not previously managed the preparation of an EIR on a water supply project, which is why the task was handled by an Energy staff member.

Michael R. Peevey, President,  
and Members of the Public Utilities Commission  
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References attached by email:

- Figures showing Ag Land Trust Properties in relation to proposed Regional Project
- Presentation on the Regional Water Supply Project presented by Curtis Weeks, Monterey County Water Resources Agency, and Jim Heitzman, Marina Coast Water District, made at the City and Agency Managers' meeting, December 9, 2009 (this and the other presentations in similar format are identified in the electronic file properties as being prepared by RMC)

All other references to be delivered to the CPUC in hard copy on December 17, 2009.



# EXHIBIT A





Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

**NOTE:** EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.





Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties in Yellow; Big Sur Land Trust property in Bright Blue.

Sea water wells and pipeline locations in Pale Blue and Brown overlays, as extracted from Coastal Water Project FEIR Revised Figure 5-3.

**NOTE:** EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer. This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

# EXHIBIT B



# *Regional Water Supply Project*



**December 9, 2009**

# ***CEQA Process***

- **Coastal Water Project Environmental Impact Report (EIR)**
  - **Evaluated 3 alternatives - equal level of detail**
    - **Coastal Water Project, Moss Landing**
    - **Coastal Water Project, North Marina**
    - **Regional Project**
  - **Evaluated significant adverse changes to existing conditions**
- **CEQA Lead Agency: CPUC**

# ***CEQA Responsible Agencies (for the Regional Project only)***

- MCWRA (intake wells and pipeline)
- MCWD (desalination plant and pipeline)
- MRWPCA: (outfall)

