

SECTION 16

Organization Comments and Responses

16.1 Organization

The following comment letters were received from organizations on the West Basin Municipal Water District (West Basin) Ocean Water Desalination Project (Project) Draft Environmental Impact Report (Draft EIR). The comment letters are grouped together and are followed by all responses as indicated in **Table 16-1**.

TABLE 16-1
LIST OF DRAFT EIR COMMENT LETTERS: ORGANIZATIONS

Letter Code	Commenting Party	Letter Page Number	Response Page Number
BP	Brenntag Pacific	16-3	16-83
EJ	Environmental Justice, Community, and Indigenous Groups	16-5	16-84
EOGB	Environmental Organizations and Green Business	16-10	16-86
GSW	Golden State Water Company	16-18	16-93
HTB	Heal the Bay	16-20	16-94
LAW	Los Angeles Waterkeeper	16-34	16-110
LAW2	Los Angeles Waterkeeper 2	16-36	16-111
NRG	NRG Energy, Inc.	16-72	16-126
OFSP	Ocean Front Strand Properties	16-74	16-130
SCLA	Sierra Club Angeles Chapter	16-75	16-131
UPRR	Union Pacific Railroad	16-81	16-138

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Comment Letter BRENNTAG PACIFIC

From: Traci Morrison/Pacific/Brenntag
To: [West Basin Desal EIR](#)
Cc: [Traci Morrison/Pacific/Brenntag](#)
Subject: West Basin Desal; Ammonium Sulfate instead of Aqua Ammonia
Date: Monday, April 23, 2018 12:17:30 PM
Attachments: [image001.jpg](#)

Zita,

I am writing to you to find out some more details on the West Basin Desal Plant. I work for Brenntag Pacific, the worldwide largest chemical distributor, and we custom blend Liquid Ammonium Sulfate 40%, our trade name "AquaLAS40." We have switched many municipalities away from aqua ammonia for safety reasons.

I just wanted to find out how you came to your decision to use ammonium sulfate? Do you have any studies you conducted. I will also contact someone in procurement to see if we can quote the product. Thank you for your time and any details you can provide me.

BP-1

Best Regards,

Traci R. Morrison

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www.brenntagpacific.com

If you require immediate assistance;

Orders/Contact:

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Debbie Ghrist at (562)777-9314 dghrist@brenntag.com

Joe Camarillo at (562)777-9368 jcamarillo@brenntag.com

Dave Clements at (562)777-9370 dcllements@brenntag.com

Customer Service Q (562)777-9300

Sales Assistance/Samples/SDS/C of A: Angie Morales (562)777-9346
amorales@brenntag.com

Technical Assistance:

Don Doodokyan; 415-713-9683 ddoodokyan@brenntag.com

Product Pricing and technical support in case I am unavailable;
Ryan Kumpula; 484-797-0169 rkumpula@brenntag.com

Best Regards,

Traci R. Morrison

Traci R. Morrison

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**CALIFORNIA
COMMUNITIES
AGAINST TOXICS**



June 25, 2018

Zita Yu, Ph.D., P.E.
Project Manager
West Basin Municipal Water District
17140 South Avalon Boulevard, Suite 210
Carson, California 90746-1296

Sent via e-mail to: DesalEIR@WestBasin.org

RE: Environmental Justice, Community, and Indigenous Groups' Comments on West Basin Municipal Water District Ocean Desalination Draft Environmental Impact Report

Dear Dr. Yu:

We the undersigned environmental justice, community, and indigenous groups thank you for this opportunity to comment on West Basin Municipal Water District's (West Basin) Draft Environmental Impact Report (DEIR) prepared pursuant to the California Environmental Quality Act (CEQA) for the proposed Ocean Water Desalination Project (Project).

EJ-1

West Basin’s longstanding and seemingly steadfast commitment to ocean-water desalination over less expensive and more energy friendly means of increasing water supply—conservation, recycling, stormwater capture, and brackish groundwater desalination—will result in a significant and disproportionate impact on low income and minority populations. The Project would produce *the* most expensive water¹ in an unnecessary amount² for a vast service area that encompasses widely disparate communities, the most disadvantaged of which will bear the brunt of the Project’s high costs, adverse environmental impacts, and outsized energy use.

EJ-1

The DEIR environmental justice analysis is inadequate for the reasons detailed below. We also find it notable that out of a 1000+ page DEIR, **only half of a single page is dedicated to the analysis of the Project’s environmental justice impacts** and the conclusion that the impacts would be less than significant. (See DEIR, 6-13.)

EJ-2

The Project Will Increase Water Rates and Disproportionately Impact Low-Income Populations.

Ocean desalination is the most expensive option for increasing our local water supplies at \$2,100 to \$2,500 per acre-foot.³ West Basin estimates the cost to build the Project will be half-a-billion dollars. The Project will inevitably increase water rates for West Basin’s ratepayers. This increase in water rates will disproportionately impact low-income populations in West Basin’s service area relative to the more affluent populations. For example, a \$10 increase to water rates that seems modest in affluent Rolling Hills Estates has a significantly great impact on a ratepayer living below the federal poverty line in Inglewood, Hawthorne, Lawndale, or Gardena, each of which 100% of the population is disadvantaged communities. The DEIR also does not account for the cumulative impact on water rates that the Project may have in light of, for example, Metropolitan Water District’s commitment to funding the multi-billion-dollar twin-tunnels project.⁴

EJ-3

The Project Will Effectively Result in Disadvantaged Communities Subsidizing Affluent Communities’ Excessive Water Consumption.

We applaud West Basin’s significant conservation savings over the past 25 years, but challenge the agency’s assertion that demand has hardened to a point that makes it difficult to realize the additional savings West Basin claims is needed if the Project is not built. Such opportunities for realizing additional conservation savings are clear when looking at the disparity between West Basin’s affluent communities’ and its low-income and minority communities’ residential per capita water usage (R-GPCD). West Basin customers in affluent communities such as Palos

EJ-4

¹ HEATHER COOLEY & RAPICHAN PHURISAMBAN, THE COST OF ALTERNATIVE WATER SUPPLY AND EFFICIENCY OPTIONS IN CALIFORNIA 13 (Pac. Inst. 2018), *available at*

http://pacinst.org/wp-content/uploads/2016/10/PI_TheCostofAlternativeWaterSupplyEfficiencyOptionsinCA.pdf.

² Comment Letter from Los Angeles Waterkeeper to West Basin Municipal Water District (explaining that the need for 21,500 acre-feet a year of new potable water supply is not supported in the DEIR).

³ COOLEY & RAPICHAN, *supra* note 1, at 13.

⁴ Bettina Boxxall, *Southern California Water Votes to Controversial Plan to Build Two Delta Tunnels*, LA TIMES (Apr. 10, 2018, 8:15 PM), <http://www.latimes.com/local/lanow/la-me-delta-tunnel-mwd-20180410-story.html>.

Verdes use upwards of 200 R-GPCD—almost three times the South Coast region average⁵—while customers in Hawthorne use only 62 R-GPCD, (DEIR, 7-13.).⁶ Yet, West Basin seeks to impose the steep costs of building and operating an ocean desalination plant across its entire service area. This scenario effectively results in low income and minority communities subsidizing wealthier communities’ excessive water consumption.

EJ-4

The DEIR Fails to Account for Adverse Impacts to Disadvantaged Communities Outside of Hawthorne.

West Basin’s contention that its Project’s impact on disadvantaged communities is less than significant does not tell the whole story. The DEIR only analyzes the Project’s impacts to the census tracts where aboveground infrastructure would be implemented (census tracts in El Segundo and Hawthorne). (DEIR, 5-13.) For Hawthorne, the DEIR compares the demographics of the 3 impacted census tracts in Hawthorne to the demographics of the city of Hawthorne as a whole. (DEIR, 6-10–6-11.) However, in doing so, the DEIR averages the minority population percentages of the 3 impacted census tracts *before* comparing them to the minority population percentage of the whole city of Hawthorne, thus diluting the actual minority percentages of the individual, impacted tracts. (DEIR, 6-11.) This allows the DEIR to find that the impacted census tracts do not have significantly greater minority populations, and thus, the Project does not disproportionately impact minority populations. (DEIR, 6-10, 6-13.)

EJ-5

This Hawthorne-to-Hawthorne comparison is disingenuous. Hawthorne’s population is 100% disadvantaged communities (DAC). The Project would provide a water supply for all customers in West Basin’s service area, therefore at a minimum, the DEIR environmental justice analysis should look at West Basin’s service area as a whole and assess the impacts of the Project on the disadvantaged communities *relative to the Project’s impacts on the affluent communities*. By unreasonably, geographically limiting the environmental justice analysis, **the DEIR fails to account for the Project’s impacts to Carson, which is 82.1% DAC, Inglewood, which is 100% DAC, Gardena, which is 100% DAC, and Lawndale, which is 100% DAC.**

The DEIR Should Consider the Environmental Justice Impacts of the Project’s Air Quality Impacts.

Ocean desalination is the most energy-intensive option for increasing local water supplies.⁷ The continuous energy demand of the 20 MGD desalination plant is equivalent to the average annual

EJ-6

⁵ From July 2017 to August 2017 alone the average residential per capita water use for the South Coast region decreased from 69.63 R-GPCD to 65.87 R-GPCD. (*Is California Water Use Increasing?* 89.3 KPCC, <http://projects.scpr.org/applications/monthly-water-use/region/south-coast/>.)

⁶ STATE WATER RESOURCES CONTROL BOARD, *August Supplier Conservation*, 9, 10 (2017), https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2017oct/supplierconservation_100317.pdf.

⁷ HEATHER COOLEY & MATTHEW HEBERGER, KEY ISSUES IN SEAWATER DESALINATION IN CALIFORNIA: ENERGY AND GREENHOUSE GAS EMISSIONS (Pac. Inst. 2013), available at <http://pacinst.org/wp-content/uploads/2013/05/desal-energy-ghg-full-report.pdf>; NAT. RES. DEF. COUNCIL, ET AL., PROCEED WITH CAUTION II: CALIFORNIA’S DROUGHTS AND DESALINATION IN CONTEXT (2016), available at <https://www.nrdc.org/sites/default/files/california-drought-desalination-2-ib.pdf>.

energy demand of almost twice the number of households in Lawndale.⁸ Many of West Basin’s low-income and minority customers are among those most disproportionately burdened by multiple sources of pollution.⁹ These communities already suffer from poor air quality.¹⁰ Southern California Edison (SCE) would supply the energy needed by the Project, and while the DEIR discusses SCE’s power mix, it does not identify the specific plants on which SCE relies. (DEIR, 5.5-6–5.5-7.) The communities in or near where these plants are located, will be disproportionately impacted by the Project’s adverse impacts to air quality. Yet, the DEIR does not disclose which communities these are or analyze the impacts.

EJ-6

The DEIR Should Consider the Environmental Justice Impacts of the Project’s Greenhouse Gas Impacts.

Based on the 2014 power mix of SCE,¹¹ the 20 MGD ocean desalination plant would contribute as much as 44,702 metric tons of CO₂e emissions per year and the 60 MGD plant would contribute as much as 146,879 metric tons per year.¹² The Project’s significant GHG emission contributions will exacerbate climate change, and **disproportionately impact low-income and minority communities, which are least able to adapt to or recover from climate change impacts.**¹³

EJ-7

The DEIR Should Consider the Environmental Justice Impacts of the Project’s Marine Impacts.

The Project would use an open-ocean intake and discharge system to draw in ocean water and discharge concentrated brine, which has the potential to adversely impact marine life. The DEIR environmental justice analysis fails to discuss the potential impacts this may have on communities that rely on marine life for subsistence.

EJ-8

For all of the above reasons, West Basin’s CEQA analysis fails to comply with the Government Code¹⁴, CEQA, and the California Attorney General’s instructive Fact Sheet, *Environmental Justice at the Local and Regional Level Legal Background*.¹⁵

EJ-9

The bottom line is that ocean desalination is not the answer, and we call on West Basin to take a step back and see that the Project’s costs overwhelmingly outweigh any benefit, particularly in light of the more cost-effective, environmentally sound options available for meeting our water

EJ-10

⁸ See POWERS ENGINEERING, ASSESSMENT OF ENERGY INTENSITY AND GREENHOUSE EMISSIONS OF PROPOSED WEST BASIN DESALINATION PLANT AND WATER SUPPLY ALTERNATIVES 19 (2018), available at https://www.smarterwaterla.org/wp-content/uploads/2018/01/Powers_Engineering_2018_WB_Desal.pdf.

⁹ CALENVIROSCREEN 3.0, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited June 4, 2018).

¹⁰ *Id.*

¹¹ POWERS ENGINEERING, *supra* note 8, at 16.

¹² POWERS ENGINEERING, *supra* note 8, at 21.

¹³ U.S. GLOBAL CHANGE RESEARCH PROGRAM, THE IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES: A SCIENTIFIC ASSESSMENT (2016), available at <https://health2016.globalchange.gov/>.

¹⁴ “[E]nvironmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12(e).)

¹⁵ OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, ENTVL. JUSTICE AT THE LOCAL AND REG’L LEVEL LEGAL BACKGROUND (2012), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

Comment Letter ENVIRONMENTAL JUSTICE AND INDIGENOUS

supply needs. Operation of an ocean desalination plant will have the perverse result of low-income communities subsidizing West Basin’s most affluent communities’ excessive water consumption. In addition, the Project will adversely impact air quality and contribute to climate change impacts on communities that already bear a disproportionate pollution burden.¹⁶ West Basin should be exploring opportunities for expanding its successful conservation and recycling programs and other water supply options that do not compromise the health and economic well-being of communities. Ocean desalination should be considered an option of last resort and one that West Basin should not be pursuing at this time.

↑
EJ-10

Sincerely,

Taylor Thomas
Research and Policy Analyst
East Yards Communities for
Environmental Justice

Jane Williams
Executive Director
California Communities
Against Toxics

Cynthia Babich
Coordinator
Los Angeles Environmental
Justice Network

Cynthia Medina
Co-Director
Del Amo Action Committee

Martha Camacho-Rodriguez
Educator/Organizer SEE
Social Eco Education

Veronica Padilla
Executive Director
Pacoima Beautiful

Robina Suwol
Executive Director
California Safe Schools

Angela Mooney D’Arcy
Executive Director
Sacred Places Institute

Roberto Morales
Chair
Nature for All

Yvonne (Martinez) Watson
Chair, Environmental Justice Committee
Sierra Club Angeles Chapter

cc: Sally Magnani, Senior Assistant Attorney General, sally.magnani@doj.ca.gov

¹⁶ CALENVIROSCREEN 3.0, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited June 4, 2018).



June 25, 2018

Zita Yu, Ph.D., P.E.
 Project Manager
 West Basin Municipal Water District
 17140 South Avalon Boulevard, Suite 210
 Carson, California 90746-1296

Sent via e-mail to: DesalEIR@WestBasin.org

**RE: Environmental Organizations and Green Business Comments on West Basin
 Municipal Water District Ocean Desalination Draft Environmental Impact Report**

Dear Dr. Yu:

We, the undersigned environmental organizations and green businesses, thank you for this opportunity to comment on West Basin Municipal Water District's (West Basin) Draft

↓ EOGB-1

Environmental Impact Report (DEIR) prepared pursuant to the California Environmental Quality Act (CEQA) for the proposed Ocean Water Desalination Project (Project).

While we are not opposed to ocean desalination as a source of potable water in appropriate circumstances, we are opposed to West Basin pursuing ocean desalination until the agency has exhausted more cost-effective and environmentally sound options to promote local water self-sufficiency, including:

- Significant additional conservation and efficiency measure to alleviate demand;
- Greater investment in multi-benefit stormwater capture and use;
- Expanding West Basin’s successful water recycling program; and
- Remediation of groundwater in the West Coast Basin through brackish desalination.

