

8.4 State Agency Comments and Responses

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- 8.4.2 California Department of Fish and Wildlife (CDFW)
- 8.4.3 California Department of Parks and Recreation (CA Parks)
- 8.4.4 California State Lands Commission (CSLC)
- 8.4.5 State Water Resources Control Board (SWRCB)

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8.4.1 California Coastal Commission (CCC)

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March 29, 2017

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FILED ELECTRONICALLY

RE: Comments on Draft Environmental Impact Report (“DEIR”) / Draft Environmental Impact Statement (“DEIS”) for proposed Monterey Peninsula Water Supply Project

Dear Ms. Borak and Ms. Grimmer:

Thank you for the opportunity to provide comments on the above-referenced document regarding the proposed Monterey Peninsula Water Supply Project. The proposed project would provide a water supply for the California-American Water Company’s (“Cal-Am’s”) service area in the Monterey Bay area. It would produce drinking water using a seawater desalination facility obtaining source water from slant wells to be constructed along the Monterey Bay shoreline in the City of Marina and would discharge a high-salinity effluent through an existing wastewater outfall being used by the Monterey Regional Water Pollution Control Authority. The produced water would be transported through a distribution system of pipelines and associated infrastructure to be built within several jurisdictions in the Monterey Bay area.

The proposed project will require several permits and approvals, including coastal development permits (“CDPs”) from several nearby local jurisdictions and from the Coastal Commission for proposed development within the Commission’s retained jurisdiction. Coastal Commission staff is currently coordinating its project review with other state agencies, and we expect to conduct a full review of the project’s conformity to relevant Coastal Act policies and requirements upon Cal-Am’s submission of its CDP application to the Commission.

We reviewed key sections of this DEIR/DEIS related to issues of conformity to Coastal Act policies and we have just a few brief comments:

- Use of subsurface intakes: We concur with the use of subsurface intakes where feasible as a means to avoid and minimize adverse effects on marine life. We commend the project applicant for selecting a subsurface method for its proposed project.
- Environmentally sensitive habitat areas: The document’s *Section 4.6 – Terrestrial Biological Resources* identifies the upland area proposed for the project’s slant wells as “primary habitat” under the City of Marina’s Local Coastal Program designation. This designation applies to areas that provide habitat for rare, endangered, or threatened plant and animal species or habitat that is necessary for the survival of an endangered species. Allowable

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CCC-2

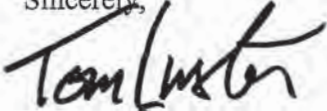
*Comments on Draft EIR – Monterey Peninsula Water Project
March 29, 2017*

types of development allowed within these areas are extremely limited and must be designed and sited to minimize habitat impacts. We recommend the Final EIR thoroughly evaluate and consider alternatives that would fully avoid or minimize habitat impacts within areas designated as primary habitat.

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CCC-2
cont.

Again, thank you for the opportunity to comment, and please let me know if you have any questions.

Sincerely,



Tom Luster
Energy, Ocean Resources, and Federal Consistency Division

8.4.2 California Department of Fish and Wildlife (CDFW)



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February 27, 2017

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Subject: Draft Environmental Impact Report /Environmental Impact Statement (DEIR/EIS) for the CalAm Monterey Peninsula Water Supply Project (MPWSP), State Clearinghouse No. 2006101004

Dear Ms. Borak and Ms. Grimmer:

The Department of Fish and Wildlife (CDFW) is in receipt of the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the California-American Water Company (CalAm) Monterey Peninsula Water Supply Project (Project). A past Draft EIR for the Project was issued on April 30, 2015 by the California Public Utilities Commission (CPUC), for which CDFW submitted a comment letter dated June 30, 2015.

The purpose of the proposed Project is to develop up to 9,752 acre-feet per year (afy) of water supplies to meet, in conjunction with other existing sources of supply, a future average annual demand of 15,296 afy in CalAm's Monterey District service area (Monterey District). The Project would be constructed to replace those portions of CalAm's existing supplies that have been constrained by legal decisions regarding CalAm's diversions from the Carmel River and pumping from the Seaside Groundwater Basin. The proposed Project would produce desalinated water, convey it to the existing CalAm distribution system, and increase the system's use of storage capacity in the Seaside Groundwater Basin. The Project would consist of several components: a seawater intake system; a desalination plant; a brine discharge system; product water conveyance pipelines and storage facilities; and an aquifer storage and recovery (ASR) system. CalAm also proposed a variant to the proposed Project that would combine a

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reduced-capacity desalination plant and all other facilities included in the proposed Project, with a water purchase agreement from the Monterey Regional Water Pollution Control Agency's (MRWPCA) proposed Pure Water Monterey Groundwater Replenishment (GWR) project. The Project area extends approximately 14 miles, from the MPWSP Desalination Plant site located in unincorporated Monterey County in the north to the western terminus of the proposed Monterey Pipeline in the City of Pacific Grove, and east approximately eight miles to the unincorporated community of Hidden Hills along Highway 68.

The Project area includes habitat for State and federally listed species, State fully protected species, and State species of special concern including, but not limited to, the following: Federally threatened and State species of special concern Western snowy plover (*Charadrius alexandrinus nivosus*), State and federally threatened California tiger salamander (*Ambystoma californiense*), federally threatened and State species of special concern California red-legged frog (*Rana draytonii*); the State endangered seaside bird's-beak (*Cordylanthus rigidus var. littoralis*), beach layia (*Layia carnosa*), Tidestrom's lupine (*Lupinus tidestromii*), and Menzies' wallflower (*Erysimum menziesii*); the State threatened Monterey gilia (*Gilia tenuiflora ssp. arenaria*); and the State rare Pacific Grove clover (*Trifolium polyodon*) and Dudley's lousewort (*Pedicularis dudleyi*). Several other State and federally listed species, State fully protected species, and State species of special concern have the potential to occur within the Project as well including sensitive plants, amphibians, marine mammals, and nesting bird species. Additionally, the Project area supports sensitive habitat types such as coastal wetlands, dune scrub, maritime chaparral, Monterey pine forest, and potentially other habitat types which are considered sensitive by CDFW.

CDFW-1

As stated in its prior comments regarding the Draft EIR, CDFW has concerns about the Project-related impacts to the sensitive habitats that are adjacent to or within the Project alignment, as well as the associated impacts to species that utilize habitats found in the Project area. Project-related impacts to these special status biological resources should be evaluated and addressed prior to Project implementation, in order to comply with State laws described below.

Department Jurisdiction

Trustee Agency Role: CDFW is a Trustee Agency with the responsibility under the California Environmental Quality Act (CEQA) for commenting on projects that could impact plant and wildlife resources. Pursuant to Fish and Game Code Section 1802, CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. As a Trustee Agency for fish and wildlife resources, CDFW is responsible for providing, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities, as those terms are used under CEQA.

Responsible Agency Role: CDFW is a Responsible Agency when a subsequent permit or other type of discretionary approval is required from CDFW, such as an Incidental Take Permit (ITP), pursuant to the California Endangered Species Act (CESA), or a Lake and Streambed Alteration Agreement (LSAA) issued pursuant to Fish and Game Code Sections 1600 *et seq.*

CDFW has regulatory authority over projects that could result in the “take” of any species listed by the State as threatened or endangered, or designated as a candidate for listing, pursuant to Fish and Game Code Section 2081. If the Project could result in the take of any species pursuant to CESA, CDFW may need to issue an ITP for the Project. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (Sections 21001(c), 21083, Guidelines Sections 15380, 15064, 15065). Impacts must be avoided or mitigated to less than significant levels unless the CEQA Lead Agency makes and supports Statement of Overriding Consideration (SOC).

The CEQA Lead Agency’s SOC does not eliminate the Project proponent’s obligation to comply with CESA. In other words, compliance with CESA does not automatically occur based on local agency project approvals or CEQA compliance; consultation with CDFW is warranted to ensure that Project implementation does not result in unauthorized take of a State-listed species.

Incidental take authority is required prior to engaging in lawful take of any plant or animal species listed under CESA. Plants listed as threatened or endangered under CESA cannot be addressed by methods described in the Native Plant Protection Act. No direct or indirect disturbance, including translocation, may legally occur to State-listed species prior to the applicant obtaining incidental take authority in the form of an ITP.

