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BY E-MAIL & FIRST CLASS MAIL
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Andrew Barnsdale
California Public Utilities Commission
c/o Environmental Science Associates
550 Kearny Street, Suite 800
San Francisco, CA 94108

Re: A.12-04-019 - Documents Referenced in Draft Environmental Impact Report for the Monterey Peninsula Water Supply Project

Dear Mr. Barnsdale:

Thank you for providing to me last Friday afternoon, June 12, 2015 a CD-rom, pursuant to the request of Mark Fogelman of this firm on behalf of our client, the Marina Coast Water District ("MCWD"), made on the preceding day. You stated to me at that time that the CD-rom contained all of the documents referenced in the Draft Environmental Impact Report ("DEIR") released on April 30, 2015 for the Monterey Peninsula Water Supply Project ("MPWSP"), and you requested that I sign a receipt for the CD-rom. We are still in the process of reviewing the documents on that CD-rom; however, it appears to us that not all documents referenced in the DEIR and Appendices thereto are on the CD-rom that we were provided. We will endeavor to get you a complete list of the missing documents within the next day or two. Nonetheless, all of the documents referenced for review in the DEIR should have been available for public access and review since April 30, 2015.

In that regard, this letter follows up on our telephone calls and email correspondence in attempting to gain access to those documents. Our requests were made pursuant to the requirements of Section 21092, subdivision (b)(1) of the Public Resources Code as well as California Environmental Quality Act ("CEQA") Guidelines (Cal. Code Regs., tit. 14), section 15087(c)(5), both of which require that "all documents referenced in the environmental impact report" be available for review and "readily accessible." The existing comment period on the DEIR for the MPWSP expires on July 1, 2015, as set forth in the Notice of Availability ("NOA") published by the California Public Utilities Commission ("CPUC") for the MPWSP DEIR.

It has become apparent to MCWD that the CPUC's NOA for the MPWSP DEIR is inadequate and must be recirculated. Public Resources Code section 21092, subdivision (b)(1) requires that the CEQA NOA for an EIR must include "the address where copies of the draft

environmental impact report and all documents referenced in the draft environmental impact report ... are available for review." As of the date the DEIR is released, all such referenced documents shall be available at a location "readily accessible to the public during the lead agency's normal working hours." (CEQA Guidelines, § 15087(c).) The CPUC's April 30, 2015 NOA fails to meet this requirement in both procedure and substance.

First, the April 30, 2015 NOA issued by the CPUC, the lead agency for the MPWSP, failed to comply with required procedure because it does not indicate where any of the documents referenced in the DEIR are available for review, either in Monterey County or at the CPUC. Hence, the Notice of Availability for the MPWSP DEIR does not provide the public the required information about the location of all documents referenced in the DEIR, and which must be readily available as of the date of the NOA.

Second, the NOA failed to comply in substance with the requirement to provide ready public access to the documents referenced in the DEIR. In the process of completing MCWD's review of the entire DEIR and its Appendices and preparing to submit comments on the DEIR, MCWD took steps to gain access to the documents referenced in the DEIR. Because no location for access was set forth in the NOA, beginning on June 11, 2015 MCWD's counsel made multiple telephone calls, sent multiple emails and on the morning of June 12, 2015 I waited in person at the CPUC's offices at 505 Van Ness Avenue in San Francisco for over an hour, all without gaining access to the documents. When I returned to 505 Van Ness that afternoon after 4 p.m., met with you and signed for the CD-rom that you provided, you informed me that there was no other way to gain access to the documents referenced in the MPWSP DEIR. So, although MCWD did eventually gain access late last Friday afternoon, the public – including the public in Cal-Am's Monterey service district – and the other parties to A.12-04-019 appear to be lacking the ready accessibility that is required by the statute and the CEQA Guidelines. Therefore, they also lack the ability to immediately access and begin review of all documents referenced in the DEIR as required by CEQA.

As noted by leading CEQA commentators, Remy and Thomas:

> The above-referenced requirement in section 21092 to notify the public of the address at which "all documents referenced in a draft EIR" can be found (and presumably read) . . . seems to require agencies to make available for public review all documents on which agency staff or consultants expressly rely in preparing a draft EIR. In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions (*see, e.g., Emmington v. Solano County Redevel. Agency*, 195 Cal.App.3d 491, 502-503 (1987)), agencies should ensure that they comply literally with this requirement.

Remy, Thomas and Moose, *Guide to the California Environmental Quality Act*, p. 342-43 (Solano Press, 2007). California courts have held that the failure to provide even a few pages of

a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process. *Ultramar v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689.

Therefore, we request that the CPUC make all of the documents referenced in the DEIR for the MPWSP readily accessible for public inspection, and then reissue the Notice of Availability for the MPWSP DEIR with the required indication of the location where the documents referenced in the DEIR may be accessed and restart the comment period so that the public has access to all referenced documents in the DEIR for the full comment period. The Revised Notice of Availability should also accurately state whether the documents referenced in the DEIR can be reviewed at all locations where the DEIR and Appendices are available, as referenced in the April 30, 2015 NOA, or whether these documents are only available at a single location.

In addition, it appears from our review of the CD-rom that you provided to me last Friday afternoon that a number of documents referenced in the DEIR and Appendices are not included on that CD-rom. Thus, these documents are not available and "readily accessible to the public" or MCWD at this time. As our review is ongoing, we will provide you with our list of the documents referenced in the DEIR and Appendices that were not included on the CD-rom provided last Friday when we complete that list over the next day or two.

Finally, the internet addresses for a number of documents referenced in the DEIR and Appendices that are purportedly available online appear to be invalid. (*See, e.g.* reference in DEIR § 4.5 to http://www.coastal.ca.gov/desalrpt/dchap3.html.) Such documents are therefore equally unavailable and not "readily accessible to the public" or to MCWD at this time. Moreover, even with a valid URL, those documents would not be "readily accessible" to members of the public who are without sufficient internet access to retrieve them. When the CPUC recirculates its NOA for the MPWSP, the CPUC must ensure that such documents are included in full within the complete set of documents referenced in the DEIR and Appendices when those documents are made "readily accessible to the public" upon NOA re-circulation.

Thank you for your attention to our concerns and for your anticipated continuing cooperation in compliance with the requirements of the CEQA statutes and Guidelines. When the NOA and DEIR are recirculated, we would encourage inclusion of the latest groundwater modeling data, as requested by the parties at the May 19, 2015 groundwater modeling workshop.

Sincerely,

Ruth Stoner Muzzin

cc: Mark Fogelman, Esq.