In addition to ocean desalination’s detrimental impacts to marine ecosystems, especially when open-ocean intakes are used as is the case of with the proposed Project, it is the most energy-intensive and expensive method of meeting our local water supply needs. At a time when we must be doing everything in our power to reduce our carbon footprint, West Basin must not invest its limited resources in a project whose energy demand will exacerbate climate change impacts, the burden of which will disproportionately impact the communities least equipped to deal with them. Likewise, West Basin should not be pursuing the most expensive option available to enhance local water supplies when much more cost-effective options exist. In a world of limited resources, committing valuable money, time, and expertise to ocean desalination is not only unwise, but inevitably hinders or even precludes more environmentally and financially sound options. For these reasons, ocean desalination should only be pursued as an option-of-last-resort.¹

CEQA requires that an agency avoid turning the environmental impact report into a post-hoc justification for its preferred alternative. (*Save Tara v. W. Hollywood* (2008) 45 Cal.4th 116, 136.) We are, thus, particularly concerned that the DEIR only analyzes three “build” alternatives and **all three alternatives evaluated involve construction and operation of an ocean desalination plant.** The DEIR does not allow a fully informed consideration of the Project by the public or the decisionmakers. The analyses, in several areas, are inadequate for failing to evaluate significant adverse environmental impacts and adequately mitigate for such impacts. In many areas, the DEIR also lacks substantial evidence to support its findings of less than significant impacts. We thank you for your careful consideration of the comments below.

Energy Impacts

- **The Project would result in the inefficient, wasteful, and unnecessary consumption of energy** and fails to comply with the directive of CEQA Guidelines Appendix F. Ocean desalination is the most energy-intensive option for increasing local water

EOGB-1

EOGB-2

EOGB-3

¹ See CAL. STATE ASSEMBLY SELECT COMM. ON WATER CONSUMPTION AND ALTERNATIVE SOURCES, NEW SOURCES FOR CALIFORNIA’S WATER SUPPLY 3 (2016), available at <https://mavensnotebook.com/wp-content/uploads/2016/04/Final-Report-Select-Committee-on-Water-Consumption-and-Alternative-Sources.pdf> (making the policy recommendation that desalination should be used as an option of last resort).

supplies.² The 20 MGD plant would have the electricity demand of as much as 18,185 homes and the 60 MGD plant would have the electricity demand of as many as 59,751 homes.³ In stark contrast, water conservation results in energy savings. For example, between June 2015 and May 2016, when statewide conservation measures were in place, California’s conservation rate of 24.5% over 2013 levels resulted in electricity savings of 1,830 GWh or the electricity use of 274,000 average Californian homes for a year.⁴ In light of the water supply opportunities available that would have significantly less energy impacts or could even result in energy savings, the Project would result in the inefficient, wasteful, and unnecessary consumption of energy.

EOGB-3

- The DEIR energy analysis does not present substantial evidence to support its conclusion that the impacts from *the most energy-intensive option for increasing local water supplies would have a less than significant energy impact*. For example, the analysis does not evaluate the potential significant impacts from the SCE electrical power grid upgrades that the DEIR states are anticipated to be required to supply the Project’s operations (DEIR, 5.5-21) and does not account for the recent SoCalGas Aliso Canyon natural gas storage facility blowout and limits the grid operator may now impose on usage under certain peak demand conditions.⁵

EOGB-4

EOGB-5

Greenhouse Gas Impacts

- The Project’s greenhouse gas (GHG) impacts should be considered significant. The Project would result in a greater contribution of GHG emissions into our atmosphere, than importing water over hundreds of miles through the State Water Project.⁶ Based on the 2014 power mix of Southern California Edison (SCE),⁷ the **20 MGD ocean desalination plant would contribute as much as 44,702 metric tons of CO₂e emissions per year and the 60 MGD plant would contribute as much as 146,879 metric tons per year.**⁸

EOGB-6

- While the DEIR states “West Basin is committed to reducing the Project’s GHG emissions to ‘net zero’ (net carbon neutral) *compared to continued use of imported water*”

EOGB-7

² HEATHER COOLEY & MATTHEW HEBERGER, KEY ISSUES IN SEAWATER DESALINATION IN CALIFORNIA: ENERGY AND GREENHOUSE GAS EMISSIONS (Pacific Institute 2013), available at <http://pacinst.org/wp-content/uploads/2013/05/desal-energy-ghg-full-report.pdf>; NAT. RES. DEF. COUNCIL, ET AL., PROCEED WITH CAUTION II: CALIFORNIA’S DROUGHTS AND DESALINATION IN CONTEXT (2016), available at <https://www.nrdc.org/sites/default/files/california-drought-desalination-2-ib.pdf>.

³ POWERS ENGINEERING, ASSESSMENT OF ENERGY INTENSITY AND GREENHOUSE EMISSIONS OF PROPOSED WEST BASIN DESALINATION PLANT AND WATER SUPPLY ALTERNATIVES 19 (2018), available at https://www.smarterwaterla.org/wp-content/uploads/2018/01/Powers_Engineering_2018_WB_Desal.pdf.

⁴ Edward S. Spang et al., 2018 *Environ. Res. Lett.* 13 014016, 2, 5–6.

⁵ See POWERS ENGINEERING, *supra* note 3, at 23.

⁶ POWERS ENGINEERING, *supra* note 3, at 22.

⁷ *Id.* at 16.

⁸ *Id.* at 21.

supplied by M[etropolitan] W[ater] D[istrict]” (emphasis added DEIR, 5.7-20.), **the DEIR fails to provide any evidence that MWD will reduce the volume of imported water on a one-to-one basis as a result of the Project.** As a result, the DEIR lacks substantial evidence to show the Project’s GHG contribution could be reduced to “net zero,” and the resulting mitigation proposed is inadequate.

EOGB-7

Energy and GHG Mitigation

- **The DEIR fails to adopt adequate mitigation measures for energy and GHG impacts.** In light of the alternative water supply options available that could avoid the significant energy and GHG impacts of the Project, including conservation, stormwater capture, recycling, and remediating brackish groundwater, the DEIR should have analyzed the Project’s impacts in comparison to such alternatives, and ultimately, proposed mitigation that reduced the Project’s GHG emissions *below* that of imported water.

EOGB-8

Land Use

- **The Project would conflict with El Segundo’s Local Coastal Program (ESLCP), and therefore, land use impacts should be considered significant.** The ESLCP may need to be amended before a coastal development permit could be issued for the Project because the ESLCP only anticipated minor modifications of existing energy facilities and construction of shoreline protective structures, not major construction of a new ocean desalination facility.
- With the hazards of sea-level rise and the shoreline’s growing susceptibility to erosion, it is unwise to invest half-a-billion dollars to build infrastructure on the coast that will exacerbate climate change.

EOGB-9

EOGB-10

Marine Biological Resources & Hydrology and Water Quality

- The DEIR uses an improper baseline to determine significant marine biological and water quality impacts by **arbitrarily limiting the environmental setting** to a small rectangular portion of the Santa Monica Bay. As a result of this limited marine study area, the DEIR **fails to account for the interconnectivity between ecosystems within Santa Monica Bay as a whole** and thus, fails to analyze a reasonable scope of impacts. In particular, the DEIR fails to analyze the significant impacts to the network of Marine Protected Areas in the Bay—Mugu Lagoon to Latigo Point Area of Special Biological Significance, the Point Dume State Marine Conservation Area and State Marine Reserve, the Point Vicente SMCA, and the Abalone Cove SMCA.
- While the DEIR discusses the requirements of the California Ocean Plan Desalination Amendment (Ocean Plan), it does not incorporate any of these requirements as a threshold of significance in the marine biological resources or hydrology and water quality analyses. As the Ocean Plan is the regulatory framework specifically adopted to address such impacts from ocean desalination facilities, **the DEIR should have**

EOGB-11

EOGB-12

evaluated the extent to which the Project will “minimize intakes and mortality to all forms of marine life”⁹ and applied this as a threshold of significance.

- The Ocean Plan requires desalination plants be sited, designed, utilize technology, and be operated to “minimize intakes and mortality to all forms of marine life.”¹⁰ Once-through cooling (OTC) infrastructure was decommissioned due to its adverse environmental impacts. Because the Project, proposes to use this decommissioned intake and discharge infrastructure, the Project’s intake and discharge will have adverse environmental impacts. **Use of this decommissioned OTC infrastructure is not appropriate.**
- The DEIR does not present substantial evidence to support its conclusion that impacts to marine biological resources and water quality would be less than significant. For example, the mere fact that the Project’s intake and brine discharge technology is permissible under the Ocean Plan does not preclude the potential for significant impacts. In fact, the Pacific Institute reports that the **“impacts of impingement and entrainment from desalination plants on the marine environment are not well understood” and may result in significant loss of biological productivity.**¹¹ With respect to **brine discharge impacts**, there is also a “lack of baseline ecological data,” but **studies “clearly demonstrate the potential for acute and chronic toxicity and small-scale alterations to community structure in marine environments.”**¹²

Environmental Justice

- Out of a 1000+ page draft environmental impact report, **only half of a single page is dedicated to analysis of environmental justice impacts and mitigation measures.** (See DEIR, 6-13.)
- **The DEIR analysis fails to account for multiple low-income or minority populations (such as Carson, 82.1% of which is disadvantaged communities, and Inglewood, 100% of which is disadvantaged communities)** by analyzing only census tracts where aboveground infrastructure would be implemented (El Segundo and Hawthorne). (DEIR, 5-13.)
- The DEIR compares the Project’s impacts on census tracts in Hawthorne to impacts on the city of Hawthorne as a whole. This is an unreasonably limited environmental setting and **fails to account for the Project’s impacts on low-income or minority populations in West Basin’s service area as whole, compared to the Project’s impacts on affluent communities in West Basin’s service area.** (DEIR, 6-11.)

EOGB-12
EOGB-13
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EOGB-18

⁹ See ST. WATER RESOURCES CONTROL BOARD, FINAL STAFF REPORT INCLUDING THE FINAL SUBSTITUTE ENVIRONMENTAL DOCUMENTATION FOR THE AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE WATERS OF CALIFORNIA, ADDRESSING DESALINATION FACILITY INTAKES, BRINE DISCHARGES, AND THE INCORPORATION OF OTHER NON-SUBSTANTIVE CHANGES, Adopted May 6, 2015, available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015_0033_sr_apx.pdf.

¹⁰ *Id.* at 11.

¹¹ HEATHER COOLEY ET AL., KEY ISSUES IN SEAWATER DESALINATION IN CALIFORNIA: MARINE IMPACTS 3 (Pac. Inst. 2013), available at <http://pacinst.org/wp-content/uploads/2013/12/desal-marine-impacts-full-report.pdf>.

¹² *Id.* at 14.

- The Project’s significant GHG emission contributions will exacerbate climate change, and **disproportionately impact low-income and minority communities, which are least able to adapt to or recover from climate change impacts.**¹³
- Many low-income and minority communities in West Basin’s service area already suffer from poor air quality.¹⁴ While the DEIR discusses SCE’s power mix, it does not identify the specific plants on which SCE relies. Thus, the **DEIR does not analyze the impacts to the communities that will be most heavily impacted by the Project’s high energy demand.**
- The half-a-billion dollar cost of building the Project will inevitably increase water rates for West Basin’s ratepayers. This **increase in water rates will disproportionately impact low-income populations** in West Basin’s service area relative to the more affluent populations.
- Further, there is significant disparity in the residential per capita water usage (R-GPCD) between the affluent communities and the low-income communities in West Basin’s service area. For example, affluent communities such as Palos Verdes use upwards of 200 R-GPCD, while customers in Hawthorne use only 62 R-GPCD, (DEIR, 7-13.).¹⁵ **The Project would effectively result in low-income communities subsidizing affluent communities’ excessive water consumption.**

EOGB-19
EOGB-20
EOGB-21
EOGB-22

Cumulative Impacts

- While the DEIR provides a “Cumulative Projects List” (DEIR, Table 4-1) of past, present, and probable future projects/development in the Project area, **the DEIR does not address how the combined nature of such projects would impact the region.** The mere fact that such future projects would be required to conform to the requirements of applicable regulations, does not necessarily preclude the potential for significant impacts.

EOGB-23

Alternatives to the Project

- **The only alternatives the DEIR analyzes are variations on building an ocean desalination plant. The DEIR does not analyze conservation, stormwater capture, recycling, brackish groundwater desalination, or any combination of these water supply options in its alternatives analysis.**
- **The DEIR relies on an unsubstantiated need for the development of 21,500 acre-feet per year (AFY) of new, potable water supply.** Neither West Basin’s 2015 Urban Water Management Plan nor MWD’s Integrated Water Resources Plan support the need

EOGB-24
EOGB-25

¹³ U.S. GLOBAL CHANGE RESEARCH PROGRAM, THE IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES: A SCIENTIFIC ASSESSMENT (2016), available at <https://health2016.globalchange.gov/>.

¹⁴ See CALENVIROSCREEN 3.0, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited June 8, 2018).

¹⁵ STATE WATER RESOURCES CONTROL BOARD, *August Supplier Conservation*, 9, 10 (2017), https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2017oct/supplierconservation_100317.pdf.

for 21,500 AF of new potable water supply. Yet, the DEIR includes a requirement that 21,500 acre-feet per year (AFY) of new, potable water supply be developed. This 21,500 AFY requirement is not disclosed as a project objective, and instead, operates as a shadow objective, which the DEIR uses to eliminate conservation, stormwater capture, and recycling as alternatives to the Project.

EOGB-25

- **Conservation, stormwater capture, recycling, and brackish groundwater desalination are alternatives that would increase local water supplies, avoid the significant adverse environmental impacts of the Project, including the energy, GHG, marine, water quality, and environmental justice impact, and would meet most of the DEIR’s stated project objectives.** The DEIR alternatives analysis is inadequate for failing to, at least, analyze a hybrid alternative that includes a combination of such alternatives.

EOGB-26

- In particular, West Basin has been a leader in recycled water with its Edward C. Little Water Recycling Facility (ECLWRF) that currently recycles approximately 35 MGD of secondary effluent from the Hyperion Water Reclamation Plant. While we applaud West Basin’s efforts to increase recycling at ECLWRF to 70 MGD, ECLWRF is “designed for ultimate expansion to 100 MGD.”¹⁶ **Expanding recycling at ECLWRF to its maximum capacity would more than eliminate the need for the 20 MGD plant.**

EOGB-27

For the reasons outlined above, as well as those expressed in Los Angeles Waterkeeper and Heal the Bay’s comment letters, we respectfully request that the DEIR be revised and recirculated. We also strongly encourage West Basin to employ a Reduce, Reuse, Recycle, and Restore approach to developing its water supply portfolio and comprehensively explore the numerous opportunities it has for increasing conservation, stormwater capture, recycling, and brackish groundwater remediation, instead of pursuing ocean desalination at this time. Once again, thank you for your careful consideration of our comments.

EOGB-28

Sincerely,



Melissa Kelly
Los Angeles Waterkeeper

On behalf of:

Craig Cadwallader
Surfrider, South Bay Chapter

Conner Everts
Desal Response Group

Nancy Shrodes
Heal the Bay

Marcus Eriksen
5 Gyres

¹⁶ CH2M HILL, WATER REUSE CASE HISTORY: WEST BASIN WATER RECYCLING/PETROLEUM REFINERY REUSE PROGRAM (WATER MATCH).