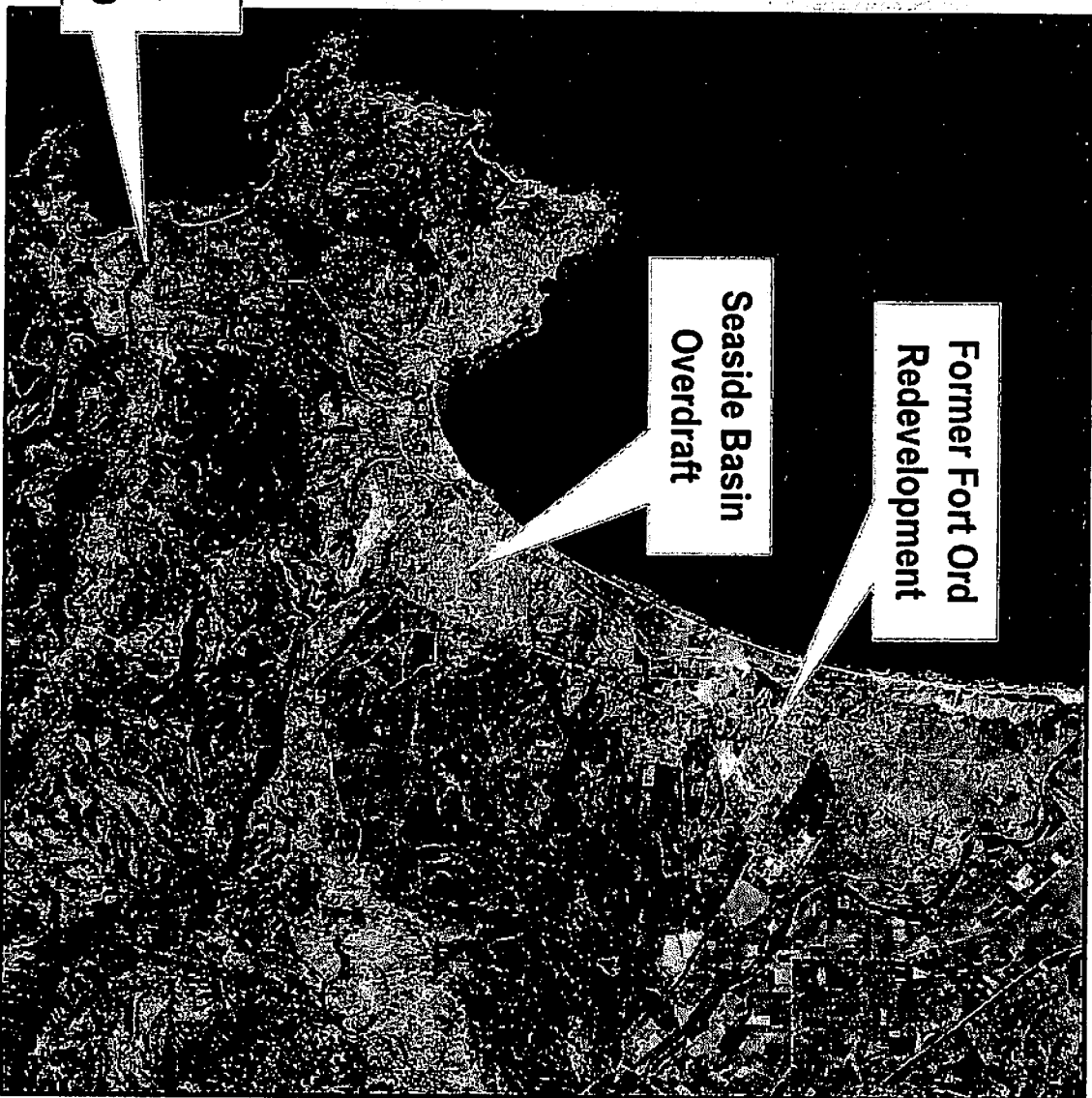
# ***CEQA Process Timeline***

- **Notice of Preparation - April 29, 2006**
  - **Public Scoping Meetings (4)**
- **Draft EIR Circulated: January 30, 2009**
- **Draft EIR Public Comment Period: January 30 to April 15, 2009**
  - **Public Meetings (3)**
- **Final EIR Publication: October 31, 2009**
- **CPUC Certification: December 17, 2009**

## ***Next Steps***

- **MCWD - Desalination Plant and Pipeline**
- **MCWRA - Desalination Supply Wells & Pipeline**
- **MRWPCA - Outfall**
  - Notice EIR
  - 30 days for action
  - Findings, Statement of Overriding Considerations
  - Hearing to approve project
  - Submit Notice of Determination (NOD)
- **NEPA Process**
  - Bureau of Reclamation funding