Permit Streamlining: Issuance of an LSAA or an ITP by CDFW is considered a “project” (CEQA Guidelines Section 15378) and is subject to CEQA. CDFW typically relies on the Lead Agency’s CEQA compliance to make its own findings. For the Lead Agency’s CEQA document to suffice for permit/agreement issuance, it must commit to fully describing the potential Project-related impacts to stream/riparian resources and listed species, as well as measures to avoid, minimize, and mitigate impacts to these resources. Take of State-listed species must be “fully mitigated” in order to comply with CESA (California Fish and Game Code Section 2081(b)(2)). If the CEQA document issued by the California Public Utilities Commission (CPUC) for this Project does not adequately analyze impacts to resources that require permits issued by CDFW, CDFW may need to act as a Lead CEQA Agency and complete a subsequent CEQA document. This could significantly delay permit issuance and, subsequently, Project implementation. For that reason, it is very important that the EIR reflect suitable and feasible avoidance, minimization, and compensatory mitigation, such that CDFW is able to make findings per CEQA necessary for ITP issuance. In addition, CEQA grants Responsible Agencies authority to require changes in a Project to lessen or avoid

effects of that part of the Project which the Responsible Agency will be called on to approve (CEQA Guidelines Section 15041).

Bird Protection: CDFW has jurisdiction over actions that may result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Sections of the Fish and Game Code that protect birds, their eggs and nests include sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

Biological Information: As required by CEQA, the DEIR/EIS should clearly identify resources on the Project site and their potential to be impacted by the proposed Project; analyze potential impacts as to their significance; and identify measures to reduce all potentially significant impacts to a level of less-than-significant. Impact analysis should be predicated on complete biological surveys. Measures and alternatives that would avoid and minimize potential impacts to resources of concern, as well as on-site conservation measures, should be considered prior to measures and alternatives that would provide for compensatory resources on or off-site.

Specific Biological Resources Comments and Recommendations

Botanical Inventory: There is the potential for sensitive plant species to occur within the Project area. Botanical surveys are recommended to be conducted prior to Project activities and be performed in accordance with guidelines developed by CDFW (DFG, 2009; <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline>) and the United States Fish and Wildlife Service (USFWS) (USFWS, 2000; https://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/Listed_plant_survey_guidelines.PDF)

. Botanical surveys are floristic in nature and must be timed appropriately and cover the entire Project area and may require multiple surveys in order to detect all species which could potentially be present on the property before impact analysis occurs. The above referenced guidelines instruct the use of reference sites to confirm appropriate survey timing, particularly for seasonably variable, often difficult to detect species. CDFW is aware that extensive botanical surveys have been conducted including analysis of reference populations, but would like to reiterate that environmental conditions have not been favorable towards plant species in the last few years during the unprecedented drought, and as a result sensitive plant populations may have not expressed themselves adequately for detection and identification during surveys.

Special Status Plants: As previously mentioned, State-listed plant species that are known to occur within the Project area and may occur within the Project alignment include seaside bird's-beak, Menzies' wallflower, Monterey gilia, beach layia, Pacific Grove clover. and Tidestrom's lupine. Based on botanical surveys, the DEIR/EIS discloses the potential impacts that the Project may have on listed plants and provides measures to mitigate for potential impacts to those plants. Due to the potential for

CDFW-2
CDFW-3

State-listed plants to occur within the Project alignment, consultation with CDFW is strongly recommended to determine if the Project can avoid take. If take cannot be avoided, acquisition of a State ITP from CDFW prior to Project implementation is warranted to comply with CESA.

For information regarding ITPs please see the following link:
<http://www.dfg.ca.gov/habcon/cesa/>. Included in the ITP would be measures required to avoid and/or minimize direct take of State listed plants on the Project site, as well as measures to fully mitigate the impact of the take. CDFW would like to work with the CPUC, CalAm, and USFWS to identify measures which could be included as conditions of approval prior to CEQA certification.

As noted in CDFW's June 30, 2015 letter for the Draft EIR, Mitigation Measure 4.6-1(e) in the DEIR/EIS discusses the restoration and reintroduction of sensitive plants as a result of Project impacts including the development of a Habitat Mitigation and Monitoring Plan (Mitigation Measure 4.6-1n). The reintroduction of sensitive plant species that may be impacted by the Project is typically not recommended for species associated with the sensitive habitats found in the Project area. Rare plants are restricted to a specific micro habitat that is suitable for their establishment and persistence. Reintroducing sensitive plant species outside of their existing habitat may not be successful, and relocation into habitat that is already occupied by these species could ultimately be detrimental to the existing population. No evidence is provided that such measures would be successful. Studies that followed the success or failure of permits issued by CDFW for various plant species have shown that success (including partial success) is less than 15% overall, for all species. Success for annual plant species is even less over the long term. With no information regarding the potential for success of reintroduction and relocation of these sensitive plants, reliance on reintroduction and relocation as the primary measure to mitigate for the impact of the take of the populations on the Project site would not meet ITP issuance criteria to fully mitigate the take of these species and may not be sufficient to reduce the impact to less than significant if the restoration and reintroduction fails. CDFW recommends that the Project be designed to substantially avoid impacts to sensitive plant species, and any residual impacts mitigated by conservation of occupied habitat at a rate of at least 2 to 1 in addition to habitat restoration. CDFW recommends Restoration success criteria include the restored population having greater than the number of individuals of the impacted population(s), in an area greater than or equal to the size of the impacted population(s), for at least 3 consecutive years without irrigation, weeding, or other manipulation of the restoration site.

State Listed Rare Plants: Section 4.6.2.2 State Regulations of the DEIR/EIS discusses information regarding State rare plants. Previously, State rare plants were similar to fully protected species because CDFW had no method to authorize take. Recent legislation has included take of State rare plant species under the incidental take authority of CDFW, and CDFW now has the mechanism to permit take of State rare plants under CCR Title 14, Section 786.9(b) using the same procedures and under

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the same conditions as take authorizations issued pursuant to Section 2081 of Fish & Game Code (please see CCR Title 14, Section 786.9), effective January 1, 2015 (http://www.fgc.ca.gov/regulations/2014/index.aspx#786_9). If take of the State rare species Pacific Grove clover is proposed as a result of the Project, an ITP from CDFW to authorize take is warranted. In the DEIR/EIS, CDFW also recommends that Pacific Clover be moved from the sub-heading of Other Special-Status Species to the sub-heading Federal or State Listed Species due to its State rare listing.

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Nesting Birds: The trees, shrubs, and grasses within and in the vicinity of the Project site likely provide nesting habitat for songbirds and raptors. CDFW encourages Project implementation to occur during the non-nesting bird season; however, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in any violation of the Migratory Bird Treaty Act or relevant Fish and Game Codes as referenced above. Prior to work commencing, including staging, clearing, and grubbing, CDFW recommends that surveys for active nests be conducted by a qualified wildlife biologist no more than 10 days prior to the start of the Project commencing and that the surveys be conducted in a sufficient area around the work site to identify any nests that are present and to determine their status. A sufficient area means any nest within an area that could potentially be affected by the Project. In addition to direct impacts, such as nest destruction, nests might be affected by noise, vibration, odors, and movement of workers or equipment. CDFW recommends that identified nests be continuously surveyed for the first 24 hours prior to any construction related activities to establish a behavioral baseline, and once work commences, for all nests to be continuously monitored to detect any behavioral changes as a result of the Project. If behavioral changes are observed, CDFW recommends that the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

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CDFW-6

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500 foot no-disturbance buffer around the nests of unlisted raptors until the breeding season has ended, or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers may be implemented when there is compelling biological or ecological reason to do so, such as when the Project area would be concealed from a nest site by topography. Any variance from these buffers is advised to be supported by a qualified wildlife biologist and it is recommended CDFW be notified in advance of implementation of a no-disturbance buffer variance.

Burrowing Owl: The Project site may be occupied by burrowing owls. CDFW recommends following the preconstruction survey methodology developed by the California Burrowing Owl Consortium (CBOC, 1993;

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CDFW-7

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83842>) if the site contains burrows that could be used by burrowing owls. CDFW recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival. The below table can be found from the Burrowing Owl Staff Report (CDFG 2012; <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83843&inline>).