Comment Letter ENVIRO ORGS

Merle Moshiri President Residents for Responsible Desalination	Susan Jordan Executive Director California Coastal Protection Network	Conner Everts Environmental Water Caucus	Veronica Padilla Pacoima Beautiful
Sherry Lear and Damien Luzzo Co-Organizers 350 South Bay Los Angeles	Marco Gonzalez Coastal Environmental Rights Foundation	Jonathan Parfrey Climate Resolve	Pamela Berstler Green Gardens Group
Sean Bothwell Policy Director California Coastkeeper Alliance	Graham Hamilton Surfrider, Los Angeles Chapter	Finian Makepeace Kiss the Ground	Charming Evelyn Sierra Club
Pam Heatherington Board of Directors Environmental Center of San Diego	Siobhan Dolan Southern California Watershed Alliance	Azita Yazdani President and CEO Exergy Systems, Inc.	Melanie Winter The River Project
Leslie Mintz Tamminen Director Seventh Generation Advisors	Joseph K. Lyou President & CEO Coalition for Clean Air	Adam Scow Food and Water Watch	Dan Silver Endangered Habitats League
Stephen Mejia-Carranza Friend of the LA River	Alison Lipman SELVA International	Mia Lehrer Studio-MLA	Anna Ehrgott Sagebrush



June 25, 2018

Patrick Shields
General Manager
West Basin Municipal Water District
17140 S Avalon Blvd
Carson, CA 90746

Subject: Ocean Water Desalination Draft Environmental Impact Report

Dear Mr. Shields:

Golden State Water Company (Golden State Water) appreciates the opportunity to comment on West Basin Municipal Water District's (West Basin) draft Environmental Impact Report (EIR) for its proposed ocean water desalination project. Golden State Water provides water service to over 250,000 customers located within 75 communities throughout 10 counties in Northern, Coastal and Southern California. Within West Basin's service area, Golden State Water serves approximately 65,000 customers, including the cities of Culver City, Gardena and Lawndale, and portions of Carson, Compton, El Segundo, Hawthorne, Inglewood, Redondo Beach, and the unincorporated communities of Athens, Del Aire, El Camino Village, Lennox and Gardena Heights. Golden State Water offers these comments in order to help facilitate a productive outcome on this important effort.

As the primary project location is not within Golden State Water Company's service area, we have few comments on the draft EIR itself. One area that could impact our customers relates to the Transportation and Traffic (Section 5.15). Section 5.15.1 indicates that "Depending on the final alignments and site selection, the proposed desalinated water conveyance facilities and regional pump station optional sites would traverse or be sited within the city of El Segundo and/or the following other surrounding jurisdictions:

- Gardena
- Hawthorne
- Lawndale
- Los Angeles County Department of Public Works
- Redondo Beach
- Torrance
- Del Aire – an unincorporated community of Los Angeles County
- El Camino Village – an unincorporated community of Los Angeles County"

As stated above, Golden State Water serves several of these areas, thus would likely have customers who are impacted by this construction work. During water pipeline construction, customers do not necessarily know which water utility is performing the construction, thus may contact Golden State Water with questions or concerns. This has been an issue in the past when West Basin has installed recycled water pipeline in our service area. If this project is

GSW-1

June 25, 2018
Sheilds
Page 2 of 2

constructed, Golden State Water requests that West Basin communicates closely with Golden State Water while laying pipeline and/or constructing pumping stations within our service area. This will help Golden State Water to better inform our customers if we receive questions about the project.

↑
GSW-1

Additionally, West Basin may be installing pipeline in alignments where Golden State Water also has potable water pipeline. The addition of new pipeline in the streets could limit Golden State Water when planning infrastructure improvements in the future, as finding locations to install new pipeline may be more difficult with West Basin's desalinated water pipeline also in place. Golden State Water requests that West Basin work closely with our Engineering Planning Department if planning for desalinated water pipeline within the Golden State Water service area. This could help to ensure that Golden State Water is better able to provide infrastructure improvements to our customers in the future.

GSW-2

Though not addressed specifically in the draft EIR, Golden State Water remains concerned about the costs related to designing and operating a desalination plant, particularly its impact on our customers' rates. We also must ensure that distributing desalinated water within our service area does not negatively impact the quality of the water served to our customers. We request that West Basin continue to engage with Golden State Water to address these concerns.


GSW-3

As stated in our letter to West Basin dated April 20, 2016, Golden State Water would support a desalination program that increases local water supply reliability in a cost effective and environmentally responsible manner. We look forward to working with West Basin as you continue to examine the feasibility of this project.

GSW-4

Once again, thank you for providing us the opportunity to provide these comments. If you have any questions, please contact me at knutting@gswater.com or (310) 767-8200 x500.

GSW-5


Katherine Nutting
General Manager, Southwest District
Golden State Water Company



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June 25, 2018

Zita Yu, Ph.D., P.E.
Project Manager
West Basin Municipal Water District
17140 South Avalon Boulevard, Suite 210
Carson, California 90746-1296

Sent via e-mail to: DesalEIR@WestBasin.org

RE: West Basin Municipal Water District Ocean Desalination Draft Environmental Impact Report

Dear Dr. Yu:

On behalf of Heal the Bay, we submit this letter in response to the West Basin Municipal Water District (West Basin) Desalination Draft Environmental Impact Report (DEIR). We appreciate the opportunity to provide comments and for the extended public comment period granted by the West Basin Board of Directors in May 2018.

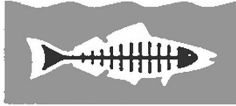
For over 30 years, Heal the Bay has worked to ensure that our coastal waters and watersheds are clean, healthy, and safe. With over 15,000 members, we have worked to protect our waterways in Los Angeles. Since our inception, we have been actively working on water quality and ecosystem health issues for the region. We recognize the need for increased local water supply in Los Angeles, and are very supportive of the Mayor’s Sustainability pLAN to reduce our reliance on imported water supply by 50% by 2025, and supply 50% of our water locally by 2035.¹ Through Heal the Bay’s Know the Flow initiative, we have educated over 30,000 Angelenos since 2016 about where our water comes from in LA, the challenges we face with our old infrastructure and dependence on an increasingly unreliable imported water supply, and the solutions we need to invest in as a community to build a water resilient city.² We identify the need to capture, conserve, reuse and restore as the path to success in achieving these goals.

West Basin has done exemplary work with wastewater recycling projects, stormwater capture projects, and conservation programs. We applaud the decision to increase their yield from Hyperion from 40 MGD to 70 MGD, and their support of conservation programing. However, we are opposed to ocean water desalination in Los Angeles County, as it is the most expensive and energy intensive process to establish local water, as identified in the Pacific Institute Report

HTB-1

¹ Sustainability pLAN, p. 17, <http://plan.lamayor.org/wp-content/uploads/2017/03/the-plan.pdf>.

² Know the Flow, Presented by Heal the Bay. <http://knowtheflow.la>.



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on Seawater Desalination in California.³ Considering these drawbacks as well as the direct environmental impacts, ocean water desalination must be a last resort, after all other resources have been exhausted. We are far from exhausting other sustainable ways of sourcing water; desalination is not the answer.

HTB-1

We specifically oppose the desalination plant proposed in West Basin's DEIR (the Project), based on significant concerns about the impact it will have on public and environmental health. Heal the Bay staff identified multiple areas of concern in reviewing the DEIR. We have identified six major themes of concern throughout the DEIR:

- No true ANALYSIS of CUMULATIVE impacts
- Exclusion of analysis of any Alternative Project other than the construction and operation of a desalination plant
- Vague language surrounding inadequate mitigation efforts
- Lack of clarity on the scope and scale of the project (the local project versus the regional project)
- Arbitrary and narrow/inadequate scope of environmental setting
- Vague promises and commitments surrounding testing and compliance protocol, eliciting our concern about enforcement

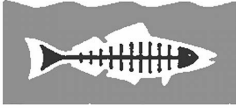
HTB-2

The Project area is hazardous due to erosion and seismic risk, and therefore unsuitable for the construction and operation of a large-scale near-shore project. The Project also poses the potential for significant water quality degradation, with no documentation or analysis made to support the claim that the Project will comply with all NPDES and anti-degradation regulations. There is no substantial evidence to support that the brine discharge and the ocean intake will have less than significant impacts on all forms of marine life, even with suggested mitigation strategies included, potentially impacting both commercially valuable and endangered species. The analysis of cumulative impact is insufficient, as it only addresses one small section of the Santa Monica Bay, and does not evaluate how the impacts of all projects listed could affect the region cumulatively. And the screening guidelines for the proposed alternatives use standards that unreasonably exclude more cost-effective, energy efficient, and environmentally sound options. We request that the DEIR be revised and recirculated to address these concerns.

In this letter, we offer a technical review of the DEIR, focusing on the above areas of concern in the following topics:

- Geology, Soils and Seismicity
- Hydrology and Water Quality
- Marine Biological Resources

³ Heather, Cooley & Matthew Heberger, *Key Issues in Seawater Desalination in California: Energy and Greenhouse Gas Emissions* (Pacific Institute 2013), available at <http://pacinst.org/wp-content/uploads/2013/05/desal-energy-ghg-full-report.pdf>.



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- o Environmental Justice
- o Cumulative Impacts
- o Alternatives
- o Discrepancies and Missing Information

HTB-2

We thank you for your consideration of these comments, which are discussed in further detail below.

Geology, Soils, and Seismicity

Geologic Conditions

The beach near the Project area is geologically unstable as a result of 1) long-shore erosion due to wave action, 2) subsurface composition that has been known to cause liquefaction in the event of seismic activity, and 3) slope instability leading to a possible landslide hazard (DEIR, 5.6-9, 5.6-11, 5.6-12). Large scale near-shore construction, which would be necessary to complete the Project, could trigger a hazardous event or increase the severity of natural hazardous processes. Additional steps must be taken to address and mitigate these effects, which will broaden the scope of the Project. Even if these additional steps are taken, the increased risk for environmental degradation cannot be completely eliminated. Furthermore, the El Segundo Local Coastal Program (ESLCP) identifies the beach in front of the Project as hazardous due to erosion, an issue "greater than local significance." ASLCP expects few, if any, future projects of significant development due to this sensitivity.⁴

HTB-3

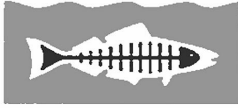
The Chevron Groin, located at the beach directly in front of the proposed facility, already makes the beach much shorter than the surrounding areas, preventing accumulation naturally from littoral drift, and more likely to reach eroded conditions (which were noted in Appendix 5B as having higher adverse effects than accreted conditions). The groin effects on the sea level rise projections were never specifically addressed within the DEIR or in the Sea Level Rise Appendix (Appendix 5B). We would like to see the DEIR recirculated, addressing this concern.

Seismic Hazards

The DEIR states that there will be a less than significant impact from the Project in the event of seismic activity, citing compliance with existing regulations (DEIR, 5.6-16). West Basin is assuming compliance with existing regulations and conditions without providing supporting documentation, so **there is still risk for significant environmental and public impacts if compliance is not met.** Additionally, compliance with regulation can mitigate these impacts, but **not eliminate them entirely.** There is an unfortunate history in Los Angeles of public and environmental catastrophes occurring when large-scale projects are built in areas that are not

HTB-4

⁴ <http://www.elsegundo.org/civicax/filebank/blobdload.aspx?blobid=3731> *Id.* Staff Summary and Recommendation at 9 and at 30.



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geologically stable (e.g. the failure of St. Francis Dam⁵). Clear and substantial environmental hazards have been identified within the Project area, as discussed above in the Geologic Conditions section. Therefore, the construction of a large-scale project in this area creates considerable unnecessary risk to public and environmental health.

↑
HTB-4

Hydrology and Water Quality

Water Quality Impacts

West Basin states that the quality of surface water is primarily a function of land uses in the Project Area and points to stormwater and urban runoff as a major source of pollution (DEIR, 5.9-30). The report also acknowledges that the Dominguez Channel Watershed is on the Clean Water Act (CWA) 303(d) list as impaired for copper, ammonium, diazinon, bacteria, lead, zinc and toxicity; and that the Santa Monica Bay is on the CWA 303(d) list as impaired for debris, sediment toxicity, dichlorodiphenyltrichloroethane (DDT), and polychlorinated biphenyls (PCBs) (DEIR, 5.9-1, 5.9-2). Other contaminants of concern within the Santa Monica Bay include polycyclic aromatic hydrocarbons (PAHs), chlordane, tributyltin (TBT), cadmium, chromium, copper, lead, nickel, silver, zinc, pathogens, total suspended solids (TSS), nutrients, trash and debris, chlorine, oil and grease. Oxygen demand is also a concern within the Santa Monica Bay (DEIR, 5.9-34).

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HTB-5

Construction activity will have adverse effects on water quality. Even with utilizing the existing water tunnels, extensive offshore construction is needed to complete the Project. The potential effects of this underwater construction will degrade water quality during construction activity throughout a 12-month period.

Increased turbidity during off-shore construction can affect marine life directly by obstructing the capacity of fish gills, and by blocking sunlight from reaching marine plant life and phytoplankton that rely on the process of photosynthesis.⁶ Degradation of this basic food source, the base of the aquatic food chain, also disrupts the ecosystem indirectly. Santa Monica Bay is on the CWA 303(d) list as impaired for sediment toxicity, DDT and PCBs. Disturbing the sediment would release additional DDT and PCBs into the water column and eventually into fish tissue.⁷ Increasing contaminant concentrations within the water column can affect public health either

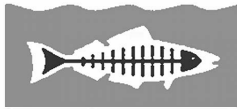
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HTB-6
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⁵ Rogers, David J. 2006. Lessons Learned from Fantastic Failures: Lessons Learned from the St. Francis Dam Failure. [https://web.mst.edu/~rogersda/st francis dam/lessons learned from the st francis dam failure{geostrata ma r-apr 2006}.pdf](https://web.mst.edu/~rogersda/st%20francis%20dam/lessons%20learned%20from%20the%20st%20francis%20dam%20failure%28geostrata%20ma%20r-apr%202006%29.pdf).

⁶ Erftemeijer, Paul and Lewis, Roy. 2006. Environmental impacts of dredging on seagrasses: A review: Marine Pollution Bulletin, v. 52, p. 1553-1572.

⁷ Ramboll Environ US Corporation. 2015. Sampling and Analysis Report for Surface Sediment Characterization and Polychaete Tissue Collection Program at the Greater Los Angeles and Long Beach Harbor Waters.

⁸ [https://www.waterboards.ca.gov/losangeles/board decisions/basin plan amendments/technical documents/12 8 New/01ENVIRONReportSedimentandPolychaeteSpecialStudy{062915}.pdf](https://www.waterboards.ca.gov/losangeles/board%20decisions/basin%20plan%20amendments/technical%20documents/12%20New/01ENVIRONReportSedimentandPolychaeteSpecialStudy{062915}.pdf).



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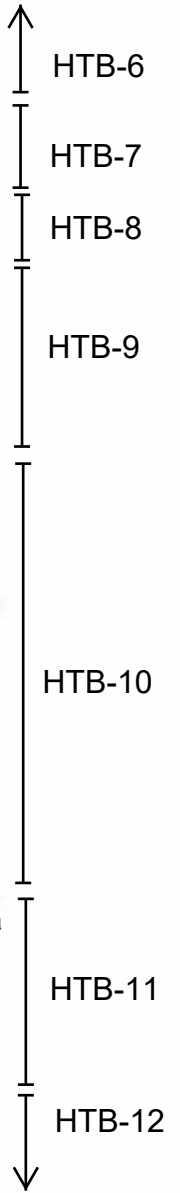
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directly through contact with contaminated water, or indirectly through the consumption of fish that have been exposed to increased contamination within the water column.

The Santa Monica Bay Restoration Commission recognizes that the level of dissolved oxygen within the Santa Monica Bay is an issue of concern.⁸ Offshore construction activities can reduce dissolved oxygen levels, which would affect marine life. Additionally, off-shore construction will occur over a 12-month period, providing sufficient potential for the accidental release of hazardous construction related materials (DEIR, 5.9-44). In view of the fact that the Project is a single-purpose water supply project that is unnecessary, considering all of the alternatives (i.e. stormwater capture, conservation, recycling, and remediating brackish groundwater), exposing the public and the environment to these potential hazards is reckless. We request that the draft EIR be recirculated, with a comprehensive analysis of the cumulative impacts of construction activities on both public and environmental health and safety.