  - SWRCB State Revolving Loan (SRF) funding

# *Water Supply Constraints Require Immediate Attention*



Carmel River  
SWRCB Order  
95-10 and CDO

Seaside Basin  
Overdraft

Former Fort Ord  
Redevelopment



# ***Regional Project***

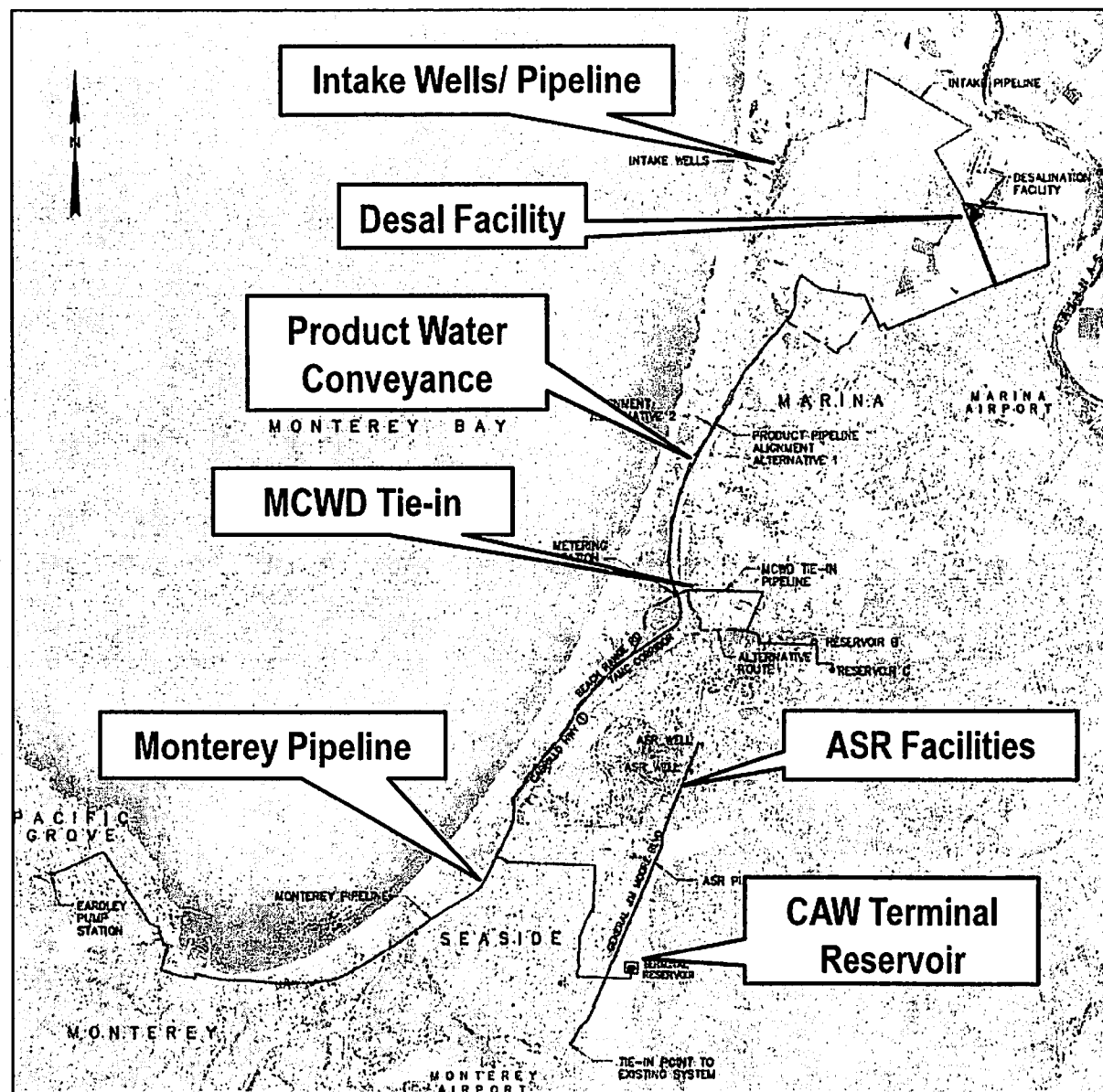
- **CAW and MCWD service area (incl. Ford Ord)**
- **Supply 13,100 afy**
  - **Continued Conservation**
  - **Sand City Desalination Facility**
  - **Regional Urban Water Augmentation Project (RUWAP)**
  - **Seaside Basin Groundwater ASR (2 existing and 2 new injection/extraction wells)**
  - **Regional Desalination Facility**
    - **10 mgd Desal Plant at Armstrong Ranch**
    - **6 new vertical wells for intake**
    - **Existing outfall at MRWPCA**
    - **Product Water Conveyance System**