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

The Staff Report recommends that foraging habitat be acquired and permanently protected to offset the loss of foraging and burrow habitat. CDFW also recommends replacement of occupied burrows with artificial burrows at a ratio of one burrow collapsed to one artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting a burrowing owl if a biologist knowledgeable with the biology and natural history of the species determines that suitable burrows are a potential limiting factor for burrowing owl. If the Project proposes to evict burrowing owls that may be present, CDFW recommends passive relocation during the non-breeding season. CDFW recommends that the CEQA document prepared for this Project describe methods that would be used to evict owls from burrows, including a monitoring program to ensure that evicted individuals are using a relocation site.

California Tiger Salamander (CTS): CTS are known to occur within the Planning Area and may occur within the Project alignment. The DEIR/EIS is advised to clearly disclose the potential impacts that the Project may have on CTS and provide measures to mitigate for all potential impacts to CTS. CDFW recommends that a site assessment and protocol level surveys be conducted for CTS because of known occurrences of CTS in the Project vicinity and aquatic features that may be CTS breeding habitat, identified adjacent to the Project site. CDFW recommends that surveys for this species follow current United States Fish and Wildlife Service (USFWS) protocol methods. Survey guidance can be found at:

<https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=83915>.

The results of the site assessment and protocol level surveys for CTS can then be utilized to evaluate the potential for impacts to the species which would be analyzed by the CPUC in the CEQA document, as well as to determine the potential for take to occur. If the Project has the potential to result in take of this species, take authorization from CDFW in the form of an ITP, pursuant to Fish and Game Code Section 2081(b),



CDFW-7
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CDFW-8

would be required prior to Project implementation, to comply with Fish and Game Code. In the absence of protocol surveys, the applicant can assume presence of CTS within the Project area and obtain an ITP. Impacts related to the permitted taking of CTS must be minimized and fully mitigated in order for CDFW to issue an ITP.

DEIR/EIS Mitigation Measure 4.6-1o provides avoidance and minimization measures for CTS and California red-legged frog (CRLF). The mitigation measure discusses options to relocate CTS and CRLF if identified during preconstruction surveys or ground disturbing activities. It also discusses installation of exclusion fencing where there is a moderate to high potential for CTS and CRLF to occur as specified in Mitigation Measure 4.6-1c. Please be advised that preconstruction surveys are not an appropriate time to detect presence/absence of CTS for which an ITP may be warranted. Also, handling and relocating CTS and installation of exclusion fencing in occupied CTS habitat without an ITP would be a violation of Fish and Game Code and CESA. If the Project does not complete the above recommended CTS surveys and chooses not to acquire an ITP, CDFW recommends that all small mammal burrows within dispersal distance of a known or potential breeding pond be avoided by a minimum buffer of 50 feet to avoid take of CTS.

CDFW-8
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Avoidable Wildlife Impacts from Erosion Control Mesh Products: Due to this Project site's extensive wildlife habitat interface, CDFW requests that erosion control and landscaping specifications allow only natural-fiber, biodegradable meshes and coir rolls. "Photodegradable" and other plastic mesh products have been found to persist in the environment, ensnaring and killing terrestrial wildlife. Reptile and amphibian deaths resulting from the use of plastic mesh products are well-documented. Plastic mesh erosion control products would likely cause unanticipated, avoidable impacts, including the potential take of special status species. CDFW believes requiring the use of biodegradable products would be a feasible mitigation measure to reduce impacts to wildlife species.

CDFW-9

USFWS & NOAA Consultation: As stated previously, CDFW recommends consultation with the USFWS prior to any ground disturbance related to this Project due to potential impacts to federally listed species. Take under the Federal Endangered Species Act (FESA) is more stringently defined than under CESA; take under FESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS and NOAA in order to comply with FESA is advised well in advance of Project implementation.

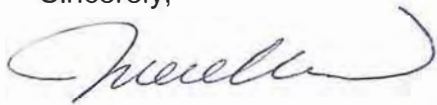
CDFW-10

Thank you for the opportunity to comment on the DEIR/EIS. CDFW is available to consult with the CPUC regarding potential effects to fish and wildlife resources, as well as specific measures that would mitigate potential effects of the Project. Depending upon the results of the actual Project site configuration, and other details which should be disclosed in the DEIR/EIS, CDFW may have additional comments and recommendations regarding avoidance, minimization, and mitigation of Project impacts

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to habitat and special status species. If you have any questions regarding these comments, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 243-4014, extension 227 or by e-mail at annette.tenneboe@wildlife.ca.gov. If you have specific questions in regards to marine biological resources, please contact Marine Region staff Steve Rienecke, Environmental Scientist, by telephone at (805) 594-6174 or by email at Steven.Rienecke@wildlife.ca.gov.

Sincerely,



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Regional Manager

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8.4.3 California Department of Parks and Recreation (CA Parks)



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Lisa Ann L. Mangat, Director

March 28, 2017

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Subject: Monterey Peninsula Water Supply Project EIR Comments

In response to the request for comments on the Draft Environmental Impact Report/Environmental Impact Statement for the Monterey Peninsula Water Supply Project, California State Parks has prepared the following comments.

1. PRC 5001.65 states commercial exploitation of resources in units of the State Park system is prohibited. Taking of the State Park land for a municipal water system is not appropriate and is not conducive to our mission statement, which is to provide for the health, inspiration and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation.

CA Parks-1

2. Regarding the construction of Transmission Main Pipeline, the EIR states on page 4.8-16 that it will "traverse an approximately .25 band of Fort Ord Dunes State Park lands between Divarty Street/1st Street and the alignments' Highway 1 undercrossing near Lightfighter Drive". Please clarify what a .25 band is and provide more information and detailed maps of these areas that depict the limits of State Park land needed.

CA Parks-2

3. Any easements needed will require approval and close coordination with California State Parks. Impacts to park resources shall be repaired and replaced in-kind and any vegetation removed shall be replaced with native plants sourced from the area.

CA Parks-3

4. Regarding construction and placement of Transmission Main Pipeline near First Street in Fort Ord, work shall be coordinated with California State Parks as the utilities for the planned Fort Ord Dunes State Park campground will be installed in this area. Construction may also conflict with campground construction and public access at 1st Street construction site. The acquisition of utility easements from our office regarding these activities will be required. Please coordinate well in advance as the easement process can take up to two years to process. Parking lot maintenance and or road agreements may also need to be negotiated.

CA Parks-4

5. In the event any Desal appurtenances were to be built within State Park ownership, easement, rights-of-entry (ROE) and lease negotiations shall be prepared and approved well in advance of any work commencing on State Park property. Easements and leases may take up to two years to negotiate and execute. Leases, ROEs and/ or easements may include reimbursements to State Parks for processing these requests, including staff time processing any CEQA compliance or coastal development permits. Lease negotiations, if approved, may include, but not be limited to, assessing revenue fee structures for Desal facilities placed on public lands. Easements, if granted, will need to be appraised using the Department of General Services Appraisal Guidelines and be accompanied by legal descriptions approved by our survey staff.

CA Parks-5

6. The following comments pertain to Options in the EIR that occur on State Park property (Intake Option 3 – Subsurface Slant Wells at Potrero Road, Intake Option 4 – Open-Water Intake at Potrero Road, Outfall Option 3 – New Outfall at Potrero Road, Alternative 1 – Slant Wells at Potrero Road, Alternative 5b – Reduced Project 6.4-mgd, Desalination Plant (Intake Slant Wells at Potrero Road).

CA Parks-6

a. The construction and placement of these facilities in a state beach is not in compliance with the State's Public Resources Code or compatible with our mission statement. If natural resource and recreational public land is condemned for private purposes, approvals, easements and fees shall be negotiated with California State Parks for the use of state lands for the installation of permanent desalinization facilities and associated appurtenances located within State Park lands.

b. Operation and maintenance of facilities shall not degrade or otherwise compromise coastal sand dune habitat, snowy plover habitat or inhibit public beach access or recreation. Subterranean intake pump vaults and resulting vibrations through the sand column within snowy plover habitat should be studied prior to FEIR certification and project approval to understand what impacts may occur. This activity may trigger a need for an incidental take permit from the US Fish and Wildlife Service. Impacts to Western Snowy Plovers during the construction, operation and maintenance, including impacts from noise and vibration, need to be thoroughly observed and analyzed and the results of any studies made available to State Parks. California State Parks may require compensation for plover monitoring each year during the breeding season for at least 5 years and mitigation of any lost native vegetation at a replacement ratio of 3:1. Improvements such as paving and maintenance to the impacted parking lots may also be required by State Parks. Any utility lines proposed for installation would need to be installed underground so as not to become perches for avian predators.