Operation and Maintenance of the Project will also have adverse effects on water quality. The DEIR specifically cites how the brine discharge could result in areas of hypoxia and that the brine could contain increased concentrations of constituents that originated in the ocean and that are regulated under the California Ocean Plan (DEIR, 5.9-50). Dilution of this contaminated brine using the surrounding ocean water is a short-sighted and short-term remediation approach because dilution is not the solution to pollution. Returning these contaminants to the ocean at a single source will cause accumulation of that contamination in the surrounding water and sediment, even if it is diluted at the moment of release, which can have a significant long-term effect on public and environmental health.⁹ Analysis and modeling of ocean currents within the Santa Monica Bay would be necessary to determine if subsurface flow is consistent enough to disperse the increasingly concentrated ocean water near the discharge point to prevent accumulation of sediment toxicity.

Some of the material that would be used during off-shore operations for the Project may cause an accumulation of toxic material within the sediment and the water column. For example, copper leaching from the intake screen structure would release copper ions into the surrounding waters. The DEIR claims that because this would be a very slow process in seawater, it would not result in exceedances of the California Ocean Plan water quality objectives for copper (DEIR, 5.9-56, 5.9-57). Copper is already considered a contaminant of concern within the Santa Monica Bay. Copper is toxic to phytoplankton and other aquatic vegetation by disrupting the process of photosynthesis.¹⁰ Copper toxicity of this basic food source could have a detrimental ripple effect



⁸ The Santa Monica Bay Restoration Commission Bay Restoration Plan.

https://www.smbrc.ca.gov/about_us/snbr_plan/docs/snbrplan_execsum2008.pdf.

⁹ State Water Resources Control Board. 2018. ADOPTION OF AMENDMENTS TO THE WATER QUALITY CONTROL PLAN FOR ENCLOSED BAYS AND ESTUARIES: SEDIMENT QUALITY PROVISIONS.

https://www.waterboards.ca.gov/water_issues/programs/bptcp/docs/sediment/060518_drft_reso.pdf.

¹⁰ Marcela Brandão Costa, Francesca Valêncio Tavares, Claudia Bueno Martinez, Ioni Gonçalves Colares, Camila de Martinez Gaspar Martins. 2018. Accumulation and effects of copper on aquatic macrophytes *Potamogeton pectinatus* L.: Potential application to environmental monitoring and phytoremediation, Ecotoxicology and Environmental Safety. <https://doi.org/10.1016/j.ecoenv.2018.01.062>.



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up the food chain, affecting the entire aquatic ecosystem. Copper has also been shown to adversely impact salmon populations by causing larval deformities and delayed hatching, and affecting sensory organs which potentially compromises their ability to return to spawning streams and to avoid predators.¹¹ **The fact that copper is already a contaminant of concern within a waterbody does not justify the initiation of a project that will discharge additional copper into the waterbody.**

HTB-12

Heal the Bay was a key proponent in the State Water Resources Control Board adopting the decommissioning of once-through cooling (OTC) due to its devastating environmental effects, as OTC was no longer “best technology available for minimizing adverse environmental impact” as required by Section 316(b) of the CWA,¹² requiring closed cycle cooling instead. The open ocean intake system was decommissioned due to its adverse environmental impacts, making it inherently flawed to claim that there would be no significant impacts on utilizing this screened open ocean intake system. The DEIR notes that there has not been any proper assessment to evaluate the effectiveness of wedgewire screen’s performance, as it is a new technology to be used, making the conclusion of no significant impact illogical (DEIR, 5.11-52).

HTB-13

Based on the many potential water quality impairments discussed above, **we do not agree that the Project will have no significant impact on the water quality**, contrary to what is claimed in the DEIR. We request that the DEIR be revised and recirculated with a comprehensive analysis of cumulative water quality effects.

HTB-14

Regulatory Compliance

This project further degrades water quality, and therefore it may not be feasible for the project to adhere to the NPDES permit requirements. The requirements of an NPDES permit depend on the sum total of contaminant discharge into that water body. West Basin has already acknowledged that the Santa Monica Bay is on the CWA 303(d) list, and they have identified multiple other sources of contamination. This project, taken in isolation, may not have a significant long-term effect on the water quality. However, if it is taken in context with the existing contamination as well as the other sources that have not yet reached compliance, it could. There is no evidence that suggests it will be in compliance, as claimed, and no alternative to brine discharge into the ocean is presented in the DEIR, if compliance is not met and discharge is restricted. We request that the DEIR be revised with alternative brine discharge locations and options.

HTB-15

¹¹ Urma Mahrosh, Merethe Kleiven, Sondre Meland, Bjørn Olav Rosseland, Brit Salbu, Hans-Christian Teien, Toxicity of road deicing salt (NaCl) and copper (Cu) to fertilization and early developmental stages of Atlantic salmon (*Salmo salar*): Journal of Hazardous Materials. <https://doi.org/10.1016/j.jhazmat.2014.07.076>.

¹² St. Water Resources Control Board, Res. No. 2015-0018, Adoption of an Amendment to the Water Quality Control Policy on the Use of Coastal and Estuarine Waters for Power Plant Cooling, https://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/appendix_a.pdf.



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Additionally, the fact that these waters are contaminated from previous and current pollutant loading from surface runoff does not mean that additional pollution will not harm the ecosystem. In fact, it requires that the Project meet additional anti-degradation requirements. The State Water Resources Control Board recognizes that there are serious contamination issues in both Santa Monica Bay and the Dominguez Channel Watershed. We believe that it may not be feasible for the project to adhere to the NPDES permit requirements. If the claim of no significant impact is made on the basis that regulatory requirements will be met, there must be proof of feasibility that these requirements *can* be met. Consultation with Regional Board Staff and supporting documentation must be included in the DEIR.

HTB-16

Coastal Flooding

By 2100, the ESGS North and South Sites would be located in an area at risk of potential coastal flooding, but mitigation efforts can be made to protect against these flooding risks (DEIR, 5.9-37). With an operational life span of only approximately 50 years, it is not viable to initiate a coastal-adjacent project that will require mitigation efforts within the next 100 years, especially considering a project that is supposedly addressing long term water supply concerns, with climate change impacts (such as sea level rise) that span beyond the life of this project. Steps to mitigate flood potential due to rising sea levels will broaden the scope of the Project, and even if these additional steps are taken, the risk of flooding cannot be completely eliminated.

HTB-17

Additionally, the risk of flooding due to climate change induced sea level rise adds to the growing list of natural disasters that are likely to occur within the Project area and that require mitigation efforts: beach instability, liquefaction, landslide, and flooding. This further identifies the Project area as unsuitable for the construction, maintenance and operation of a large-scale, near-shore project.

Marine Biological Resources

Brine Discharge

Physical and chemical effects on larvae and phytoplankton are expected from the brine discharge.¹³ There is also concern about the effects on marine life from contaminated discharge; both from antifouling agents (DEIR, 5.11-60, 5.11-61) and/or brine containing concentrated pollutants originally found in the intake ocean water (DEIR, 5.11-49, 5.11-56, 5.11-58). These effects on larvae may in turn affect the recruitment of new individuals into the populations of ecologically and economically important fish (such as CA halibut, croaker and CA Sheephead) and invertebrate species (lobster and market squid). Further, the DEIR recognizes that the intakes will have impacts to larvae and phytoplankton. Specifically, the speed of intake of 30 feet/min is fast, and at a size of ~1.0 mm larvae will still pass through (DEIR, 5.11-52, 5.11-53). The DEIR

HTB-18

¹³ Heather, Cooley & Matthew Heberger, Key Issues in Seawater Desalination in California: Energy and Greenhouse Gas Emissions (Pacific Institute 2013), available at <http://pacinst.org/wp-content/uploads/2013/05/desal-energy-ghg-full-report.pdf>.



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cites these impacts as less than significant, with mitigation incorporated, but the mitigation strategy itself is unclear. Page 5.11-52 states that “Regardless of the magnitude of the impact of discharge-induced entrainment, it would be expected to be reduced through the application of mitigation to restore or enhance marine or coastal habitat, which could include a local coastal marsh restoration project such as the Ballona Wetlands Restoration Project. Therefore, the implementation of Mitigation Measure BIO-M2 would reduce Project related entrainment impacts of non-special-status taxa, to less than significant after mitigation.” We disagree; **these are significant impacts that the mitigation actions do not address effectively.** This is just one example of the vague language used around mitigation, which is then asserted to result in less than significant impacts. Other mitigation strategies proposed, such as paying the “appropriate fees” to the “appropriate agencies,” are not mitigation strategies that reduce the impacts to be less than significant. This is something that can be mandated if an agency is hit with incompliance, but should not be considered a mitigation strategy.

↑ HTB-18
|
| HTB-19

Endangered Species

Populations of species like black abalone (Federal Endangered Species Act listed) and giant/black seabass in CA are very low. There are State Marine Reserves (SMR) and State Marine Conservation Areas (SMCA) north and south of the proposed site. Abalone Cove in Palos Verdes is 7 miles away and Pt. Dume in Malibu is 22 miles away from the proposed Project location. The DEIR mentions that abalone larvae have not been documented through their studies but that they may occur in the area, just not often. The table on p.5.11-30 lists four species of abalone, and under the column “potential to occur in study area,” it reads “not expected.” **While the habitat for the adult species may not be found in the study area, the larvae may.** The SMRs and SMCAs may be assumed to be a likely source of abalone larvae. Abalone were historically found on rocky areas along the coast.¹⁴ The potential for the larvae to recolonize historic range may be hindered by the project activities (DEIR, 5.11-30, 5.11-42).

| HTB-20

Noise

We have serious concerns about the negative effects of underwater noise on marine mammals and marine reptiles (e.g. turtles) from construction and operation activities; and particularly when added to other ongoing projects, creating a magnified effect. The project timeline should be compared to and analyzed with other projects expected to generate noise levels that may affect marine life; such as the U.S. Navy 5-Year Military Readiness Training and Testing Program currently under consideration by the California Coastal Commission (DEIR, 5.11-39, 5.11-46). **This is just another example of how true cumulative impacts and analysis are not included in the DEIR.**

| HTB-21

¹⁴ California's Living Marine Resources: A Status Report, Abalones, 1-17 (2011), <https://www.wildlife.ca.gov/Conservation/Marine/Status/2001>.



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Emissions

Greenhouse gas emissions (GHGE) are contributing to changing conditions in ocean water, which in turn may affect coastal marine populations by reducing their resilience.¹⁵ There are expected cumulative impacts at the global level from an increase in the number of desalination plants; and their contribution through GHGE is expected to have an effect on marine ecosystems at the local level.¹⁶ In addition, increased storm activity off the CA coast may increase the likelihood of machinery malfunctions during construction or plant operation, which can potentially further affect marine life. The Project is expected to have very high energy demands, and an accompanying high GHGE (refer to coalition letter on energy and emissions). **Section 5.11 of the DEIR fails to address how West Basin plans to mitigate for any potential negative effects on marine systems as a result of their GHGE.**

HTB-22

HTB-23

HTB-24

Moreover, the Project would directly oppose the City of Los Angeles Carbon-Neutrality by 2050 goal.¹⁷ While West Basin has stated they will implement mitigation efforts to offset their carbon footprint, not emitting carbon in the first place is a much better approach. In addition, as we state throughout this letter, there are other, better water supply projects that do not emit as much (if any) carbon, and many that will actually increase carbon sequestration; this includes nature based solutions that create healthy soils and vegetation.

HTB-25

Subsurface Intake and Screened Intake

The DEIR does not assess an alternative that would support subsurface intake. According to the California Water Code, all new desalination facilities must use the best available technology to “minimize the intake of all forms of marine life.” (Cal. Water Code § 13142.5(b).) The Ocean Plan considers subsurface intake as the preferred technology, and requires new plants to evaluate the feasibility. The DEIR asserts infeasibility for a plant with the design capacity of 40 MGD intake (20 MGD plant). However, the DEIR should have examined a plant of reduced capacity (5-15 MGD) as an alternative that could support subsurface intake. We ask that the final EIR include this alternative.

HTB-26

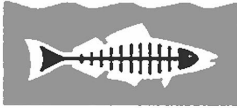
As mentioned earlier in this letter, the DEIR notes that there are no current studies that examine the effectiveness of wedgewire screens at an active facility, nor the magnitude of the reduction of larval intake that would result (DEIR 5.11-52, 5.11-53). The *Intake Effects Assessment Report* (Tenora 2014) completed by consultants examined a model plant with an intake of 0.511 MGD of seawater, which was then used to assess the Project which would intake 45.4 MGD. This is an

HTB-27

¹⁵ Climate Change 2014 Synthesis Report Summary for Policymakers, Intergovernmental Panel on Climate Change, 1, 2 (2014) https://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf.

¹⁶ Heather, Cooley & Matthew Heberger, Key Issues in Seawater Desalination in California: Energy and Greenhouse Gas Emissions (Pacific Institute 2013), available at <http://pacinst.org/wp-content/uploads/2013/05/desal-energy-ghg-full-report.pdf>.

¹⁷ “L.A. to Go Carbon-Neutral by 2050.” Office of Los Angeles Mayor Eric Garcetti, Office of Los Angeles Mayor Eric Garcetti, 7 June 2018, www.lamayor.org/mayor-garcetti-announces-la-go-carbon-neutral-2050.



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89% increase from the demonstration facility, but the DEIR states no significant impact based on this model. That is an unreasonable conclusion, as the Project volume intake is much larger, and the wedgescreen is untested intake technology at that scale. **All of these stressors combined pose a cumulative threat not addressed by the DEIR marine section.**

HTB-27

Enforcement

Experience suggests that agencies such as the California Coastal Commission (CCC) and California Department of Fish & Wildlife (CDFW) have very limited resources for enforcement. What are the enforcement capabilities of the relevant agencies to ensure West Basin complies with regulations/permit requirements and conditions? (DEIR, 1-10) We recommend that any research completed addressing mitigation or compliance be completed by a third party, to ensure transparency.

HTB-28

Environmental Justice

We have a number of environmental justice concerns, including:

1. Only half of a page throughout the entire 1,000+ draft environmental impact report addresses analysis of environmental justice impacts and mitigation measures (DEIR, 6-13).
2. The DEIR only addresses impacts of census tracts where above ground infrastructure would be built (Hawthorne and El Segundo), failing to include impacts to other low-income communities in their service area (DEIR, 5-13).
3. The Project will cost half-a-billion dollars to build, which will increase water rates for rate payers. **The cost will disproportionately impact low-income communities in the service area.** And as more affluent water users tend to have higher water demands, this effect will be exasperated (ex. PV- 200 R-GPCD vs. Hawthorne- 62 R-GPCD (DEIR, 7-13)).¹⁸

HTB-29

Cumulative Impacts

As noted throughout this comment letter, **there lacks a true review of cumulative impacts and analysis.** The Basis of Cumulative Analysis (Section 4 of the DEIR) was simply a laundry list of projects (construction and intake/discharge in the Southern CA Bight). Cumulative effect is even defined using the California Coastal Act on p. 4-1 as “the incremental effects of an individual project (that) shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” But the “analysis” in each section discussed thus far only examines the impacts of the local project within the arbitrarily chosen environmental setting. **There lacks any analysis of how all the regional projects impact the environment cumulatively.** It is far too narrow in scope, resulting in insufficient analysis. And

HTB-30

¹⁸ State Water Resources Control Board, *August Supplier Conservation*, 9, 10 (2017), https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2017oct/supplierconservation_100317.pdf.



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although promises of cumulative impacts are made in Section 4 regarding analysis of ocean intake and discharge in Section 5.11, cumulative analysis of these projects is lacking.