# *Regional Project Components*

- 13,100 acre-feet per year water supply
- 2,700 AFY to MCWD
- 10,400 AFY to CAW

Component	Supply (AFY)
Regional Desalination Facility (MCWD / CAW)	10,500 (8,800 CAW) (1,700 MCWD)
Recycled Water (MCWD)	1,000
Sand City Desalination (CAW)	300
Seaside Basin ASR / Carmel River Water Recharge (CAW)	1,300
<b>Total Incremental Supply</b>	<b>13,100</b>

# Regional Project Components

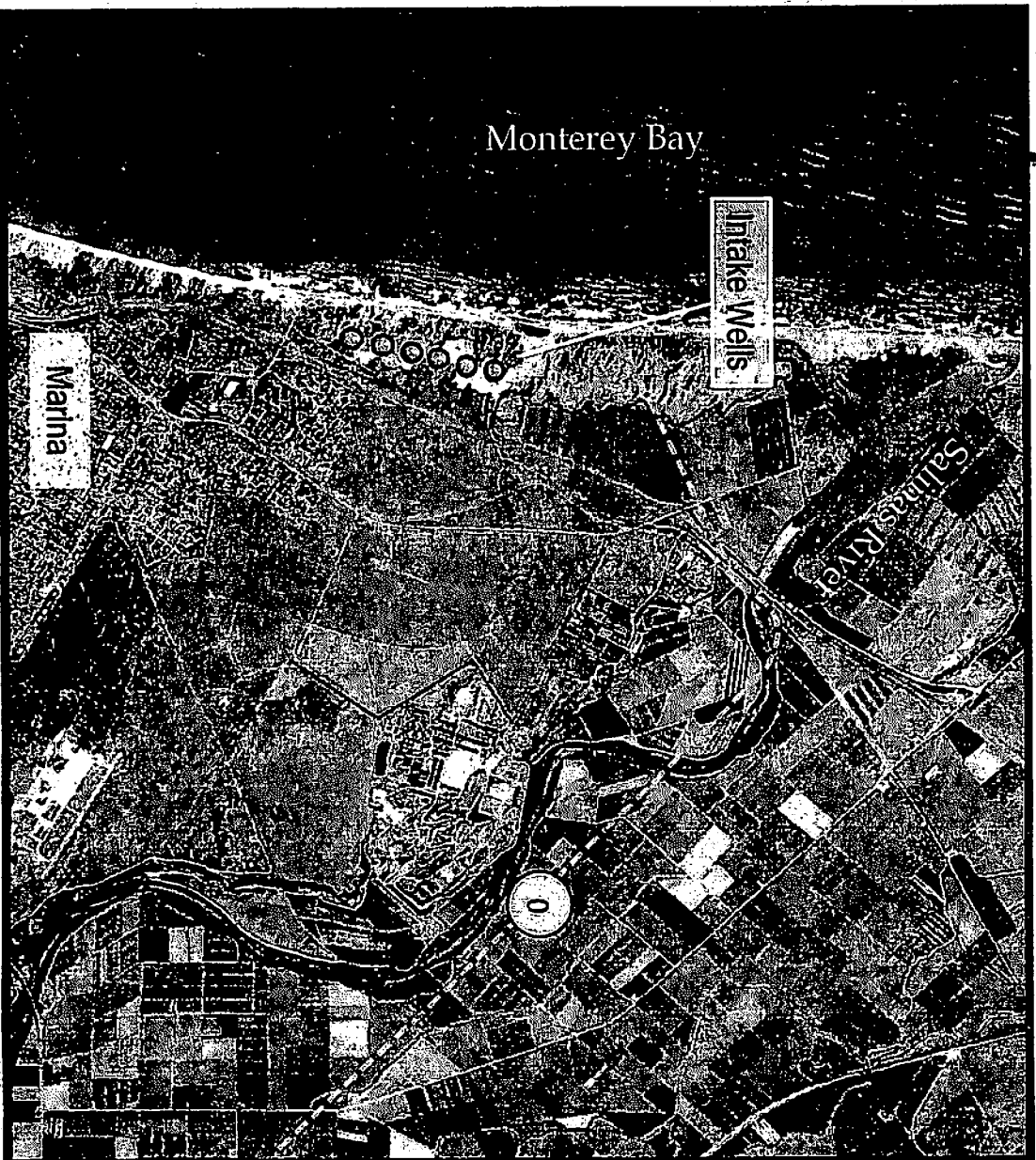


# ***Regional Project Provides Replacement Water – No Growth Inducement***

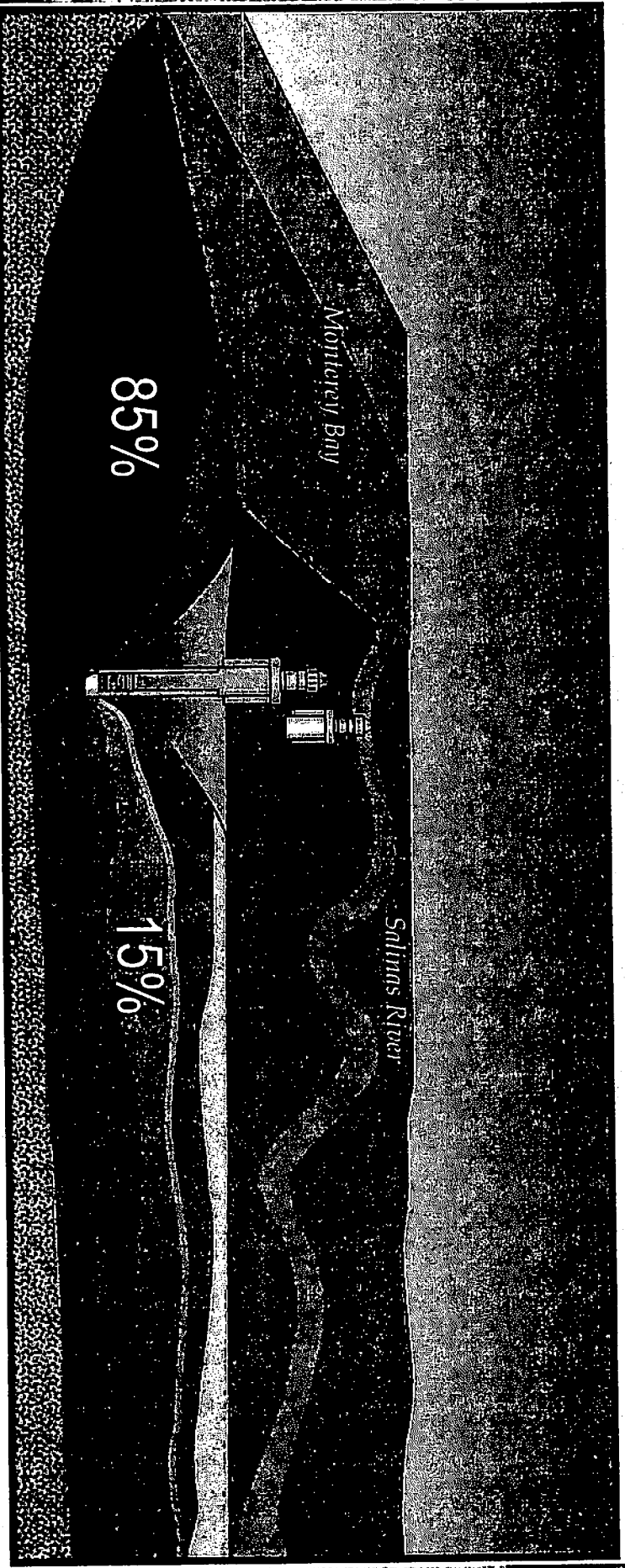
- **Reduces Diversions from Carmel River**
  - **Consistent with SWRCB Order 95-10**
  - **Complies with Cease and Desist**
- **Reduces Pumping from Seaside Basin**
- **Meets Water Needs for Approved Redevelopment of Former Fort Ord**