CA Parks-7

c. The proposed alternatives will include municipal scale infrastructure improvements which are not specifically identified. Construction of municipal water processing facilities in the proposed State Park land is not compatible with the local coastal plan

CA Parks-8

that protects coastal values or the mission of State Parks. Items such as pumps, electrical service, maintenance facilities, discharge drains for maintenance, equipment housing, underground vaults, vehicle parking, control panels, access manholes, and any above ground features are in conflict with the natural and rural setting in the park. Currently there are no permanent facilities of the type proposed in the park. The parking lot is unpaved and there are no utilities (water, sewer, electrical, or communication) to the site. There are no flush toilets at the site.

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CA Parks-8
cont.

d. Another issue is the use of the parking lot for anything other than coastal access. This site is only one of the few coastal access points for the public in this segment of the Monterey coast and State Parks is unlikely to be able to build additional parking due to the sensitive nature of the surrounding lands. Any Desal related appurtenances shall not interfere with public access parking and shall not impinge upon or take coastal dune habitat.

CA Parks-9

e. Visual impacts are also another concern, where the proposed use may involve the need for security fences and lights around fixtures. All areas that are fenced will require landscaping and all lighting will require light shields that do not illuminate adjacent coastal sand dune habitat.

CA Parks-10

f. Water production, noise and vibration impacts, and discharges of any kind are prohibited.

CA Parks-11

If you have any questions regarding these comments, please do not hesitate to contact me at (831) 649-2862 or Stephen.bachman@parks.ca.gov

Sincerely,



Stephen Bachman
Senior Planner Monterey District

8.4.4 California State Lands Commission (CSLC)

STATE OF CALIFORNIA

EDMUND G. BROWN JR., Governor

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, Executive Officer
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890
Contact FAX: (916) 574-1885

February 27, 2017

File Ref: SCH # 2006101004

Mary Jo Borak
California Public Utilities Commission
c/o Environmental Science Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108

Subject: Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Monterey Peninsula Water Supply Project, Monterey County

Dear Ms. Borak:

The California State Lands Commission (CSLC) staff has reviewed the subject Draft EIR/EIS for the Monterey Peninsula Water Supply Project (Project), which is being prepared by the California Public Utilities Commission (CPUC) and the Monterey Bay National Marine Sanctuary (MBNMS). The CPUC is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), because it is considering issuance of a Certificate of Public Convenience and Necessity to the California American Water Company (CalAm) pursuant to Public Utilities Code section 100. MBNMS is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.) as portions of the Project fall within its jurisdiction. The CSLC is a trustee agency for projects that could directly or indirectly affect sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

CSLC staff previously commented on the Notice of Preparation for the Project in a letter dated November 8, 2012, and the previous Draft EIR, in a letter dated September 30, 2015 (enclosed). In September 2015, the CPUC announced that the Draft EIR would be modified and recirculated as a joint EIR/EIS in coordination with MBNMS.

CSLC Jurisdiction and Public Trust Lands

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has

certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

On December 17, 2014, the CSLC authorized a General Lease – Right-of-Way Use to CalAm for the construction and operation of a temporary exploratory test slant well in Monterey Bay. In order to operate the existing test well as a permanent well, CalAm must obtain a new lease. In addition, the Project includes nine new proposed slant wells which appear to be located on sovereign land within Monterey Bay; construction and operation of these wells would also require a lease. The existing Monterey Regional Water Pollution Control Agency's ocean outfall and diffusers proposed for use as part of this Project are currently authorized under CSLC Lease No. PRC 6091.9. A lease amendment or new lease may be required for CalAm to use the existing outfall. Questions regarding CSLC jurisdiction or leasing requirements should be directed to Cheryl Hudson with the Land Management Division (see contact information below).

CSLC-1

Project Description

The Project as proposed by CalAm would be located near the Salinas River along the coast in the southern portion of Monterey Bay, Monterey County. The Draft EIR/EIS identifies Alternative 5a – “Reduced Project 6.4 Million Gallons Per Day Desalination Plant (Intake Slant Wells at CEMEX)” as the Environmentally Superior Alternative. This Alternative would include an agreement to purchase 3,500 acre feet/year of recycled water from the proposed Pure Water Monterey Groundwater Replenishment project, to replace those portions of CalAm's supplies that have been constrained by legal decisions regarding CalAm's diversions from the Carmel River and pumping from the Seaside Groundwater Basin. The Alternative would achieve the Project's goals and objectives through reduced operational energy use, reduced GHG emissions, and reduced effects on groundwater levels influenced by fewer slant wells and less volume of pumping, compared to the proposed Project.

CSLC staff understands the Project would include the following components:

- A subsurface seawater intake system;
- A desalination plant;

- A brine discharge system;
- Product water conveyance pipelines, one pump station, storage facilities; and
- Improvements to the existing Seaside Groundwater Basin's aquifer storage and recovery system.

Environmental Review

As a responsible agency, the CSLC's exercise of discretion is limited to the portions of the Project that are under the CSLC's jurisdiction (State CEQA Guidelines, § 15096, subd. (d)). As a result, the comments below focus on the construction and operation of the discharge pipeline and slant wells, which are the components of the Project that would be subject to the CSLC's leasing authority. CSLC staff requests that the CPUC consider the following comments on the Project's Draft EIR/EIS.

Greenhouse Gas (GHG)

The portions of the Project under the jurisdiction of the CSLC have not substantially changed since the release of the 2015 EIR. CSLC staff acknowledge that the current EIR/EIS has sufficiently responded to all of staff's previous comments with one exception. Although it is understood that the impacts associated with GHG emissions would remain significant and unavoidable, that impact conclusion is "based on the information currently available." Mitigation Measure (MM) 4.11-1 indicates that the proposed GHG Emissions Reduction Plan would provide feasible measures when completed. For that reason, CSLC staff believes that the lead agencies have not gone far enough to explore feasible mitigation, or to demonstrate that feasible measures are not available. In addition, MM 4.11-1 itself does not contain specific, feasible, enforceable obligations, or formulas containing performance standards that would further mitigate the significant effect of the Project (State CEQA Guidelines, § 15126.4, subd. (a)(2)). Although the assumption is that the preparation of the plan would reduce the carbon footprint of the Project, the measure, as written, does not guarantee this result and may constitute deferred mitigation impermissible under CEQA (State CEQA Guidelines, § 15126.4, subd. (a)(1)(B)).

For example, MM 4.11-1 states in part:

The Plan shall include a summary of state-of-the-art energy recovery and conservation technologies available for utility scale desalination facilities and shall include a commitment by CalAm to incorporate all available feasible energy recovery and conservation technologies; or, if CalAm finds that any of the technologies will not be feasible for the project, the Plan shall clearly explain why such technology is considered to be infeasible. (Emphasis added.)

Therefore, if no technologies are found to be feasible, they are not required to be implemented. In addition, the measure states "CalAm shall make good faith efforts to ensure that at least 20 percent of the approved project's operational energy use requirements are achieved with "clean" renewable energy...." (Emphasis added.)

CSLC-2

However, there is no definition of what a “good faith effort” would entail. Additionally, the mitigation measure fails to identify potential impacts of the measure itself, such as the possible “installation of solar photovoltaic panels at or adjacent to the desalination plant,” which would also need to be discussed, albeit in less detail than the effects of the Project (State CEQA Guidelines, § 15126.4, subd. (a)(1)(D)).

CSLC-2
cont.

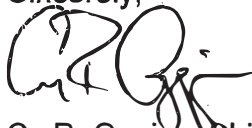
CSLC staff requests that MM 4.11-1 be reworded to improve enforceability. The MM should identify specific, feasible energy recovery and conservation technologies that could be used individually, or in combination to reduce net GHG emissions and require the lead agencies to meet targeted reductions.

As noted above, a lease (or leases) would be required from the CSLC for the construction and operation of the proposed slant wells and use of the existing outfall. A more concise and enforceable measure would assist staff in determining whether additional analysis would be required prior to lease approval.

Thank you for the opportunity to comment on the Draft EIR/EIS for the Project. As a responsible and trustee agency, the CSLC will need to rely on the Final EIR/EIS for the issuance of any amended or new lease as specified above, and therefore, we request that you consider our comments prior to certifying the EIR/EIS.