↑
HTB-30

In addition, the DEIR specifically mentions that it won't be analyzing the impacts of the regional project, as there are many details that have not been determined, but then uses language throughout as if the regional project is inevitable. The way the DEIR is written seems to suggest that one DEIR would be sufficient for both the local and the regional project, when only looking at adverse effects of the local 20 MGD project. This is absolutely not the case. We want to point out and ensure that another DEIR would be required for an expanded project, as it was not sufficiently addressed in this DEIR due to the undetermined details. Tripling the intake for a regional project would have cumulative impacts that would be far more significant than that of a 20 MGD plant.

HTB-31

The DEIR assumes that "rather than provide additional capacity, the desalinated potable water would replace imported water use in West Basin's service area in the future," replacing 11% of imported demand (DEIR, 4-10). However, this is an unsubstantiated claim, with no evidence to support it. Adding desalination to the water portfolio does not necessarily reduce the purchase of imported water, nor negate impacts associated. They are not mutually exclusive. In fact, there is evidence that suggests otherwise. After the Poseidon Plant in Carlsbad was approved by the Coastal Commission, it came to light that they knowingly misled the agency with illusions to a 1-1 ratio (desalination vs imported) when they had an agreement with Metropolitan Water District (MWD) through 2035 that specifically included a clause where no new desalination water could replace the water purchase from MWD in that time frame (see Attachment A, California Coastal Commission Staff Report).

HTB-32

Alternatives

The only alternatives considered in this DEIR involve the operation and construction of a desalination plant, ruling out more cost-effective and efficient options such as conservation, stormwater capture, recycling, and brackish water desalination to remediate groundwater supplies, or any combination of these possibilities. These would meet most of the Project objectives and avoid many of the associated environmental impacts of this desalination plant. And yet they were screened as infeasible options, as they did not meet at least one of seven requirements, some of which were arbitrary. We believe it is insufficient to use these particular requirements as the basis of excluding valid alternatives.

HTB-33

Looking at this project as part of a larger issue, the purpose of creating a desalination plant is to address the water supply issue in Southern California. However, if water quality is compromised, that water is no longer available as a water supply benefit; therefore, water quality is a water supply issue. Our resources cannot be put towards these single-benefit projects when so many multi-benefit project options are available to us that can address water quality and water supply while also providing community investments.

HTB-34



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Stormwater capture projects are well suited for Los Angeles. A few of these projects have been implemented, improving our ability to capture, store and reuse rainwater, not only increasing water supply, but also decreasing pollutant runoff, improving water quality in our rivers, lakes and ocean. Some of these projects involve nature-based solutions, providing additional community investments. It is a win-win-win situation. Heal the Bay, as a member of OurWaterLA, is helping the county draft a stormwater funding measure that would provide the funding for the construction, operation and maintenance of these multi-benefit projects. LA County also has 147 billion gallons of unused groundwater storage, which can be augmented with both recycled wastewater and captured stormwater. We need to take advantage of the amazing storage capacity we have, which many other cities are not afforded.¹⁹ Additionally, conservation needs to be a way of life, and not just something we practice in a year that is declared by the governor as a drought emergency. These are just a few of the water sources local to Los Angeles that are currently being underutilized. We want to see increased water conservation, and increased water reuse via stormwater recycling (e.g. the Santa Monica Urban Runoff Recycling Facility) and wastewater recycling (e.g. West Basin’s Edward C. Little Water Recycling Facility).

HTB-35

The DEIR asserts that the alternatives that Heal the Bay supports (as mentioned above) were not included in the analysis because they did not meet at least one of the seven screening criteria. The first is the requirement of supplying 21,500 AFY, and the third includes meeting the five objectives set for this project. We have issues with this reasoning:

HTB-36

- o The 21,500 AFY need for a new water supply is unsubstantiated. It is not required by the 2015 Urban Water Management Plan (UWMP) nor the Integrated Water Management Plan. This number seems to be used to specifically exclude conservation, stormwater capture, and recycling as alternatives.
- o The new expansion of the Edward C. Little’s recycling program from 40 MGD to 70 MGD was not included in this analysis. We are very supportive of this expansion, but would love to see it go further, as the design capacity is for 100 MGD,²⁰ which would more than eliminate the need for a 20 MGD desalination project.
- o And two of the five objectives for the Project pertain to **control**; control of water (2) and control of pricing (3). These are not sufficient justifications to exclude more cost effective and environmentally sound alternatives. It is unreasonable to use this as a basis for exclusion from the analysis.

HTB-37

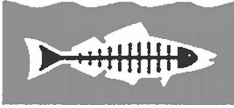
HTB-38

Thus, the criteria for assessing alternatives are flawed and can only lead to the predetermined outcome that West Basin would like to see, the creation of a desalination plant. We would like to see conservation, stormwater capture, increased recycling, and brackish water desalination, or a combination of such alternatives, proposed as an official alternative in a recirculated DEIR.

HTB-39

¹⁹ Provided by MWD in creation of Know the Flow materials, 2016.

²⁰ CH2M HILL, Water Reuse Case History: West Basin Water Recycling/Petroleum Refinery Reuse Program (Water Match).



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Discrepancies and Missing Information

Reading through the DEIR, Heal the Bay found many discrepancies and missing information. We have included just a few examples for review and improvement here:

- o Table 4-1 starting on page 4-4 is not up to date, using language like “expected completion date 2017” for the listed construction documents. The last updates seem to be reflecting projects finished in 2016. This is surprising for a document released in the spring of 2018.
- o Page 4-10 Table 4-2 – the “Ultimate Yield/Capacity (MGD)” column is inconsistent, resulting in misleading figures and potentially resulting in inaccurate comparisons and conclusions by the reader. Specifically, 230 MGD is provided for Hyperion Wastewater Treatment Plant (which is the average yield). It is later specified in the document beneath the table that design capacity is 450 MGD, with peak weather flow at 800 MGD. Conversely, the ultimate capacity for Joint Water Pollution Control is reflected in the table, at 400 MGD. On pg. 4-13, the DEIR mentions that “in 2015, the JWPCP had an effluent flow of 259 MGD (Sanitation Districts 2016).” The table is provided with the intent to allow the reader to more easily compare and contrast between facilities. However, you cannot compare yields if you are comparing different baselines. The table should reflect either the Average Yield or Ultimate Capacity, rather than alternating arbitrarily between the two. Consistency is needed for sensible analysis. And the effluent flow for JWPCP cited quotes 2015 with no context (was this a particular day? The average flow for the year?) from a study in 2016. Is there more recent data that could be included or referenced?
- o Page 9 in Appendix 5B reads “At the year 2100 planning horizon for critical infrastructure, low range projections in Figure 9 (green curve) indicate that mean sea level increases to MSL = +3.91 ft NAVD while extreme high water increases to EHW = +8.84 ft. NAVD, while mean higher high water increases to MHHW = + 6503 ft. NAVD.” The text is missing a decimal point. It should read MHHW= + 6.503 ft, as we are not expecting 6,503 foot water levels in 2100.

HTB-40

HTB-41

HTB-42

HTB-43

These mistakes make the document feel rushed, not thoroughly reviewed, and based on outdated information.

Conclusion

The Project area is hazardous due to erosion and seismic risk, and therefore unsuitable for the construction and operation of a large-scale near-shore project. The Project also poses the potential for significant water quality degradation, with no documentation or analysis made to support the claim that the Project will comply with all NPDES and anti-degradation regulations. There is no substantial evidence to support that the brine discharge and the ocean intake will have less than significant impacts on all forms of marine life, even with suggested mitigation strategies included, potentially impacting both commercially valuable and endangered species. The analysis of cumulative impact is insufficient, as it only addresses one small section of the

HTB-44

Comment Letter HEAL THE BAY



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Santa Monica Bay, and does not evaluate how the impacts of all projects listed could affect the region cumulatively. And the screening guidelines for the proposed alternatives use standards that unreasonably exclude more cost-effective, energy efficient, and environmentally sound options.

HTB-44

We respectfully request that the DEIR be revised and recirculated, due to the reasons outlined above, as well as those noted in Los Angeles Waterkeeper’s comment letter and the environmental NGO coalition letter submitted by Los Angeles Waterkeeper. We encourage West Basin to further pursue the principles of capture, conserve, reuse, and restore, examining additional alternatives and creating a diverse water portfolio by increasing opportunities for conservation, stormwater capture, recycling, and brackish water desalination, in lieu of the proposed desalination project. Thank you for your time and consideration.

HTB-45

Sincerely,

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Associate Director,
Policy & Outreach
Heal the Bay

Annelisa Ehret Moe
Water Quality Scientist
Heal the Bay

Mary Luna
Coastal & Marine Scientist
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Attachment A

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W6a

Filed: December 8, 2009
Staff: Tom Luster – SF
Staff Report: January 28, 2010
Hearing Date: February 10, 2010

STAFF REPORT: REQUEST FOR REVOCATION

APPLICATION NUMBER: R2-E-06-013

APPLICANT: Poseidon Resources (Channelside)
LLC/Cabrillo Power II LLC

PROJECT LOCATION: Site of Encina Power Plant, adjacent to Agua Hedionda Lagoon, in the City of Carlsbad, San Diego County.

PROJECT DESCRIPTION: Construct and operate a 50 million gallon per day seawater desalination facility.

PERSONS REQUESTING REVOCATION: Surfrider Foundation, San Diego Coastkeeper, and the Coastal Environmental Rights Foundation.

SUMMARY OF STAFF RECOMMENDATION

On November 15, 2007, the Commission granted to Poseidon Resources (Channelside) LLC (“Poseidon”) Coastal Development Permit (“CDP”) E-06-013 to construct and operate a seawater desalination facility on the site of the Encina Power Station, adjacent to Agua Hedionda Lagoon, in the City of Carlsbad. One of the Commission’s key concerns in its review of the project was the adverse coastal resource effects caused by project-related greenhouse gas (“GHG”) emissions. The Commission found that the electricity needed to operate the facility would produce a significant amount of GHG emissions that would adversely affect a number of coastal resources. However, Poseidon characterized its project as being “net carbon neutral”, and stated that it would fully mitigate for its project’s net GHG emissions. Poseidon offered a proposed *Climate Action Plan* in which the single largest mitigation measure, representing about two-thirds of its total net emission reductions, was that the project be automatically credited with a decrease in GHG emissions resulting from a one-for-one reduction in State Water Project (“SWP”) water imports to the region. Poseidon also asserted that if, despite the project’s water production, those water imports continued, those continued imports would be subject to review and mitigation through CEQA.

Commission approval of the project CDP required the facility to be “net carbon neutral” and required Poseidon to submit a plan for further Commission review and approval showing how it would meet that standard. The Commission later approved an *Energy Minimization and Greenhouse Gas Reduction Plan* (the “Plan”) that considered the comments of the California Air Resources Board and the State Lands Commission and that required Poseidon to implement various measures to ensure the project was “net carbon neutral”. In approving the Plan, the Commission required Poseidon to directly account for other emission reduction measures, but automatically credited Poseidon with these asserted reductions from reduced SWP imports.

The above-referenced Environmental Groups request that the Commission revoke Poseidon’s CDP, based primarily on a contention that Poseidon intentionally misrepresented that its project would be “net carbon neutral” and that the project would result in one-for-one emission reductions from the SWP. This revocation request focuses on whether Poseidon provided the Commission with complete and accurate information with respect to how its “net” GHG emissions should be calculated.

In investigating this revocation request, Commission staff learned that a 2005 MWD agreement included a provision prohibiting desalination projects from reducing MWD’s entitlements or usage of water imported from the SWP or any other sources. The Poseidon project is dependent on its customers obtaining a subsidy from MWD, and Poseidon knew that such subsidies would be subject to agreements modeled on the 2005 MWD Agreement, but it failed to provide such agreement to the Commission.

MWD’s allocation of SWP water is determined based on its rights to such water as laid out in a long-term contract with DWR, which is valid through 2035. As MWD explained in a January 20, 2010 letter, it anticipates continuing to take its full SWP entitlements and allotments for the foreseeable future, due to current water shortage conditions in Southern California. MWD also explained in this letter that it also seeks other sources of water – e.g., transfers, exchanges, and other “marginal” water supplies – and on a “long-term average basis”, the Poseidon project is likely to reduce its need to supplement its SWP allocation through these supplies. Thus, the Poseidon project will not reduce the amount of water MWD is entitled to or that it will take from its annual SWP allocation (which is the basis of Poseidon’s emission reduction measure), but it may, on an average, long-term basis, result in a reduction in MWD’s need for expanded transfers and exchanges. Poseidon failed to explain to the Commission that the water it produces will in fact only “displace” imported water if MWD is able to reduce its reliance on marginal water supplies that it obtains through the SWP. Poseidon’s representations to the Commission asserted that there would be a reliable, one-for-one reduction in water imported to Southern California through the SWP as the result of Poseidon’s project, but this does not appear to be the case.

In addition, given that MWD will continue to import its full allocation of SWP water, regardless of the impact of Poseidon’s project, and that it is entitled to such water under a long-term contract with DWR, it is not as clear as Poseidon claimed that water its project “displaces,” but continues to be imported into Southern California, will be subject to CEQA review. There is no evidence that the water MWD will continue to import to Southern California will be used solely for “new” or “expanded” uses, as Poseidon claimed, rather than fulfilling MWD’s existing obligations that it has not fulfilled due to the ongoing water shortage. As a result, and contrary to

Poseidon's claims, there is not clear evidence that CEQA will apply to require mitigation for the GHGs emitted by the "additional" 56,000 acre feet of water pumped into Southern California after Poseidon's project begins operations.

Nonetheless, Commission staff determined that the Commission's approval of Poseidon's proposed emission reduction measure also relied on letters of support from the agencies cited above, and that the Commission's decision would not have changed based on Poseidon providing complete or accurate information about the project's effects on SWP-related emissions or about the role of CEQA in reducing emissions. Although Commission staff concludes that Poseidon misrepresented or omitted material information related to its claimed reduction of imported water, staff also concludes that even if more accurate information had been provided to the Commission, it would not have required additional or different conditions on Poseidon's permit. Staff therefore recommends the Commission *deny* the revocation request.

EXHIBITS

EXHIBIT 1: Coastal Development Permit E-06-013.

EXHIBIT 2: December 8, 2009 Environmental Groups' Request for Revocation (without attachments).

EXHIBIT 3: January 13, 2010 Poseidon Response to Revocation Request (without attachments)

EXHIBIT 4: Letters of Support for Poseidon's GHG Approach

STAFF NOTE – REVOCATION REGULATIONS

The California Code of Regulations, Title 14, Division 5.5, Section 13105(a) states that the grounds for the revocation of a coastal development permit (or permit amendment) are as follows:¹

Grounds for revocation of a permit shall be:

- a) *Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the Commission finds that accurate and complete information would have caused the Commission to require additional or different conditions on a permit or deny an application;*

The three elements of Section 13105(a) that must be satisfied before a permit can be revoked are:

- 1) That the applicant provided incomplete or false information; AND
- 2) That false or incomplete information was supplied intentionally; AND
- 3) That if the Commission had known of the information, it would have denied the permit or imposed different conditions.

¹ The Commission's regulations at Section 13105(b) provide additional grounds for revocation based on inadequate notice; however, the Environmental Groups do not request revocation based on these grounds. Section 13105(b) states: "*Failure to comply with the notice provisions of Section 13054, where the views of the person(s) not notified were not otherwise made known to the Commission and could have caused the Commission to require additional or different conditions on a permit or deny an application (14 Cal. Code of Regulation Section 13105).*"

Because of the impact on a permittee, the grounds for revocation are narrow, and are confined to information in existence at the time of the Commission’s action. The rules of revocation do not allow the Commission to have second thoughts on a previously-issued permit based on information that comes into existence after the granting of a permit, no matter how compelling that information might be. Similarly, a violation of the Coastal Act or the terms and conditions of a permit, or an allegation that a violation has occurred, are not grounds for revocation.