# ***Desalination Intake Wells- No Significant Impact***

- Intake wells located between Highway 1 and dunes

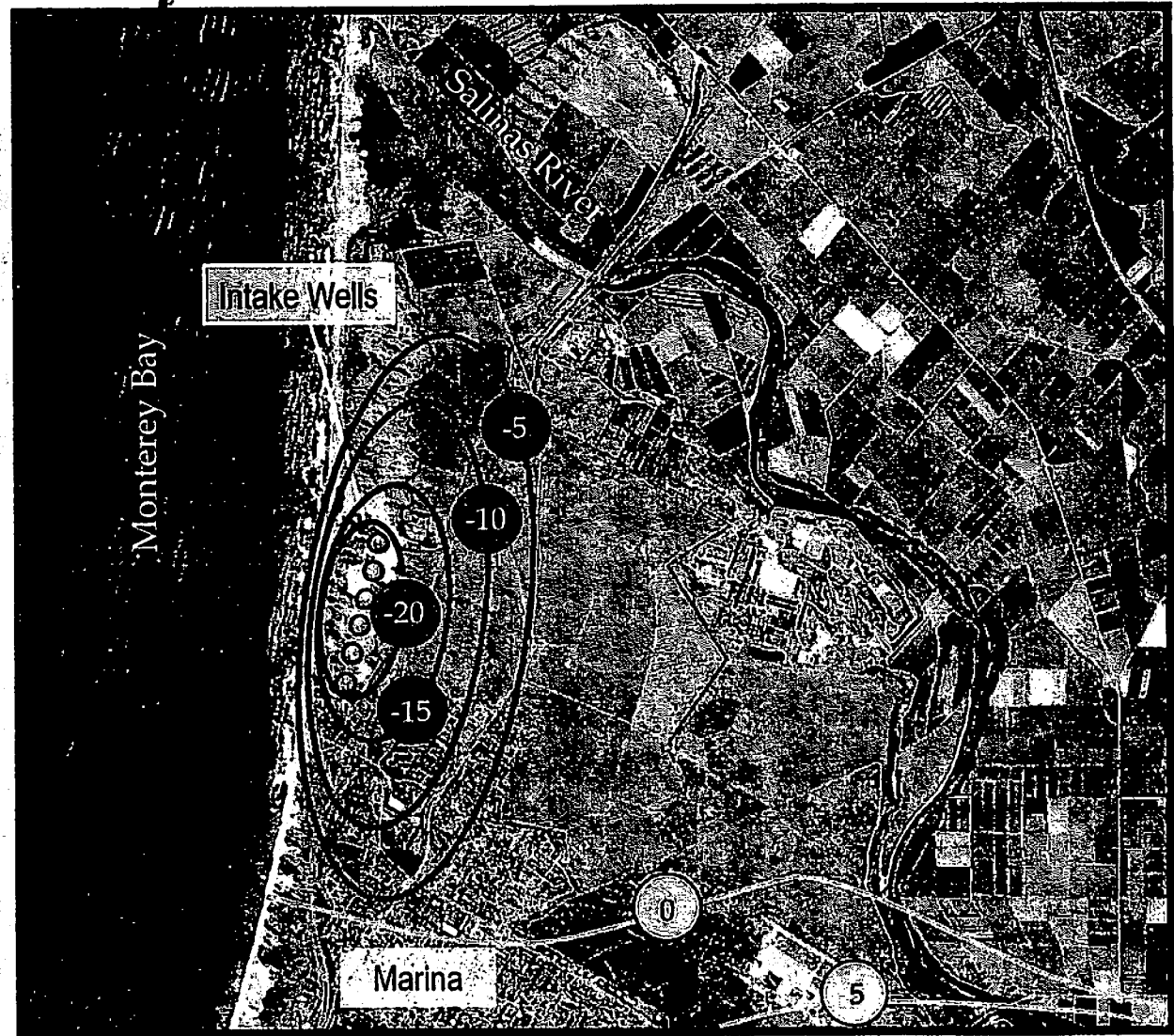


# *Desalination Intake Wells Create Local Trough and Barrier to Intrusion*



# *Desalination Intake Wells- No Significant Impact*

- Localized effect in groundwater elevations immediately surrounding wells
- Helps restore basin