Please send copies of future Project-related documents, including electronic copies of the Approving Resolution, Final EIR/EIS, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available. Please refer questions concerning environmental review to Cynthia Herzog, Senior Environmental Scientist, at (916) 574-1310 or via e-mail at Cynthia.Herzog@slc.ca.gov. For questions concerning CSLC leasing jurisdiction, please contact Cheryl Hudson, Public Land Management Specialist, at (916) 574-0732 or via e-mail at Cheryl.Hudson@slc.ca.gov.

Sincerely,



Cy R. Oggins, Chief
Division of Environmental Planning
and Management

Attachments

cc: Office of Planning and Research
C. Herzog, CSLC
C. Hudson, CSLC
L. Calvo, CSLC

8.4.5 State Water Resources Control Board (SWRCB)



State Water Resources Control Board

March 28, 2017

Mary Jo Borak, CEQA lead
California Public Utilities Commission
c/o Environmental Science Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108

Karen Grimmer, NEPA Lead
Monterey Bay National Marine Sanctuary
99 Pacific Avenue
Building 455a
Monterey, CA 93940

Submitted electronically

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT FOR THE CALIFORNIA AMERICAN WATER COMPANY PROPOSED MONTEREY PENINSULA WATER SUPPLY PROJECT (Docket ID: NOAA-NOS-2016-0156)

Dear Ms. Borak and Ms. Grimmer:

The Central Coast Regional Water Quality Control Board (Central Coast Water Board) and State Water Resources Control Board (State Water Board) (collectively Water Boards) have reviewed the Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) for the Monterey Peninsula Water Supply Project (MPWSP) proposed by California American Water Company (CalAm). CalAm proposes to construct a facility capable of producing 10,750 acre-feet (9.6 MGD) of potable water per year. The seawater intake system for the MPWSP would consist of 10 subsurface slant wells at the CEMEX sand mining site in the City of Marina and would extract 24.1 million gallons per day of source water through the seafloor. The MPWSP would transport brine from the desalination facility to commingle with wastewater from the Monterey Regional Water Pollution Control Agency, when available, prior to being discharged through the existing Monterey Regional Water Pollution Control Authority's ocean outfall pipeline. The pipeline discharges into the Monterey Bay National Marine Sanctuary and is equipped with multiport diffusers that are oriented horizontally to the seafloor. The diffuser has 171 two-inch-diameter ports: 65 in the 60-inch section and 106 in the 48-inch section. The ports discharge horizontally alternately from both sides of the diffuser at a spacing of 16 feet on each side. The 42 ports closest to shore are presently closed, so there are 129 open ports distributed over a length of approximately 1024 ft. The ports are approximately six inches above the rock ballast and nominally 54 inches above the sea bed.

The Central Coast Water Board is the agency responsible for issuing the National Pollutant Discharge Elimination System (NPDES) permit for the discharge of brine and other wastes from the MPWSP to the Pacific Ocean and for making a determination regarding the MPWSP's consistency with California Water Code section 13142.5, subdivision (b) (Water Code section 13142.5(b)). CalAm submitted a request for a Water Code section 13142.5(b) determination to the Central Coast Water Board on February 10, 2017. The Central Coast Water Board, in consultation with the State Water Board, is currently reviewing this information to determine if it

FRANCA MARQUELIS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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is sufficient for performing the analyses required by Chapter III.M of the Water Quality Control Plan for the Ocean Waters of California (Ocean Plan), which provides direction for the regional water boards on how to conduct a Water Code section 13142.5(b) analysis for a seawater desalination facility. Water Boards staff will prepare a recommendation regarding the best available site, design, technology, and mitigation measures feasible for the MPWSP, considering the requirements in Chapter III.M of the Ocean Plan for the Central Coast Water Board to consider in conjunction with the NPDES permit.

Water Boards staff acknowledges that the analysis required in Chapter III.M of the Ocean Plan, including determining consistency with Water Code section 13142.5(b), is separate and distinct from the DEIR/EIS and California Environmental Quality Act (CEQA) process. However, Water Boards staff will rely on analyses and information conducted as part the CEQA process for the Water Code section 13142.5(b) determination to the extent possible. Therefore, Water Boards staff offers the following comments on the DEIR/EIS.

General Comments

CalAm is proposing to use slant wells to withdraw seawater for the MPWSP. Slant wells are a type of subsurface intakes which are the preferred intake technology in the Ocean Plan¹ because they minimize or eliminate intake and mortality of marine life over the operational lifetime of the facility. CalAm’s construction and maintenance plan for the slant wells appears to avoid impacts to marine life. Slant wells, constructed from an onshore well-head, will have no mortality to marine life caused by construction of the intake. Additionally, it appears that there would be no construction-related mortality associated with the discharge as the brine will be disposed through the existing Monterey Regional Water Pollution Control Agency ocean outfall pipeline. If it is determined that adjustments to the duckbill nozzles on the existing diffuser are necessary, an estimate of any marine life mortality caused by this construction should be included.

SWRCB-1

Brine from the MPWSP would be commingled with wastewater from the MRWPCA when available. During the dry season, when wastewater is unavailable, brine only will be discharged through the MRWPCA multiport diffusers, which is the preferred brine disposal technology if wastewater for commingling is unavailable. The proposed MPWSP appears to comport with the preferred intake and discharge technologies in the Ocean Plan.²

SWRCB-2

Overall, it appears that the MPWSP has been sited and designed in a manner that would result in minimal impacts to marine life and is consistent with the intent of the Ocean Plan to protect marine life and water quality. This is especially important because the facility’s intake and discharge would be within the Monterey Bay National Marine Sanctuary, which contains extensive kelp forests, is a diverse ecosystem, is home to sensitive species, and provides habitats to over 500 species of fish.

SWRCB-3

Additional Comment on Surface Water Hydrology and Water Quality (Section 4.3 of the DEIR/EIS)

- 1. Although the MPWSP would use the preferred brine discharge technology of commingling brine with wastewater, the DEIR/EIS should assess any potential discharge-related mortality of all forms of marine life,² including any incremental

SWRCB-3

¹ Ocean Plan Chapter III.M.2.d.(1)

² Ocean Plan Chapter III.M.2.d.(2)

shearing- or salinity-related mortality for both the commingled and brine-only discharge scenarios. The DEIR/EIS should also describe proposed mitigation for any discharge-related mortality for each discharge scenario.

↑ SWRCB-3
cont.

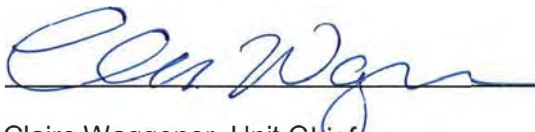
- 2. The DEIR/EIS describes using potential operational measures, including flow augmentation, to ensure that the MPWSP operational discharges meet water quality requirements in the NPDES permit. The Ocean Plan defines flow augmentation as when a facility withdraws additional source water for the specific purpose of diluting brine prior to discharge. Water Boards staff is unclear how Cal Am defines flow augmentation and the potential operational scenarios that are being defined as flow augmentation in the DEIR/EIS. Since CalAm proposes to use subsurface intakes for the MPWSP, it would be exempt from the Ocean Plan's prohibition on flow augmentation as an alternative brine discharge technology.³ However, the DEIR/EIS should clarify the possible sources of water that may be used for the potential operational measure of flow augmentation as defined in the Ocean Plan.

↑ SWRCB-4

Thank you for the opportunity to comment on this draft environmental document. If you have any questions or would like to discuss our comments further, please contact me at Claire.Waggoner@waterboards.ca.gov (916) 341-5582 or Peter von Langen at (805) 549-3688.

Sincerely,

Claire Waggoner and John Robertson



Claire Waggoner, Unit Chief
Statewide Policies and Planning
Division of Water Quality
State Water Resources Control Board

John M. Robertson

Digitally signed by John M. Robertson
Date: 2017.03.27 16:13:41 -07'00'

John M. Robertson
Executive Officer
Central Coast Water Board

cc via email:

- Jonathan Bishop, State Water Resources Control Board
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- Karen Larsen, State Water Resources Control Board
Karen.Larsen@waterboards.ca.gov
- Lori Okun, State Water Resources Control Board
Lori.Okun@waterboards.ca.gov
- Marleigh Wood, State Water Resources Control Board
Marleigh.Wood@waterboards.ca.gov
- Harvey Packard, Central Coast Water Board

³ Ocean Plan chapter III.M.2.d(2)(d)i.