Revocation of a permit removes a previously granted permit. Even if a permit is vested – i.e., the permittee has started construction of the project – if the Commission revokes the permit, the permittee is required to stop work and, if wishing to continue, to reapply for a new permit for the project. Section 13108 of these regulations establish that, if at a public hearing the Commission finds that grounds for revocation exist, it may revoke the permit.² It may also determine that additional investigation is necessary and continue the matter to a future hearing.³

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² Section 13108(a) of these regulations state that the revocation request is to be heard at the next regularly scheduled meeting. Staff received the revocation request on December 8, 2009, and on December 14, 2009, both Poseidon and the Environmental Groups agreed to a February 2010 hearing.

³ Section 13108(c) states: “The commission shall ordinarily vote on the request at the same meeting, but the vote may be postponed to a subsequent meeting if the commission wishes the executive director or the Attorney General to perform further investigation.”

I. STAFF RECOMMENDATION

Staff recommends that the Commission determine that no grounds exist for revocation.

MOTION:

I move that the Commission grant revocation of Coastal Development Permit E-06-013.

The staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the request for revocation and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY REVOCATION:

*The Commission hereby **denies** the request for revocation of the Commission's decision on Coastal Development Permit E-06-013 on the grounds that:*

- a) Although there was intentional inclusion of inaccurate, erroneous or incomplete information in connection with the subject coastal development permit application, the Commission finds that the accurate and complete information would not have caused the Commission to require additional or different conditions on the permit or deny the application.*
- b) There was no failure to comply with the notice provision of Section 13054 where the views of the person(s) not notified were not otherwise made known to the Commission and would have caused the Commission to require additional or different conditions on a permit or deny an application (14 Cal. Code of Regulations Section 13105).*

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. REVOCATION REQUEST

On December 8, 2009, the Surfrider Foundation, San Diego Coastkeeper, and Coastal Environmental Rights Foundation (collectively “Environmental Groups” or “Groups”) filed with the Commission a joint request to revoke the Commission’s approval of CDP E-06-013. The Environmental Groups’ stated grounds for revocation are summarized below and are provided in full in Exhibit 2.⁴

The Environmental Groups contend that Poseidon intentionally withheld accurate and complete information from the Commission and that the Commission would have placed different conditions on the CDP or denied the application had Poseidon disclosed accurate and complete information. The Environmental Groups’ specific contention is that Poseidon asserted to the Commission that its project should be credited for greenhouse gas (“GHG”) emission reductions from reducing State Water Project (“SWP”) water imports while not disclosing to the Commission that a 2005 agreement from the Metropolitan Water District (“MWD”) showed that a project such as Poseidon’s would be prohibited from interfering with MWD’s ability to import water from the SWP or other sources. The Groups contend that had Poseidon disclosed this agreement (“MWD Agreement”) to the Commission, the Commission would have likely placed different conditions on the CDP or denied the permit.

In a January 13, 2010 letter (see Exhibit 3), Poseidon responds to the Environmental Groups’ contention.⁵ Poseidon does not dispute that it did not provide the MWD Agreement to the Commission, but contends that the Environmental Groups’ revocation request meets none of the three tests of Section 13105(a). Poseidon claims that the Commission was “fully aware” that the MWD would not relinquish its ability to import available water, and that Poseidon’s proposed approach, adopted by the Commission, was consistent with CEQA principles, given that any continued imports that may occur would be subject to CEQA review and mitigation. Thus, Poseidon claims that if it were required to mitigate for its GHG emissions without obtaining credit for reduced emissions from the imported water its project would replace, that there would be “double mitigation” for such “replaced” water, given that both Poseidon and any new or expanded user would be required to mitigate for its impacts.

⁴ In its January 13, 2010 response to the revocation request, Poseidon claims that the Coastal Environmental Rights Foundation is not a proper party to the revocation request and should be removed as a party from the revocation proceeding under Section 13106 of the Commission’s regulations. Since the revocation request was also submitted by the Surfrider Foundation and the San Diego Coastkeeper, who each raise the same contentions as the Coastal Environmental Rights Foundation, these contentions are validly before the Commission.

⁵ Poseidon also provided a January 7, 2010 letter in response to Commission staff’s request that Poseidon submit a CDP amendment application to address this GHG mitigation issue. Many of the two letters’ contentions and responses are similar, and Poseidon’s January 13 letter incorporates the January 7 letter by reference.

B. PROJECT APPROVAL BACKGROUND

COMMISSION REVIEW

CDP Approval: On November 15, 2007, the Commission granted to Poseidon Resources (Channelside) LLC (“Poseidon”) Coastal Development Permit (“CDP”) E-06-013 to construct and operate a seawater desalination facility on the site of the Encina Power Station, adjacent to Agua Hedionda Lagoon, in the City of Carlsbad.

One of the Commission’s key concerns in its review of the project was the adverse coastal resource effects caused by project-related GHG emissions. Seawater desalination is a relatively energy intensive source of water,⁶ and the electricity needed to produce desalinated water can produce significant amounts of GHG. The Commission found that the electricity needed to operate the facility would produce from about 60,000 to 90,000 tonnes (or about 130 million to 200 million pounds) of GHG emissions annually⁷ and that those emissions would adversely affect a number of coastal resources. However, Poseidon characterized its project as being “net carbon neutral”, and stated that it would fully mitigate for the net GHG emissions resulting from the facility’s operations.⁸ In October 2007, Poseidon offered a proposed *Climate Action Plan* in which the single largest proposed mitigation measure, representing about two-thirds of its total mitigation, was Poseidon’s proposal that its project be credited with the decrease in GHG emissions resulting from a one-for-one reduction in SWP water imports to the region.⁹

⁶ See, for example, California Sustainability Alliance, *The Role of Recycled Water in Energy Efficiency and Greenhouse Gas Reduction*, produced for the California Public Utilities Commission, May 2, 2008.

⁷ See Commission Final Adopted Findings, page 3. This amount is expected to change each year, and presumably decline, as existing power sources are replaced with sources that emit fewer or no GHG emissions.

⁸ “Net carbon neutral” generally refers to a broader range of emissions and mitigation measures than are addressed in Poseidon’s Plan and usually includes both direct and indirect emissions resulting from a project. However, the vast majority of this project’s emissions are the indirect emissions resulting from Poseidon’s use of electricity generated and purchased to operate the facility. For purposes of the Commission’s review – in these Recommended Findings, in its Final Adopted Findings for the project CDP, and in its approval of Poseidon’s Plan – “net carbon neutral” refers only to those indirect emissions and to the mitigation measures meant to “zero out” those emissions.

⁹ The plan stated that Poseidon’s expected production of 56,000 acre-feet of water each year would use about 250,000 megawatt-hours of electricity, which would produce about 61,000 tonnes of annual GHG emissions. Poseidon asserted that it should receive credit for reducing SWP imports by the same 56,000 acre-feet of water each year, which would reduce SWP electricity use and its GHG emissions by about 47,200 tonnes. Poseidon proposed to offset the net remaining 13,800 tonnes of emissions through other measures, including purchasing renewable energy credits, providing carbon sequestration through reforestation, etc.

The expected GHG emissions are based in part on the average “emission rate” of the generating sources used by the electricity provider. For example, electricity generated by a natural gas-powered facility generally has a lower GHG emission rate than a coal-powered facility – roughly several hundred pounds of emissions per megawatt-hour versus two thousand pounds per megawatt-hour. Renewable energy sources generally have an emission rate at or close to zero. A provider’s average emission rate changes as its generating sources change – for example, through new technology or by using a different mix of sources due to plant shutdowns, seasonal differences, etc. Annual emission rates for various providers are certified by the California Climate Action Registry. At the time of the Commission’s review, Poseidon’s provider, San Diego Gas & Electric, had an average emission rate of about 780 pounds per megawatt-hour and the SWP’s rate was somewhat lower.

In approving the project CDP, the Commission found that project-related GHG emissions adversely affected a number of coastal resources. As stated in the Commission’s Final Adopted Findings (at page 75):

“The global heating, sea level rise, and ocean acidification resulting from greenhouse gas emissions affects public access (Coastal Act Sections 30210-30214), recreation (Sections 30212.5, 30213, 30220-30222), marine resources (Sections 30230-30231), wetlands (Sections 30231, 30233), ESHA (Section 30240), agriculture (Sections 30241-30242), natural land forms (30251), and existing development (Sections 30235, 30253).”

The Commission also found in approving the project that the project would be inconsistent with Coastal Act Section 30233(c) due to its effects on wetlands, but that this inconsistency could be “overridden” through application of Coastal Act Section 30260 because the project was a coastal-dependent industrial facility. One of the tests of that section requires the Commission to determine that the project’s adverse environmental effects are mitigated to the maximum extent feasible. As stated in its Findings, the Commission concluded that the project met this test in part due to the requirement that Poseidon “submit to and obtain from the Commission approval of a revised Energy Minimization and Greenhouse Gas Reduction Plan that results in reduction in electrical use and reduction or offset of greenhouse gas emissions associated with the project’s operations to the maximum extent feasible through Poseidon’s agreement that the project will be net carbon neutral.”

To bring the project into conformity with the Chapter 3 policies of the Coastal Act, the Commission required Poseidon to meet 17 Special Conditions included in the CDP (see Exhibit 1). The Commission did not accept Poseidon’s proposed *Climate Action Plan* but instead required through **Special Condition 10**¹⁰ that Poseidon submit for additional Commission review and approval an *Energy Minimization and Greenhouse Gas Reduction Plan* (the “Plan”) that was to include measures to ensure the facility operations would be “net carbon neutral”. As stated in the Findings (at pages 89-90):

“Poseidon’s revised plan shall establish that the project will avoid, minimize, or mitigate adverse impacts to a wide range of coastal resources, including public access, recreation, marine resources, wetlands, ESHA, agriculture, natural land forms, and existing development associated with its minimized and mitigated energy consumption. Based on the above, the Commission finds that the project, as conditioned, will conform to Coastal Act provisions related to minimizing energy use and mitigating any adverse effects on coastal resources from greenhouse gas emissions.”

¹⁰ Special Condition 10 states:

Energy Minimization and Greenhouse Gas Reduction Plan: PRIOR TO ISSUANCE OF THE PERMIT, the Permittee shall submit to the Commission a Revised Energy Minimization and Greenhouse Gas Reduction Plan that addresses comments submitted by the staffs of the Coastal Commission, State Lands Commission and the California Air Resources Board. The permit shall not be issued until the Commission has approved a Revised Energy Minimization and Greenhouse Gas Reduction Plan after a public hearing.

Approval of Energy Minimization and Greenhouse Gas Reduction Plan: On August 6, 2008, pursuant to the Final Adopted Findings and **Special Condition 10** of the CDP, the Commission approved Poseidon’s *Energy Minimization and Greenhouse Gas Reduction Plan*. A key component of the Plan, and the measure that accounted for the majority of project-related emission reductions, was Poseidon’s proposal that its project be “automatically” credited with a decrease in GHG emissions resulting from the SWP reducing its water imports to the region. Poseidon asserted that it should receive credit for reducing MWD’s imports from the SWP by the same amount of water Poseidon produced each year, which would thereby reduce SWP’s electricity use and its GHG emissions.

In approving the Plan, the Commission accepted Poseidon’s characterization that the SWP reduction was a “project-related measure” that should not be subject to independent review.¹¹ The Commission’s Findings state, at pages 11-12, that “[t]he Commission is satisfied that these project-related measures will reduce the GHG emissions attributable to the project and that they therefore should be included in the calculations used to determine the project’s net GHG emissions.” The Findings also acknowledge letters supporting this approach from the Chair of the California Air Resources Board and the Chair of the State Lands Commission, pursuant to **Special Condition 10**, as well as letters from the Executive Director of the California Energy Commission and the General Manager of the MWD (see Exhibit 4).

As part of Plan approval, the Commission required Poseidon to submit an annual report that provides a direct accounting of other emission reduction measures, though not the SWP-related measure. For this SWP measure, the Plan assumes the reductions will occur. Poseidon’s emission reduction “credit” will be based each year on the amount of water the project produces and the emissions associated with that production as compared to the emissions caused by the SWP pumping an equal amount of water from Northern California to the MWD service area. At the time of the Commission’s review, this “credit” would have represented about 47,000 tonnes of GHG emissions, or about two-thirds of Poseidon’s expected emissions.

MWD APPROVAL OF SUBSIDY FOR POSEIDON

On November 10, 2009, the MWD approved a contract with member agencies that have agreed to purchase water from Poseidon’s project. The contract, based on MWD’s Seawater Desalination Program, provides a subsidy of up to \$250 per acre-foot for purchase of Poseidon’s water. It also includes a provision meant to protect MWD’s ability to import water, consistent with the 2005 MWD Agreement. This November 2009 MWD contract approval brought to light the 2005 Agreement and its provision allowing MWD to terminate the subsidy if the project impaired MWD’s ability to import or use its full water entitlement. This raised Commission staff concern that the project would no longer be “net carbon neutral” and would not adequately mitigate its GHG emissions. On November 13, 2009 Commission staff requested Poseidon address this project change by submitting an application to amend its CDP, but Poseidon declined. On December 8, 2009, the Environmental Groups filed their revocation request.

¹¹ The Commission’s Adopted Findings at pages 3-4 state that “project-related measures identified in the Plan are used to calculate the project’s net GHG emissions and therefore are not subject to the CARB, CCAR, or Air District requirements for offsetting the net GHG emissions.”

C. ANALYSIS OF REVOCATION CONTENTIONS

The revocation contention states Poseidon's assertion that the project would be "net carbon neutral", which was based largely on GHG emission reductions from reduced SWP imports, was an intentional misrepresentation. In support of this assertion, the Environmental Groups point to the undisclosed 2005 MWD Agreement that allows MWD to terminate the Agreement if its entitlements or usage of imported water supplies are reduced due to the production of desalinated water. Poseidon relied on its customers' ability to obtain similar agreements from MWD for its project to be economically viable. Thus, the 2005 Agreement explicitly ensures that MWD's full entitlement to imported water will be maintained, regardless of the new water produced through a desalination project. This Agreement was part of an MWD program on which Poseidon was relying during the Commission's review. This 2005 Agreement came to light in November 2009 when the MWD approved a contract providing a subsidy of up to \$250 per acre-foot for water from Poseidon's project. The contract was between the MWD and several of its member agencies and provided the subsidy to those agencies towards the cost of Poseidon's water. This subsidy is part of the MWD's Seawater Desalination Program, which it established in 2004 to provide incentives for local water supplies.

Recent letters from the MWD and the San Diego County Water Authority (SDCWA) provide some clarification as to the role of the MWD Agreement and Poseidon's project. A December 17, 2009 letter from MWD confirms that the above-referenced 2005 MWD Agreement includes the provision prohibiting covered projects from reducing MWD's ability to import water, and states that the provision's "sole purpose is to protect Metropolitan's imported water supply rights and entitlements", including those provided through its contract for SWP water supplies. A January 20, 2010 MWD/SDCWA letter states:

"As MWD described in a prior communication, MWD's SDP agreement with the Water Authority and their local retail agencies includes a provision protecting MWD's imported water rights and entitlements. Given current shortage conditions, we expect MWD to take its full SWP and Colorado River rights and entitlements for the foreseeable future. However, MWD supplements its SWP Table A entitlement by pursuing transfers, exchanges, and other marginal supplies also transported through the SWP delivery system. It is the demand for these additional supplies that is likely to be offset by the project."

It appears, therefore, that while Poseidon's project will not automatically reduce SWP imports and thereby reduce emissions, MWD believes that it is likely to reduce MWD's need for transfers or exchanges, on a long-term, average basis, thereby potentially resulting in reduced emissions. Whether emission reductions occur will depend in part on the relative costs of those sources compared to the cost of Poseidon's water, the location of those sources and the amount of electricity needed (and GHG emissions generated) to deliver them to the MWD, the availability of storage for MWD supplies, and other factors.