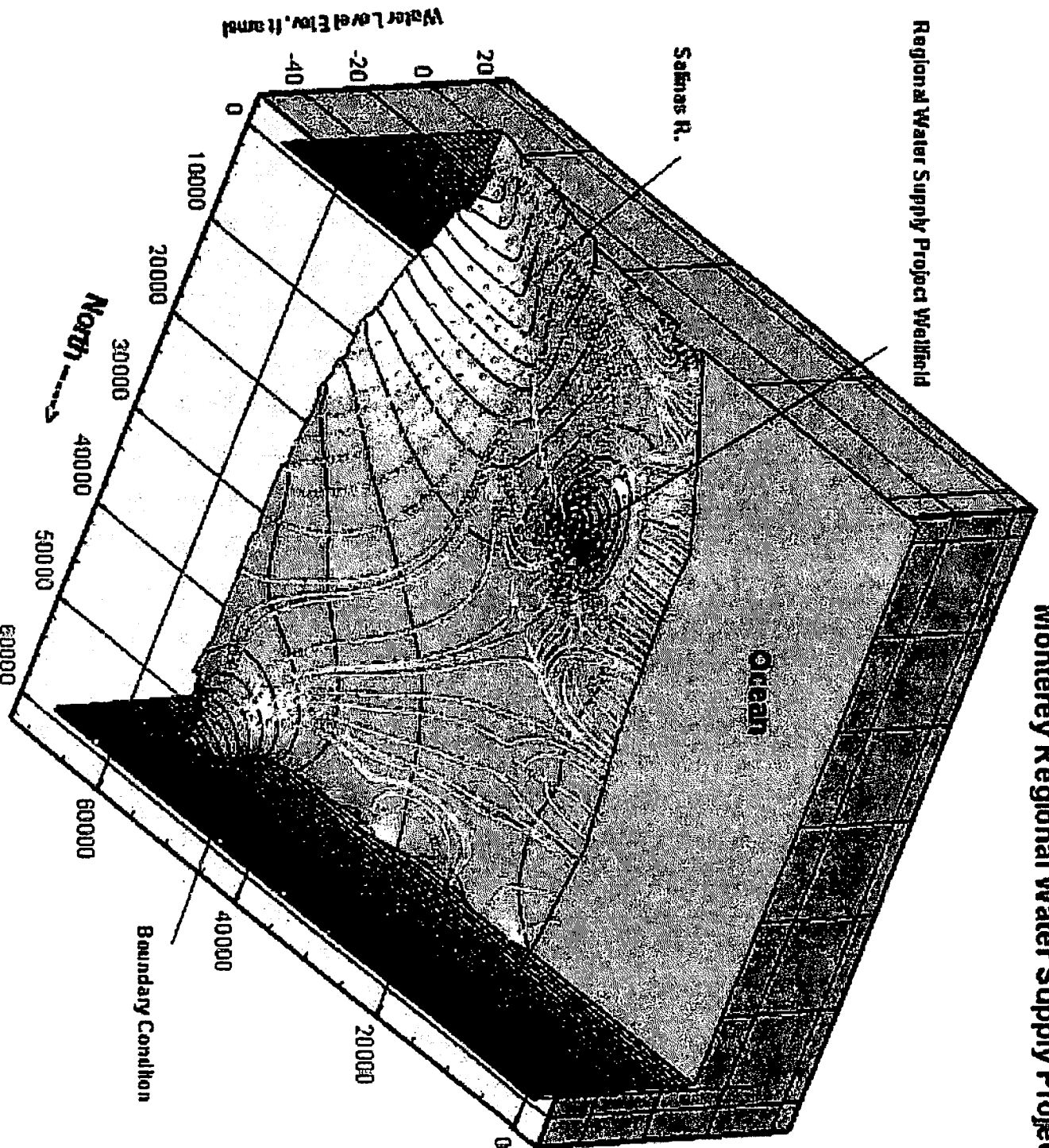


# Monterey Regional Water Supply Project

Regional Water Supply Project Wellhead

Salinas R.