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8.4.1 Responses to Comments from California Coastal Commission

CCC-1 The Lead Agencies acknowledge the California Coastal Commission's commendation of the project applicant's selection of subsurface intakes in order to avoid and minimize adverse effects on marine life.

CCC-2 Alternatives that would avoid impacts on primary and/or secondary habitats were evaluated in the EIR/EIS. Although Alternative 1 is considered to result in a significant and unavoidable impact with respect to conflict with the North County LCP/LUP, as described on Draft EIR/EIS page 5.5-140, "It is noted that the Alternative 1 subsurface slant well construction would occur within the disturbed parking lot area and would not significantly disrupt habitat in this location; nonetheless, because the subsurface slant wells are not a resource-dependent use, they would conflict with this policy." Thus, Alternative 1 (and for similar reasons, Alternative 5b) would avoid the impacts on primary and/or secondary habitat described for the slant wells under the proposed project since the intake system and source water pipeline would not be located in primary and/or secondary habitat. Additionally, each of the alternatives that include an open-water intake (Alternatives 2, 3, and 4) would avoid the impact on primary and/or secondary habitat associated with the slant wells at CEMEX. However, these alternatives have different and more severe impacts on marine habitats; therefore, there are impact tradeoffs associated with the alternatives.

Impacts on primary habitat would be common to some or all alternatives. Under Alternatives 1, 2, 3, 4, and 5b, the Source Water Pipeline would not impact primary habitat. Under Alternative 5a, the Source Water Pipeline would impact primary habitat similar to the proposed project. The new Desalinated Water Pipeline and new Transmission Main, which are components of all alternatives, would have similar impacts on primary habitat as the proposed project. Therefore, while none of the action alternatives would fully avoid impacts on primary habitat, the Final EIR/EIS does thoroughly evaluate several alternatives that would minimize impacts within primary habitat.

8.4.2 Responses to Comments from California Department of Fish and Wildlife

- CDFW-1 The Draft EIR/EIS does not evaluate Dudley’s lousewort (*Pedicularis dudleyi*). According to the best available information from the California Natural Diversity Database (CNDDDB) and California Native Plant Society (CNPS) as of publication of the Final EIR/EIS, there are no extant or historical populations within approximately 20 miles of the project area (the nearest population is in Big Sur), and therefore no compelling reason to include it as potentially occurring within the project area. Further, the species was not detected during multiple survey dates (see EIR/EIS Section 4.6.1.2, Information Sources and Survey Methodology, for a list of survey dates).
- CDFW-2 The Lead Agencies acknowledge CDFW’s comment regarding the environmental conditions in the project area in recent years. The Draft EIR/EIS acknowledges that sensitive plant species have potential to occur at the project site, but does not base its impact analysis solely on the results of surveys, but also relies on an evaluation of habitat conditions to determine whether there is potential for a special-status plant to occur within the project boundary. For example, for Hickman’s onion, described in Section 4.6.1.8 on page 4.6-51, the Draft EIR/EIS states, “This species has not been observed during project-related botanical surveys, but has potential to occur in grassland or grassland understory of coast live oak woodlands alongside the Ryan Ranch-Bishop and Main System-Hidden Hills Interconnection Improvements sites.” Additionally, as described in Mitigation Measures 4.6-1e, focused surveys for special-status plants would be conducted in accordance with guidelines established by CDFW prior to commencement of ground disturbing activities to determine the location of any special-status plant species within the project area.
- CDFW-3 As described in Table F-1 in Appendix F, beach layia and Tidestrom’s lupine have a low potential to occur in the project area. The Draft EIR/EIS analyzes potential impacts on Seaside bird’s-beak, Menzies’ wallflower, Monterey gilia (described as sand gilia in the Draft EIR/EIS), and Pacific Grove clover as these species have a moderate or higher potential to occur in the project area. The Lead Agencies acknowledge that if take of any of these state-listed species cannot be avoided, CalAm would apply for an Incidental Take Permit (ITP) from CDFW prior to project implementation during the permitting process (see Table 3-8, Anticipated Permits and Approvals). CDFW’s specific comments on mitigation measures (which would be adopted at the time of approval of the project or an alternative) are addressed in responses to the following comments.
- CDFW-4 Mitigation Measure 4.6-1e does not require reintroduction of sensitive plant species, nor recommend it as the primary measure to mitigate for take of such plants, but states that it may be one option to compensate for temporary or permanent loss of special-status plant occurrences and specifies that “Compensatory measures shall be

determined on a case-by-case basis in consultation with the resource agencies with jurisdiction over those species.” The Lead Agencies acknowledge that CDFW, as a resource agency that may have jurisdiction (depending on the species and location of compensatory habitat), would not recommend reintroduction. Subparts 1 and 2 of Mitigation Measure 4.6-1e require the siting of project facilities to avoid permanent and temporary impacts on special-status plants and their required constituent habitat elements to the extent feasible, and to implement measures during construction to avoid take of special-status plants, as requested in the comment.

As recommended in the comment, Mitigation Measure 4.6-1e has been revised to require a minimum 2:1 compensation ratio for permanent impacts and to clarify the options for compensation. The measure has also been revised to clarify the applicable performance standards as recommended in this comment (i.e., that the restored population must have greater than the number of individuals of the impacted population(s), in an area greater than or equal to the size of the impacted population(s), for at least three consecutive years without irrigation, weeding, or other manipulation of the restored site).

See response to comment CDFW-3 regarding the potential need for an ITP.

- CDFW-5 In response to this comment, the following text has been added to the discussion of the California Fish and Game Code in Final EIR/EIS Section 4.6.2.2, State Regulations:

Additionally, as described in CCR Title 14, Section 786.9, CDFW may also permit take of state rare plants under the same conditions as take authorizations issued pursuant to Section 2081 of the Fish and Game Code.

Also in response to this comment, text regarding listed and non-listed species on Draft EIR/EIS page 4.6-4 in Section 4.6.1.1, Definitions, has been revised to acknowledge that listed special-status species refers to those species that are listed as threatened or endangered under FESA and/or CESA or as rare by the California Fish and Game Commission.

Finally, the discussion of Pacific Clover has been moved from the heading “Other Special-Status Species” to “Federal or State Listed Species” in Table 4.6-2 and in Table F-1 in Appendix F in the Final EIR/EIS as recommended in this comment. See response to comment CDFW-3 regarding the potential need for an ITP.

- CDFW-6 As encouraged in this comment, Mitigation Measure 4.6-1i describes that if ground-disturbing activities must occur during the breeding season, then CalAm would implement measures to avoid impacts on nesting birds protected under the Migratory Bird Treaty Act or Section 3503 of the Fish and Game Code. Additionally, Mitigation Measure 4.6-1i has been revised to incorporate CDFW’s recommendations in this comment, which include behavior monitoring for the first 24 hours prior to any construction related activities and during the project,

consultation with CDFW, and using a 250-foot no disturbance buffer around active nests of non-listed bird species and a 500-foot no disturbance buffer around the nests of non-listed raptors.

CDFW-7 Consistent with this comment, Mitigation Measure 4.6-1h requires that impacts on occupied burrowing owl burrows be avoided by establishing a no ground-disturbing work buffer using buffer distances described in CDFW Staff Report on Burrowing Owl Mitigation. The measure also requires that CalAm implement preconstruction surveys described in the Staff Report on Burrowing Owl, which is more detailed and specific than that required in the California Burrowing Owl Consortium's Burrowing Owl Survey Protocol and Mitigation Guidelines. Also consistent with this comment, regarding compensation, the measure requires that "if burrowing owls are found on-site, compensatory mitigation for loss of breeding and/or wintering habitat shall be implemented onsite or offsite in accordance with Staff Report on Burrowing Owl Mitigation guidance and in consultation with CDFW." The measure addresses the requirements for relocation of owls in subparts 6 through 8, including through the development and implementation of a Burrowing Owl Exclusion Plan that must be approved by CDFW. Mitigation Measure 4.6-1h specifies that the plan must include relocation measures consistent with this comment (i.e., replacement of occupied burrows with artificial burrows at a ratio of 1:1, with passive relocation occurring only during non-breeding season).