The record before the Commission shows that Poseidon consistently characterized its project as being “net carbon neutral”, due largely to crediting the project with emission reductions from reduced SWP imports. This was the largest of Poseidon’s proposed and approved mitigation measures, representing about two-thirds of its expected “net” emission reductions. Regarding the MWD Agreement, Poseidon deliberately chose not to provide it to the Commission, despite Staff’s request that Poseidon document its asserted emission reductions,¹² and Commission questions about Poseidon’s assertion that it should “automatically” receive credit for the reductions.¹³ Poseidon also did not disclose to the Commission that the MWD Agreement allowed MWD to terminate its subsidy if its project caused MWD to reduce its imports or usage from the SWP or other water sources.

Further, Poseidon did not fully describe to the Commission that MWD would continue to have its full allocation of SWP water to which it is entitled under a long-term contract with the Department of Water Resources (“DWR”), regardless of the amount of water produced by Poseidon. It failed to explain to the Commission that any reduction in MWD’s demand for imported water would result from MWD’s possible reduced demand for “marginal” sources of imported water, such as water exchanges, transfers, purchases, etc., instead of a one-for-one reduction in its use of its SWP allocation. As stated in the January 20, 2010 MWD/SDCWA letter, these agencies believe that the Poseidon project will allow it to reduce its need for such marginal imports “on a long-term average basis.” Therefore, while MWD believes that the Poseidon project is likely to result in a reduction of the volume of water imported into Southern California, such reductions will not be in a consistent, one-for-one manner, as Poseidon represented to the Commission.

¹² Commission staff requested at a June 2008 meeting that Poseidon document its proposed emission reductions and Poseidon offered to provide this MWD Agreement. At the time of the Commission’s review, there were five MWD agreements in place with different member agencies, each with identical provisions prohibiting projects from limiting MWD’s right to imported water. A July 11, 2008 memo from Commission staff memorializing the meeting showed Poseidon initially offered an agreement (referred to in the memo as an MWD Contract). Poseidon later modified to memo to change its offer to more general documentation, which did not include the MWD Agreement or the provision.

The relevant portion of the memo is shown below, with Commission staff’s original language in regular text and Poseidon’s changes in strikethrough and underline.

From July 11, 2008 memo to Peter MacLaggan from Tom Luster:

“Page 15, Avoided Emissions from Displaced Imported Water:

Commission staff: As currently proposed, any emissions reductions that may occur from this element of the Plan cannot be verified. Staff recommends that Poseidon provide verification from the Metropolitan Water District of Southern California (MWD) or other sources showing this measure would meet the AB 32 criteria.

Poseidon: Will provide staff with ~~MWD’s Contract with Long Beach to provide an example of available verification data~~documentation from MWD demonstrating that the water produced by the Project would replace an existing demand or prevent a new demand on MWD with respect to Poseidon’s customers.”

¹³ See August 6, 2008 Commission hearing transcript, pages 226-29.

Poseidon also asserted to the Commission that even if the water its project “displaced” continued to be pumped into Southern California, it would only be for “new or expanded” uses, so those uses would be subject to CEQA procedures and required to mitigate for GHGs produced by importation of such water. Given that MWD is entitled to continue to import its full allocation of SWP water, regardless of how much water is produced by the Poseidon project, it is unclear that CEQA would, in fact, apply to MWD’s continued distribution of such water to its existing customers. Despite what it represented to the Commission, it is speculation on Poseidon’s part that such water would be used solely for new or expanded uses that would be subject to CEQA.

APPLYING THE THREE-PART TEST OF SECTION 13105(A)

Commission staff reviewed the record available to the Commission during its November 2007 review and approval of Poseidon’s CDP and its August 2008 review and approval of Poseidon’s *Energy Minimization and Greenhouse Gas Reduction Plan*. Poseidon’s characterization of relevant project components during those Commission’s reviews are applied to Section 13105(a)’s three-part test and summarized below, followed by a more detailed analysis:

- **Ground for Revocation #1 – Did the applicant provide incomplete or false information?:** Poseidon did not disclose to the Commission the full nature of MWD’s rights to SWP water allocations or that the Poseidon project’s claimed reductions in imported water are not expected to be on an automatic, one-for-one basis. Poseidon also did not disclose the MWD Agreement, although Poseidon was relying on its customers’ ability to obtain substantially similar agreements from MWD. Thus Poseidon did not inform that Commission that this agreement allows MWD to terminate its subsidy if Poseidon’s project causes MWD to lose its entitlements to, or reduce its usage of, water imported from the SWP or any other source. The Agreement shows that MWD would maintain its full imported water entitlements and allotments, but Poseidon still described as “speculative” whether imports would continue. Rather than providing the Commission with the MWD Agreement, Poseidon provided other information that did not clearly show MWD’s intent to maintain its full entitlement and usage of imported water.
- **Ground for Revocation #2 – Was the inaccurate or incomplete information supplied intentionally?:** Despite questions and discussion by the Commission, staff, and the public about how and whether the project would actually reduce SWP imports, Poseidon did not disclose the above-referenced MWD Agreement or that MWD would to continue to have its full allocation of SWP water so that any reductions in imported water would not necessarily take place on an automatic, one-for-one basis. When Commission staff requested that Poseidon document its expected emission reductions, Poseidon initially agreed to provide the MWD Agreement; however, Poseidon later provided only more general documentation from MWD that did not include the MWD Agreement. When asked by the Commission about “automatically” crediting Poseidon’s project with the SWP reductions, Poseidon did not disclose that those reductions were unlikely to take place on a yearly, one-for-one basis. These nondisclosures appear to be intentional. With regards to Poseidon’s CEQA assertions, it is unclear from the record whether Poseidon intentionally mischaracterized the role of CEQA processes in determining whether emissions from continued SWP imports would be subject to separate review and mitigation.

- **Ground for Revocation #3 – If the Commission had known of the information, would it have denied the permit or imposed different conditions?:** As shown in its Final Adopted Findings, the Commission based its project approval in part on requiring the facility to be “net carbon neutral”. The Commission required Poseidon to directly account for other GHG emission reduction measures, but not the purported SWP-related reductions, and without those reductions, the project will not be “net carbon neutral”. In approving Poseidon’s Plan, the Commission relied on Poseidon’s above-referenced characterizations of the expected SWP reductions and on Poseidon’s CEQA-related assertions, and also relied on the letters of support from the other involved agencies. Had the Commission fully understood MWD’s water allocation entitlements and process for water importation and distribution, on which Poseidon was relying, the Commission could have either imposed different conditions or denied the project. However, the Commission also relied on the aforementioned support from other involved agencies, which was a specific requirement of **Special Condition 10**, and served as the basis for the Commission’s decision. Therefore, complete or accurate information about the SWP emission reductions would likely not have altered the Commission’s reliance on those letters and its resulting decision.

The application of the three Section 13105(a) tests is provided in more detail below.

1. GROUNDS FOR REVOCATION #1: DID THE APPLICANT PROVIDE INCOMPLETE OR FALSE INFORMATION?

As noted above, one of the key issues during Commission consideration of the CDP was whether project-related GHG emissions would result in adverse effects to coastal resources and be inconsistent with Coastal Act policies. Poseidon characterized its project operations as “net carbon neutral”, based largely on its contention that the project would reduce, on a one-for-one basis, SWP water pumping to the region, which would thereby reduce the SWP’s GHG emissions. Poseidon also described several CEQA-related provisions that would apply, should the “displaced” water continue to be imported. Poseidon submitted several documents in support of its contention, which the Commission cited in its Findings.¹⁴

¹⁴ The Commission’s Final Adopted Findings, at page 85, refer to several of these documents in support of the Commission’s decision to approve the project:

“In its October 21, 2007 memorandum, Exhibit D to its November 9, 2007 letter to the Commission, and in its presentation to the Commission at the November 15, 2007 hearing, Poseidon presented its proposal to offset or reduce the proposed project’s energy use and greenhouse gas production so that the facility’s operations would be net carbon neutral. Poseidon states that it will develop a Climate Action Plan that (1) would ensure the project minimizes energy consumption in compliance with Coastal Act Section 30253(4), and (2) would render the project net carbon neutral.”

POSEIDON'S CHARACTERIZATIONS REGARDING SWP EMISSION REDUCTIONS

Poseidon's relevant characterizations about reducing SWP emissions included those provided below:

November 2007 Commission CDP Hearing:

- **Poseidon's November 2007 proposed *Climate Action Plan*:** Prior to the Commission's CDP hearing, Poseidon submitted a November 2007 proposed *Climate Action Plan* that included mitigation measures it stated would result in "net carbon neutral" project operations. This proposed plan stated, at page 4:

"One major source of carbon reductions results from the fact that the Project is introducing a new, local source of water into the San Diego area; water that will displace imported water from the State Water Project (SWP) – a system with its own significant energy load and related carbon emissions. For every acre-foot of SWP water that is replaced by water from the proposed project, 3.4 MWh of energy use is avoided, along with associated carbon emissions." [emphasis added.]

- **Poseidon's November 9, 2007 *Response to Staff Report*:** Before the Commission's CDP hearing, Poseidon provided its *Response to Staff Report*, which stated, at page 52:

"The Carlsbad facility will supply 56,000 acre-feet of water per year to the San Diego region, water that would otherwise have to be pumped into the region through either the State Water Project or the Colorado River Aqueduct."

Exhibit B of that letter included Poseidon's responses to specific sections of the staff report, and provided Poseidon's further assurances that its project would decrease imported water supplies to the region. At page 52 of that document, Poseidon responded to a statement by Commission staff that "Poseidon's project does not ensure a decrease in imported water supplies to the San Diego Region" by stating:

"This is not correct. The Carlsbad facility will supply 56,000 acre-feet of water per year to the San Diego region, water that would otherwise have to be pumped into the region through either the State Water Project or the Colorado River Aqueduct. As stated by all Carlsbad desalination project water agency partners in letters to the State Lands Commission dated November 6 and November 7, 2007, that were provided to the Coastal Commission, water from the desalination plant will provide direct, one-for-one replacement of imported water to meet the requirements of their Urban Water Management Plans, thus eliminating the need to pump 56,000 acre feet of water into the region. See Poseidon Resources Corporation. Letter to Paul Thayer Re: Desalination Project's Impact on Imported Water Use, November 8, 2007. including attachments from eight water agencies. Conversely, if the project is not approved the demand for imported water by the eight public water agencies will increase by 56,000 AF/Y starting in 2010." [emphasis added.]

- **Poseidon’s November 15, 2007 Handout to the Commission:** A handout Poseidon provided to the Commission at the CDP hearing stated, on pages 29 and 30:

“Measuring Energy Use: The project will supply 56,000 AFY that would otherwise have to be pumped from California State Water Project (SWP) – energy savings 3.4 mWh/AF” [emphasis added.]

“ Measuring the Carbon Footprint: ... The project will supply 56,000 AFY that would otherwise have to be pumped from California State Water Project (SWP) – with corresponding reduction in carbon emissions of 47,240 metric tons of CO₂ per year.” [emphasis added.]

August 2008 Commission Hearing on Energy Minimization and Greenhouse Gas Reduction Plan: Poseidon later provided similar documentation and testimony for the August 2008 Commission review and approval of Poseidon’s proposed Plan, including:

- **Poseidon’s July 3, 2008 letter to the Commission:** In preparing for the August 2008 hearing at which the Commission would consider the proposed plan, Poseidon stated in a letter to the Commission that its proposed Plan “ensures that all net indirect Greenhouse Gas (“GHG”) emissions from the Project will be offset” and that “The Plan Appropriately Credits Avoided Carbon Emissions from the 56,000 Acre-Foot That Will No Longer Be Imported to the San Diego Region.” The letter also stated, “[w]hen the Project is built, it will result in an increase in energy use due to the electricity that will be purchased from SDG&E to operate the desalination facility, and a decrease in energy use because the Project’s water will replace water that would otherwise have been imported from the SWP to the Project’s customers”, and “if all indirect GHG emissions from the Project are zeroed out by its avoided emissions and carbon offsets, the Project will not increase net GHG emissions relative to existing conditions and there will be no adverse impact.”
- **Poseidon’s July 2008 proposed plan:** In this proposed plan, which accompanied the above letter, Poseidon based its proposed emission reduction on fully replacing the pumping needed to move imported water from Northern California to the MWD service area. The plan states, at pages 13-14:

“Avoided Emissions from Displaced Imported Water: Another source of Avoided Emissions will result from the Project’s introduction of a new, local source of water into the San Diego area; water that will displace imported water now delivered to Customers from the State Water Project (SWP) – a system with its own significant energy load and related carbon emissions... The proposed Project will supply 56,000 acre-feet of water per year to the San Diego region. The Project will provide direct, one-to-one replacement of imported water to meet the requirements of the participating water agencies, thus eliminating the need to pump 56,000 acre feet of water into the region.” [emphasis added.]

- **Poseidon Testimony at August 2008 hearing:** At the hearing, Poseidon referred to another MWD letter of July 29, 2008 and stated (see August 6, 2008 hearing transcript, pages 91-92):

“[t]he replacement of the imported water is not only reasonably anticipated, but it has been confirmed by MWD – and here is the language in their letter. They have committed to provide Poseidon’s customers – the water district – with a financial incentive. Receipt of that financial incentive requires the water district to demonstrate that they are replacing an equivalent amount of water from MWD. MWD’s program will also verify and audit to insure that the water is replaced.”

The cited letter also states:

“Metropolitan believes it is appropriate for the Project’s GHG Plan to be based on offsetting net carbon emissions because San Diego County will use 56,000 acre-feet per year less imported water upon Project start up. By net, we mean the difference in energy related emissions required for moving water through the State Water Project compared to operating the seawater desalination project.”

At the hearing, and in response to questions about whether the Commission should require in the Plan that Poseidon account for the SWP-related emission reductions, Poseidon requested the Commission adopt its proposed approach that would “automatically reduce” water foregone from the SWP as part of its emission reductions (see August 6, 2008 hearing transcript, page 228).

POSEIDON’S NONDISCLOSURE OF THE MWD’S AGREEMENTS

During the Commission’s review of both the CDP and Plan, Poseidon did not fully describe the MWD’s process or entitlements for importing water to Southern California or the 2005 MWD Agreement, and did not explain how MWD obtains water through the SWP or that MWD’s long-term contract with DWR establishes how much water MWD is able to import. That contract provides MWD with a water “entitlement”, or maximum annual amount of SWP water, and an “allotment”, which is the amount MWD is to receive each year (through 2035) based on water availability. These aspects of MWD’s deliveries are not affected by Poseidon’s project. As explained in the January 20, 2010 MWD/SDCWA letter to the Commission, MWD expects to continue taking the full allocation of water to which it is entitled under its contract with DWR. Poseidon failed to disclose to the Commission that MWD would continue to be supplied with its full allocation of SWP water and that any reduction in imported water would only come through possible reductions in MWD’s demand for “marginal” water sources.

Poseidon also failed to disclose the 2005 MWD Agreement or its provision that allows MWD to terminate its subsidy if the project limits MWD’s entitlements to import or use water from the SWP or other sources. This Agreement includes the following provision:

“The Parties agree that this Agreement shall terminate forthwith if Metropolitan reasonably determines that as a result of Water Authority’s or LRA’s action or support, Metropolitan is required by any statute or administrative order, court, or other entity to

reduce, defer, or exchange entitlement to or reduce usage of Colorado River water, State Water Project water, or other water supplies Contracted for by Metropolitan as a result of expected or actual production of the Desalinated Seawater by the Project.”