Ocean





# ***Regional Project Excludes any Exportation of Salinas Basin Groundwater***

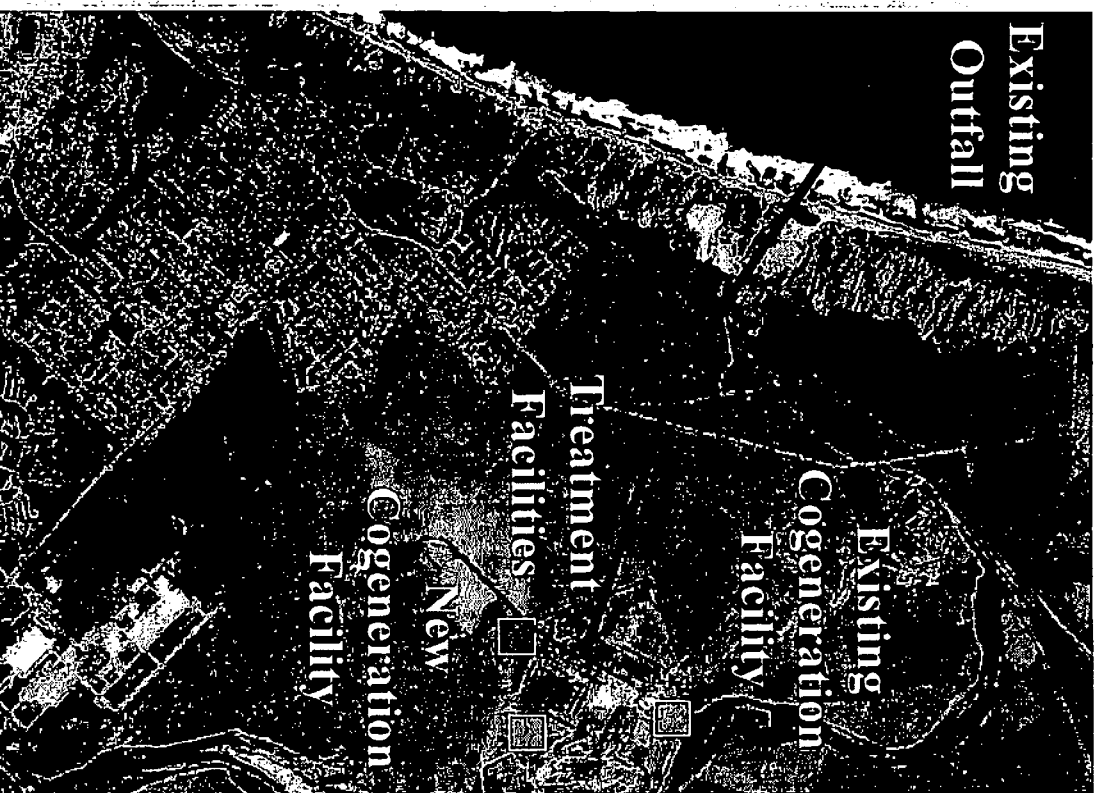
- **MCWD is Within Zone 2C**
  - **Overlies Groundwater Basin**
  - **Existing Supply is Zone 2C Groundwater**
- **Ocean Based Portion of Product Water will be Delivered to CAW for use outside Zone 2C**
- **All Non-Ocean Based Portion of Product Water will be Delivered to MCWD for use within Zone 2C**