CDFW-8 As described in EIR/EIS Section 4.6.1.2, reconnaissance-level field surveys were conducted to determine the potential for special-status species, including the California tiger salamander, to occur within the project area. The EIR/EIS acknowledges that California tiger salamander have potential to occur in the project area in Section 4.6.1.8 and provides a detailed assessment of where this species has potential to occur. The EIR/EIS identifies potential habitat for California tiger salamander as non-native grassland within 1.2 miles of potential breeding ponds and assumes that this species may occur in these areas in the absence of protocol-level surveys. The EIR/EIS provides a comprehensive analysis of the potential direct and indirect (i.e., take) project impacts on California tiger salamander in Section 4.6.5 based on where they have potential to occur. Construction-related impacts and mitigation measures to reduce those impacts to less than significant are described in Impact 4.6-1. There are no potential operational impacts on California tiger salamander. See response to comment CDFW-3 regarding the need for an ITP for construction activities. Because the project, as well as avoidance measures such as installation of exclusion fencing, has potential for take of California tiger salamander, the Lead Agencies anticipate that CalAm would need to obtain an ITP from CDFW prior to project implementation. Take authorization will also be sought from the USFWS.

As described in Mitigation Measure 4.6-1o, California tiger salamander would only be relocated with authorization from USFWS and CDFW (i.e., through Federal and California Endangered Species Act consultation or permits, respectively).

Additionally, Mitigation Measure 4.6-1o has been revised to clarify that installation of exclusion fencing for California tiger salamander also would be subject to such authorization. The measure has also been revised to specify that if take authorization for California tiger salamander is not obtained from CDFW and USFWS, then all small mammal burrows within dispersal distance of a known or potential breeding pond shall be avoided by a minimum buffer of 50 feet.

CDFW-9 In response to this comment, Mitigation Measure 4.6-1c has been revised to incorporate CDFW's recommendations regarding the use of natural-fiber, biodegradable meshes and coir rolls, and to prohibit the use of photodegradable and other plastic mesh erosion control products (see subpart 22).

CDFW-10 As described in 4.6.2.1, Federal Regulations, a federal agency is required to consult with USFWS and NMFS if the proposed project may affect a federal listed species. ONMS has consulted with USFWS and NMFS through Section 7 of the Federal Endangered Species Act, as required.

In response to this comment, the following text from Draft EIR/EIS page 4.6-122 has been revised in Section 4.6.5:

The following impact analysis evaluates impacts of the proposed project as required by CEQA and NEPA. A Biological Assessment, which would evaluate the project's impacts on federally listed species, would be prepared in support of FESA Section 7 consultation between the ONMS and USFWS and between the ONMS and NMFS.

8.4.3 Responses to Comments from California Department of Parks and Recreation

- CA Parks-1 The proposed project does not include the taking of any state park land. However, CalAm would need to seek an easement, right-of-entry, and/or a lease agreement with State Parks for any facility that would encroach upon State Parks property. A sentence has been added in Final EIR/EIS Section 5.4.3.1 to acknowledge this. Accordingly, CalAm would be required to comply with any conditions required as part of the easement, right-of-entry, and/or lease agreement with State Parks for such facility, including conditions described in this letter, such as repaving and maintaining parking lots following disturbance.
- CA Parks-2 The text in Draft EIR/EIS Section 4.8.2.2 that describes state regulations, including the Fort Ord Dunes State Parks General Plan on page 4.8-16, has been revised to read:
- “The new Transmission Main . . . would traverse an approximately 0.25-mile-long band . . .”
- Draft EIR/EIS Section 3.3.4 explains the width of the disturbance corridor for pipeline construction would vary typically from 50 to 100 feet and trenchless technologies could require wider corridors at entry and exit pits. See Figures 3-6, 3-7, and particularly Figure 3-8.
- CA Parks-3 CalAm will need to apply to State Parks for an easement, right-of-entry, and/or a lease agreement. As noted in Draft EIR/EIS Table 4.6-4, the installation of the new Transmission Main in the Fort Ord Dunes State Park would occur within central dune scrub. The potential impacts are addressed in Impact 4.6-2. In response to this and other comments, Mitigation Measure 4.6-2b has been revised to ensure that impacts on central dune scrub (among other plant communities and habitat types) will be restored to previous conditions or better at the end of construction, so that by the fifth year following restoration, native vegetation covers at least 70 percent of the baseline/impact area native vegetation cover, and so that there is no more cover by invasives than the baseline/impact area. Additionally, the Lead Agencies anticipate that conditions of approval of the State Parks easement, right-of-entry, and/or lease agreement may further define specific planting requirements within State Parks lands.
- CA Parks-4 The Fort Ord Dunes State Park Campground is recognized as a potential project in Draft EIR/EIS Table 4.1-2 as Project No. 46 that may contribute to cumulative impacts. The cumulative impacts on land use and recreation if the campground and MPWSP are constructed at the same time or sequentially are addressed in Impact 4.8-C in EIR/EIS Section 4.8, Land Use, Land Use Planning, and Recreation.

CalAm will need to apply for an easement from State Parks and is willing to negotiate maintenance and/or road agreements.

CA Parks-5 See response to comment CA Parks-1. Table 3-8 has been revised to include State Parks, as follows.

Agency or Department	Permit or Approval	Discussion
<u>California Department of Parks and Recreation</u>	<u>Easement, right-of-entry (ROE), and/or lease negotiations for 0.25-mile portion of the new Transmission Main that would encroach on Fort Ord Dunes State Park</u>	<ul style="list-style-type: none"> State Parks has jurisdiction and management authority over Fort Ord Dunes State Park and any easement, ROE, and/or lease if granted, will need to be appraised using DGS guidelines and be accompanied by State Parks-approved legal descriptions.

CA Parks-6 As discussed on page 5.3-30 of the Draft EIR/EIS, only Intake Option 9 was carried forward into the development of whole alternatives. Likewise, as noted on page 5.3-51 of the Draft EIR/EIS, only the proposed use of the existing (MRWPCA) outfall was carried forward in the development of Alternatives 1 and 5b; therefore, Intake Option 4 and Outfall Option 3 were screened out from further consideration in the EIR/EIS.

Intake Option 3, described in Draft EIR/EIS Section 5.3.3 and evaluated in Section 5.3.6 that may occur on State Parks property, would be located in the parking lot at the end of Potrero Road. Table 5.3-4 considers the impact of this intake option on the Potrero Road parking lot. The alternatives evaluated in the Draft EIR/EIS that include Intake Option 3 are described in Section 5.4.3 (Alternative 1, Slant Wells at Potrero Road) and Section 5.4.8 (Alternative 5b, Reduced Project Slant Wells at Potrero Road). All onshore construction activities and disturbance would occur in the parking lot at the western terminus of Potrero Road, and would not disturb the dunes or active beach area; the electrical control building would be located at the edge of the parking lot. The setting/affected environment at the Potrero Road parking lot is described in Section 5.5.8.1 and impacts of the alternatives on the parking lot and recreational resources are discussed in Sections 5.5.8.4 (Alternative 1), and 5.5.8.8 (Alternative 5b). See response to comment CA Parks-1 regarding the need for an easement, right-of-entry, and/or lease agreement.

CA Parks-7 With respect to coastal dune habitat and snowy plover habitat, the impacts of Alternatives 1 and 5b facilities on these and other sensitive terrestrial biological resources are described in EIR/EIS Section 5.5.6.4 (Direct and Indirect Effects of Project Alternative 1 – Slant Wells at Potrero Road), and Section 5.5.6.8 (Direct and Indirect Effects of Alternative 5 – Reduced Desal Project 5a [CEMEX] and 5b [Potrero Road]). The Alternatives 1 and 5b facilities that would be located within State Parks land would be constructed in a parking lot behind the sand dunes and would not directly impact sensitive natural communities or wetlands. Indirect

impacts on coastal sand dune habitat and snowy plover habitat would be reduced to a less-than-significant level with implementation of mitigation measures listed in EIR/EIS Sections 5.5.6.4 and 5.5.6.8 (see Section 4.6, Terrestrial Biological Resources, for the full text of these measures). With regard to impacts from pump vibration, impacts from Alternatives 1 and 5b would be the same as described for the proposed project. Sections 4.6, 5.5.6.4, and 5.5.6.8 of the Final EIR/EIS have been revised to cross-reference the analysis in Section 4.12, Noise and Vibration, which concludes that operation of the slant wells under the proposed project would not produce groundborne vibration. Since there would be no groundborne vibration, there would be no impact from groundborne vibration on western snowy plover. This determination would be the same for Alternative 1 and Alternative 5b.