# *Brine Disposal Will be thru Existing Ocean Outfall – No Significant Impact*



- Available capacity
- Will meet Ocean Plan dilution requirements

# *Facilities will Rely on Power from Landfill Gas Cogeneneration – Independent Project*

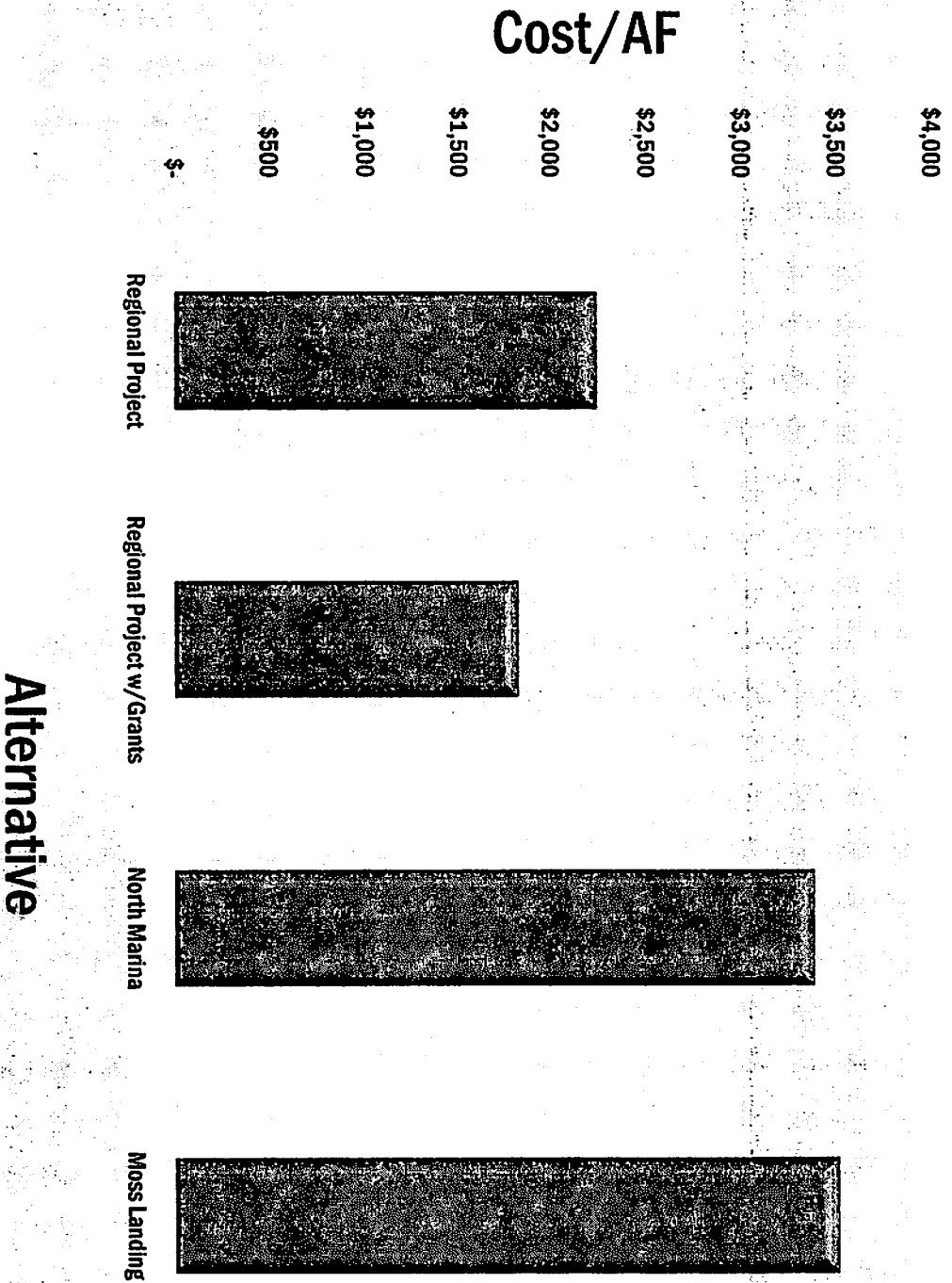


- Cogeneration power from adjacent landfill
  - New 6 mw cogeneration plant
  - Initially, energy source: combination of natural gas and methane
  - Tie to existing 5 mw cogeneration plant
- Renewable energy credits
- Long-term, low-cost reliable energy supply
- Addresses potential GHG impacts

# *Identified Significant Environmental Impacts*

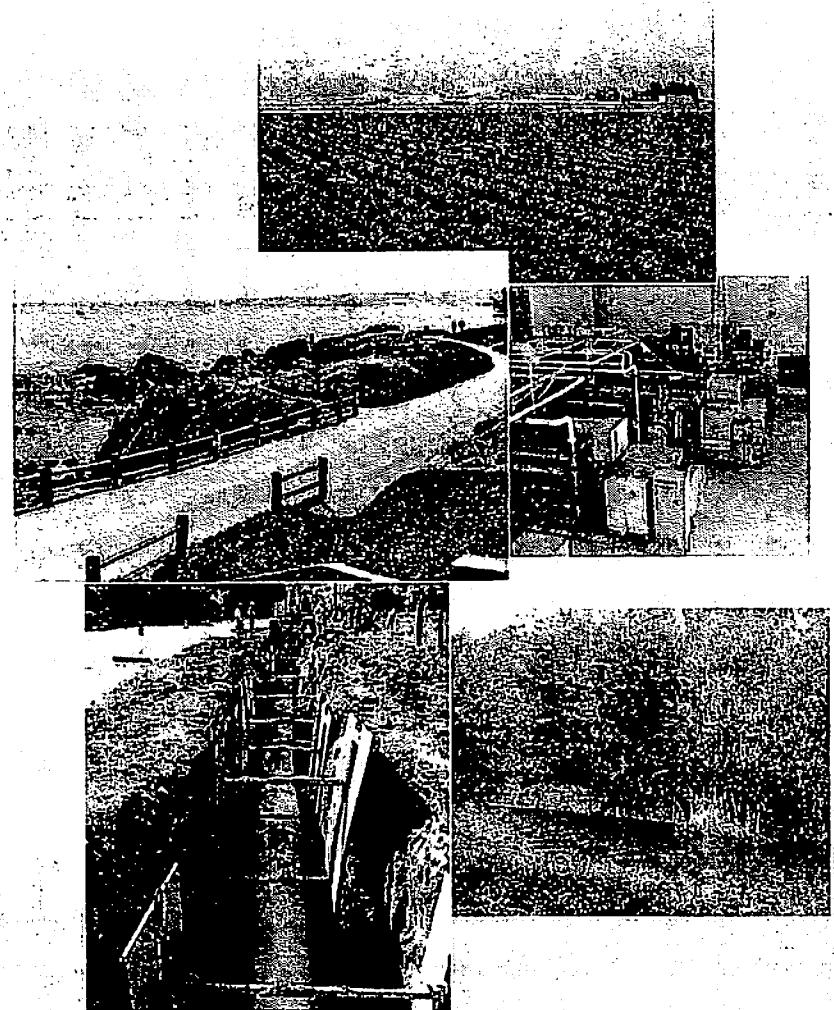
- Green House Gas Emissions – Increased electrical power requirements
- Significant and unavoidable (Addressed by mitigation package, including Landfill Gas Energy Source)
- PM<sub>10</sub> – Slight elevation in dust during construction
- Significant and unavoidable

# *Regional Project Provides Least Cost Solution*



# *Water for Monterey County Provides Substantial Regional Benefits*

- Lowest Cost Alternative
- Restoration of flows to the Carmel River – Steelhead Fish
- Increased reliability
- Reduced wastewater discharge to Marine Sanctuary
- Reduced carbon footprint thru green landfill power
- Immediate construction to aid economic stimulus



***Questions or comments?***