Although groundborne vibration would not result in incidental take of the western snowy plover, the USFWS will be consulted with regarding potential impacts from construction and maintenance activities. As part of that permitting process, ONMS is consulting with USFWS through the Section 7 consultation process as necessary for potential impacts on snowy plover. In response to comments on the Draft EIR/EIS and to this ongoing consultation process, Mitigation Measure 4.6-1d (Protective Measures for Western Snowy Plover) has been revised to specify performance standards for the fifth year following restoration of temporarily impacted snowy plover habitat and to require a minimum 3:1 ratio of permanent compensation for permanent loss of western snowy plover habitat (see Final EIR/EIS Section 4.6). These revisions are consistent with the comment's requests.

With respect to paving and maintenance of parking lots and installation of utility lines, see response to comment CA Parks-1.

CA Parks-8 See response to comment CA Parks-6.

CA Parks-9 Impacts of Alternatives 1 and 5b on public coastal access and parking at Potrero Road are discussed in Draft EIR/EIS Sections 5.5.8.4 and 5.5.8.8. Existing access and parking at the Potrero Road parking lot would temporarily be precluded during construction, and parking options for Salinas River State Beach visitors would be limited to two of three existing options (Sandholdt Road lot or Monterey Dunes Way lot). The EIR/EIS includes Mitigation Measures REC-1a and REC-1b, which would require public notice regarding closure and implementation of a plan for maintaining safe beach access during construction. Mitigation Measure REC-1b has been revised to require that CalAm submit the Beach Access Management Plan to State Parks for review and approval prior to construction. Potrero Road parking access would be fully restored following construction.

Impacts of Alternatives 1 and 5b on coastal dune habitat are discussed in Sections 5.5.6.4 and 5.5.6.8. Mitigation Measure 4.6-2b described in response to comment CA Parks-3 would apply to these alternatives.

- CA Parks-10 Draft EIR/EIS Section 5.5.14.1 describes the aesthetic setting/affected environment at the Potrero Road parking lot. Impacts of Alternatives 1 and 5b on the visual resources at Potrero Road are discussed in Sections 5.5.14.4 and 5.5.14.8. Permanent structures would not require security fencing and would not be visible from the beach or block coastal views. See Draft EIR/EIS pages 5.5-279 and 5.5-292 for a discussion of nighttime light and glare. Mitigation Measure 4.14-2 (Site-Specific Nighttime Lighting Measures), which would require lighting fixtures to be cast downward and shielded to prevent light from spilling onto adjacent offsite uses (including into adjacent offsite habitat) would apply to these alternatives.
- CA Parks-11 See responses to comments CA Parks-5 through CA Parks-10. EIR/EIS Section 5.5.12 addresses impacts from noise and vibration and Section 5.5.3 addresses surface water runoff and discharges.

8.4.4 Responses to Comments from California State Lands Commission

- CSLC-1 As described in Draft EIR/EIS Section 3.4, the proposed project, including the conversion of the test slant well to a permanent well and use of the existing outfall, could require discretionary permits from federal, state, and local jurisdictions. Table 3-8, Anticipated Permits and Approvals, lists the State Lands Commission requirement for a New Land Use Lease and Amended Land Use Lease for the uses described in the comment, among the many approvals CalAm is expected to pursue prior to project implementation (see Draft EIR/EIS page 3-65).
- CSLC-2 In response to this and other comments on the Draft EIR/EIS, the quoted text in the comment has been deleted from Mitigation Measure 4.11-1 and the measure has been revised as shown in response to comment USEPA-4 in Section 8.3.5. Based on these revisions to the mitigation measure, the analysis also has been revised to conclude that, with mitigation, the proposed project's impacts with respect to GHG emissions would be less than significant.

8.4.5 Responses to Comments from State Water Resources Control Board

SWRCB-1 As summarized in the comment and discussed in detail in EIR/EIS Sections 4.3.5 and 4.5.5, the use of slant wells is consistent with the Ocean Plan's preferred technology for desalination plant intakes since they minimize or eliminate marine life mortality during operations over the project life-time. Additionally, construction of the proposed project would avoid and/or minimize impacts associated with marine life mortality and such impacts would be less than significant. Implementation of a retrofit of the existing MRWPCA outfall diffuser to increase the dilution of operational discharges is described under Impact 4.3-5 and Mitigation Measure 4.3-5 in Section 4.3.5. The potential secondary construction-related impacts on marine biological resources from implementing Mitigation Measure 4.3-5 are assessed and described in Section 4.3.5.4. Secondary impacts on benthic organisms and other marine biological resources associated with retrofitting the outfall diffuser with inclined jets would be less than significant.

SWRCB-2 As summarized in the comment and discussed in detail in Sections 4.3.5 and 4.5.5, the proposed project has been sited and designed in a manner that adheres to the requirements of the Ocean Plan regarding the use of multiport diffusers and the comingling brine from the MPWSP with wastewater to protect marine life and water quality within the Monterey Bay National Marine Sanctuary.

SWRCB-3 Two potential sources of mortality of marine organisms associated with discharges of brine were considered in EIR/EIS Section 4.5.5.2: increased salinity and turbulence shear stress. Salinity-related and shear stress-related marine life mortality for brine-only and comingled operational discharges is assessed in detail under Impact 4.5-4. The review of available literature presented in Table 4.5-9 found no reported cases of mortality in experiments that tested organisms at salinities as low as the maxima predicted in the brine discharges at the points of contact with the seafloor. Consequently, the EIR/EIS concluded that no mortality would occur due to the elevated salinities in the brine discharge and no mitigation is necessary.

As described in detail under Impact 4.5-4, the EIR/EIS concluded that for the worst-case brine-only discharge scenario, roughly 0.23 to 0.86 percent of total numbers of plankton flowing over the diffuser could be killed by shear stress, estimated to be roughly 892 million organisms per day or 0.00261 percent of the total area around the edge of Monterey Bay at the depth of 35 meters. As noted in EIR/EIS Appendix D1, the volumes entrained into the proposed brine discharges are much less than are entrained into the existing discharges that only include secondary treated wastewater. This is mainly because the dilution of the treated wastewater is much higher. For the brine-only discharges, the entrainment rates range from 7 to 22 percent of those for the baseline case. Therefore, organism

mortality for the proposed project brine discharges would also be expected to be about 7 to 22 percent of the baseline case. Because the CEQA/NEPA analysis determined that the impacts would be less than significant for discharge related mortality, no mitigation is proposed.

However, while the EIR/EIS does not require mitigation for salinity-related or shear stress-related mortality, the SWRCB might want to impose conditions (mitigation) as part of the permitting process. In order to do so, the area of production foregone (APF) would need to be calculated and it is typically calculated as a percentage of the entrainment losses resulting from the intake analysis. But since the project proposes to utilize subsurface intakes, Empirical Transport Modeling (ETM) was not performed, and Area of Production Foregone (APF) was therefore, not included in that calculation. The APF from the discharge could be estimated by assuming the area between the diffuser port and the edge of the zone of initial dilution (ZID) on both sides of the outfall that exceed 2 ppt above ambient salinity could settle on the seafloor (which model results indicate it would not). That area is calculated to be approximately 2,010 to 7,800 square meters of seafloor (21,635 to 85,800 square feet) or 0.5 to 2 acres. See EIR/EIS Section 4.5.5.2, Impact 4.5-4.

SWRCB-4 The use of additional source water from the intake slant wells is not proposed for flow augmentation to increase the dilution of operational discharges. As described in Mitigation Measure 4.3-5 in Section 4.3.5.2, flow augmentation would be achieved by adding water with densities (i.e., salinity) closer to fresh water. This would decrease the density difference between the operational discharge and the receiving ocean waters and result in increased dilution and mixing. As modeled by Roberts (see EIR/EIS Appendix D1), adding 2.3 to 4.8 million gallons per day (mgd) of freshwater flows, depending on the discharge scenario, could substantially increase minimum dilution at the edge of the ZID, and thus ensure compliance with the water quality objectives defined in the California Ocean Plan. See response to comment MRWPCA-7 in Section 8.5.9 for further discussion regarding the use of Mitigation Measure 4.3-5 flow augmentation to increase the dilution of operational discharges at the outfall diffuser and for further discussion regarding the use of Mitigation Measure 4.3-5 flow augmentation to increase the dilution of operational discharges at the outfall diffuser.