The MWD Agreement also defined water that would be eligible for the subsidy – i.e., the “eligible yield” – as water that would “augment” (not replace) imported water. Section 1.4 of the MWD Agreement states:

“‘Eligible Yield’ shall mean the amount of Desalinated Seawater actually delivered to an LRA’s or Water Authority’s local potable water distribution system from the Project in a Fiscal Year, excluding any Desalinated Seawater that Metropolitan reasonably determines will not augment water supply available to Metropolitan’s service area, including Metropolitan’s imported water.” (emphasis added)

The MWD Agreement therefore specifies that in order for a project to be eligible for the subsidy, it must augment MWD’s imported water supplies and not cause a reduction in those supplies.¹⁵

Although Poseidon states in its January 13, 2010 response to the revocation request that it provided “complete and accurate information regarding MWD’s continuing right to use its imported water entitlements after the Project commences operations”, Commission staff’s review shows that none of the cited documents provide this MWD Agreement’s unequivocal statement that MWD could terminate the subsidy if the project caused MWD to reduce its entitlement or usage of imported water. This provision, in conjunction with a full understanding of MWD’s intention to maintain its full water entitlements and allotments, would have been important considerations for the Commission to determine whether Poseidon’s project should automatically receive credit for reducing SWP-related emissions. Disclosure would have also clarified several other elements of Poseidon’s proposed approach. For example, although the above-referenced July 2008 MWD letter seems to suggest MWD would be reducing its SWP imports due to the project, disclosure of this MWD Agreement provision would have shown that the project would not necessarily reduce those imports. Moreover, MWD itself states that water produced by the Poseidon project is only likely to reduce marginal water imports and that such reductions will only be on an average, long-term basis.

Poseidon also states in its January 17, 2010 response to the “incomplete information” contention that the MWD agreements have “consistently required” MWD’s imported water entitlements not be relinquished. While it is correct that this has been a consistent requirement of these agreements, Poseidon did not provide the Commission with those agreements, which resulted in the Commission acting on Poseidon’s project based on incomplete information.

¹⁵ The November 2009 MWD Contract, which is based on the 2005 Agreement, also describes how it will calculate the “reasonable costs” costs for which the subsidy can be awarded. They include a project’s costs for mitigation and may also include a project’s “net electrical energy” costs, which are defined as costs of energy purchases minus costs of energy recovered; however, they do not specify any SWP-related electricity reductions.

POSEIDON'S ADDITIONAL CEQA-RELATED CHARACTERIZATIONS OF ITS EXPECTED CREDITS FOR EMISSION REDUCTIONS

Along with the its characterizations that the project would reduce SWP pumping and emissions and would be “net carbon neutral” due to those reductions, Poseidon offered several additional explanations in support of its expected credits for those reduced emissions, based largely on contentions related to CEQA principles or procedures. For example, Poseidon asserted that it would be “speculative” to assume the same amount of imported water would continue to be delivered from the SWP to MWD, and that if water that was supposedly displaced by the Poseidon project was still delivered to Southern California, any necessary GHG mitigation would be identified through CEQA review and would be the responsibility of users of that water. Poseidon further described its proposal as appropriate under a CEQA baseline approach, which recognized the need to account for “net” rather than “gross” emissions. These characterizations, however, generally do not accurately describe the role of CEQA on the purported SWP import reductions.

Regarding “speculative” deliveries, for example, Poseidon stated in its July 3, 2008 letter to the Commission:

“It is speculative to predict whether some or all of the replaced water would still be imported to the San Diego region after implementation of the Project. However, even assuming the replaced water does continue to be imported into the region, the question before the Commission is whether it has the authority under California law to require Poseidon to mitigate the GHG emissions associated with those water imports for uses separate and entirely unrelated to the Project or whether the purchasers of that water should be responsible for mitigating those emissions.”

Regarding mitigation by other users, for example, Poseidon stated at the August 2008 hearing, (see August 6, 2008 hearing transcript, pages 92-93):

“If water continues to be pumped to Southern California from the state water project, it would be for new or expanded uses. Those new uses would be required under CEQA to address the impacts of importing the new water... According to staff's proposal, Poseidon would need to offset carbon emissions associated with imported water it is replacing, but since only new or expanded projects would be using this imported water, and those projects are required to mitigate the carbon impacts under CEQA, staff's proposal would result in double mitigation for the same impacts.”¹⁶

¹⁶ Poseidon similarly stated in its November 9, 2007 letter to the Commission:

“If the replaced water is pumped into the region for other uses, then the associated carbon emissions from such pumping should be and is the responsibility of those other uses. Any other result would be an unfair and unwarranted ‘double counting’ of carbon emissions, requiring Poseidon to offset emissions caused by other activities not associated with their operations.”

At the August 2008 hearing, Poseidon also cited CEQA in responding to public comments that MWD had not confirmed a reduction of pumping from the SWP.¹⁷ Poseidon stated (on pages 165-66 of the transcript):

“What we have said is that Poseidon’s customers, the water districts, have agreed to replace the water, and therefore that the water that is replaced, where that goes is speculative, but wherever it goes, CEQA will apply to require those people to mitigate it... In addition, this Commission determined that the project was not growth inducing. That was part of your findings. The requirement that Poseidon be assigned the mitigation for the replaced water is just not consistent with the determination that you have already made that the project is not growth inducing.”

Poseidon also characterized its “net” emissions approach as being based on a CEQA baseline approach requiring mitigation for “net” rather than “gross” emissions,¹⁸ and stated that this approach “is consistent with CEQA in that it does not require MWD to relinquish water entitlements in the amount of water the Project replaces, and instead places the obligation of providing mitigation for emissions associated with importing the replacement water into other parts of MWD’s service territory on hypothetical future users of that water.” Poseidon also stated in its August 2, 2008 letter to the Commission:

“When the Project is built, it will result in an increase in energy use due to the electricity that will be purchased from SDG&E to operate the desalination facility, and a decrease in energy use because the Project’s water will replace water that would otherwise have been imported to the Project’s customers. Under CEQA principles, the Project’s impact should be assessed by considering the net contribution of GHG emissions relative to the existing baseline, factoring in both increases and decreases in energy use the Project will cause.”

As noted previously, there does not appear to be support in the record for Poseidon’s assertions that it was speculative to assume that the volume of water MWD imported into Southern California would be directly reduced, on a one-for-one basis, due to Poseidon’s project.

¹⁷ For example, from the August 6, 2008 hearing transcript, public comment from Mr. Jonas Minton, pages 96-97:

“You have received a letter from the Metropolitan Water District indicating that they consider that the water supply from the Carlsbad project to be an offset. But, a very careful reading of that letter does not indicate that they will reduce their pumping of water all the way from northern California to Southern California. This is the one very important reason: San Diego is not their only customer. Even if San Diego did not take the water, Metropolitan is required by its act, its organic act, to provide water supplies to its other customers in Southern California...”

¹⁸ Regarding “net” versus “gross”, Poseidon has mischaracterized the difference between its proposed approach and Commission staff’s approach as “net” versus “gross” – that is, a “net” approach that accounts for both the increase and decrease in emissions caused by the project as opposed to a “gross” accounting for just the increase. It appears, however, that all parties supported the “net” approach. Poseidon’s approach differed from Commission staff’s primarily by how it accounted for the “net emissions – i.e., Poseidon asserted it should “automatically” receive emission offsets from SWP reductions, whereas Commission staff recommended the Commission require Poseidon to document those reductions in determining its “net” emissions, due largely to the uncertainty about whether those reductions would occur.

Poseidon did not disclose to the Commission the provision of the MWD Agreement that allows MWD to terminate its subsidy if the desalination project results in a reduction of MWD's entitlements or usage of SWP water. This provision shows that MWD anticipates that continued imports are likely and that emission reductions are therefore unlikely. MWD recently stated in its January 2010 letter that it is likely to be able to offset some of its marginal water supplies due to the Poseidon project, but it still intends to take its full allocation of SWP water, even after the Poseidon project is operating.

Regarding the contention that the continued imports would undergo CEQA review, this, too, appears to be speculation on Poseidon's part. MWD's deliveries from the SWP are governed by a long-term contract specifying the maximum amount of water MWD is entitled to each year, and the annual allotment of water provided each year. These mechanisms are not subject to CEQA review. In addition, Poseidon has not substantiated its claim that any water displaced by its project would be used in new or expanded projects, which could be subject to CEQA review, rather than being used by MWD's existing customers in a manner that likely would not be subject to CEQA review. As stated in its January 20, 2010 letter, MWD believes that it is likely to be able to reduce its reliance on finding marginal water supplies as a result of having Poseidon's water available; however, this will likely depend on many other factors, including the availability of such supplies, MWD's storage capacity for water not immediately used in its distribution system, and the cost of such supplies relative to the costs for Poseidon's water.

2. GROUNDS FOR REVOCATION #2: WAS THE INACCURATE OR INCOMPLETE INFORMATION SUPPLIED INTENTIONALLY?

Neither the Coastal Act nor the Coastal Commission regulations define the term "intent" for purposes of determining whether an applicant has intentionally submitted inaccurate, erroneous or incomplete information to the Commission. The law related to fraudulent misrepresentation, however, explores the definition of intent in the context of misrepresentation of facts, which is what is at issue in a revocation hearing. As a result, this area of law is instructive to the Commission when it considers a revocation request.

One element of a claim for fraudulent misrepresentation is the intent to defraud or induce reliance. *Cicone v. URS Corporation* 183 Cal. App. 3d 194, 200 (1986). In establishing this element, "the only intent by a defendant necessary to prove a case of fraud is the intent to *induce reliance*. Moreover, liability is affixed not only where the plaintiff's reliance is intended by the defendant but also where it is *reasonably expected to occur*." *Lovejoy v. AT&T Corp.* (2001) 92 Cal. App. 4th 85, 93 (2001). (emphasis in original). Thus, a defendant may be liable for fraud even for unanticipated reliance by a plaintiff. *Id.* at p. 94. In addition, a party's intent to induce reliance may be inferred from his or her failure to disclose facts as required by statute. *Lovejoy v. AT&T Corp.* 119 Cal. App. 4th 151 (2004). Thus, the Commission may infer that Poseidon intentionally submitted inaccurate, erroneous or incomplete information if it finds that Poseidon failed to disclose facts as required by the Coastal Act.

At several points during the Commission's review of both the CDP and the Plan, questions were raised by the Commission, Commission staff, and the public as to whether Poseidon's project would result in actual SWP emission reductions, and Poseidon had opportunities to disclose its understanding of MWD's water entitlements and intention to continue to take its full SWP allocation or the provision in the MWD Agreement that allows MWD to terminate the Agreement if the project reduces its entitlements or usage of SWP water. For example, as explained in footnote 12 above, Commission staff worked with Poseidon and several agencies after the Commission's November 2007 CDP approval to develop a plan that would conform to the Commission's Findings and **Special Condition 10**. Commission staff requested Poseidon verify its various proposed emission reduction measures, including the asserted emission reductions from reduced SWP imports. While Poseidon initially offered to verify the reduction by providing a copy of an MWD Agreement, it later modified its offer so as not to provide the MWD Agreement but to instead provide more general MWD documentation. It later submitted the July 2007 MWD letter mentioned above; however that letter did not reference the MWD Agreement's provisions.

Later, at the Commission's August 2008 hearing, several Commissioners, Commission staff, and members of the public raised doubt as to whether Poseidon's project would reduce SWP emissions. During Commission deliberation about this particular measure, Commissioners asked Poseidon about providing independent verification of the SWP reduction, but Poseidon requested that it be allowed to automatically receive credit for the reduction (see August 6, 2008 hearing transcript, pages 226-29). Poseidon referenced the July 29, 2008 MWD letter, and asserted that this letter confirmed the project would reduce regional demand for imported water by 56,000 acre feet (see August 6, 2008 hearing transcript, pages 82-83). Again, however, Poseidon did not disclose that MWD did not intend to directly reduce its imports due to the water produced by Poseidon or that the MWD Agreement would allow it to terminate its subsidies if the Poseidon project resulted in a reduction of its entitlements or usage of imported water.

The Commission's record and other documents clearly show that during the Commission review, Poseidon was relying on the subsidies its customers could obtain through a mechanism similar to the 2005 MWD Agreement. For example, a November 9, 2007 letter from Poseidon to the Commission states that the June 22, 2007 MWD letter confirmed MWD's intent to provide the project with the subsidy subject to the 2005 Agreement and made available through MWD's Seawater Desalination Program. Poseidon's July 3, 2008 letter to the Commission also refers to Poseidon's reliance on this program and states that "[t]he MWD rebate and audit system contribute to the substantial evidence in the record establishing that the Project's water will in fact replace imported water."¹⁹

¹⁹ Commission staff review of this revocation request also produced other documents showing that Poseidon was relying on this MWD Agreement and subsidy during or before the Commission's review. These include minutes from SDCWA meetings (e.g., December 6, 2001 and September 26, 2002) describing Poseidon's involvement in a possible project with SDCWA and Poseidon's and SDCWA's reliance on the MWD subsidy.

Regarding Poseidon's CEQA assertions, it is unclear on what basis Poseidon claimed that any use of water "displaced" by the Poseidon project would be for a new or expanded use, subject to CEQA requirements. Given that MWD is able to continue taking its full allocation of SWP water, without CEQA review, regardless of the amount of water produced by Poseidon, it is speculative to assume that CEQA would apply to the use of any of this water. Because the basis for Poseidon's assertions is questionable, one could infer that it was intentionally misrepresenting the nature of the required CEQA review. The evidence does not definitively show, however, that such statements were intentional misrepresentations.

3. GROUND FOR REVOCATION #3: IF THE COMMISSION HAD KNOWN OF THE INFORMATION, WOULD IT HAVE DENIED THE PERMIT OR IMPOSED DIFFERENT CONDITIONS?

The key issue before the Commission is whether it would have made a different decision – i.e., would have denied the project or required additional or different conditions – had Poseidon: 1) described MWD's intention to continue to take its full allocation of SWP water; 2) provided the MWD Agreement; or 3) correctly recognized that it was unlikely that any entity would be required to undertake a CEQA review for use of water "displaced" by the Poseidon project. Had the Commission known of the differences between Poseidon's assertion that its project should "automatically" receive credits for SWP import reductions and MWD's understanding that the Poseidon project is only likely to offset marginal water sources on an average long-term basis, or if the Commission had known of the MWD Agreement provision that allowed MWD to terminate its subsidy if the desalination project resulted in a reduction of its entitlement or usage of water imported from the SWP, it could have reached a different decision on the CDP. Similarly, had the Commission known that MWD's deliveries from the SWP were governed by a long-term contract whose annual deliveries are not subject to CEQA review, it could have required Poseidon to directly account for its expected SWP emission reductions. However, it is not clear that the Commission would have made a different decision, given Poseidon's presentation to the Commission of support from other entities for Poseidon's proposed approach, including agencies specified in **Special Condition 10**.

D. CONCLUSION AND RECOMMENDATION

The Commission finds that the non-disclosed MWD Agreement was part of the complete and accurate information needed to determine the project's Coastal Act conformity. The Commission also finds that Poseidon intentionally withheld the MWD Agreement Poseidon's assertions about the role of CEQA in determining necessary mitigation were also speculative and potentially incorrect, though the record does not indicate whether these assertions were intentional. However, based on its reliance on the aforementioned letters of support from involved agencies, the Commission finds it would not have imposed additional or different conditions or denied the project had the Agreement been provided. Therefore, the Commission finds that the revocation request does not meet all three grounds for revocation.



COASTAL ENVIRONMENTAL RIGHTS FOUNDATION



December 8, 2009

Peter Douglas
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Via Electronic Mail
pdouglas@coastal.ca.gov, tluster@coastal.ca.gov

RE: Poseidon/City of Carlsbad Desalination Project
Second Request for Revocation of Coastal Development Permit
Application E-06-013

Please accept this (second) request for revocation ("Request") of Poseidon Resources (Channelside) LLC's (Poseidon) Coastal Development Permit (CDP), Application E-06-013, on behalf of Surfrider Foundation, San Diego Coastkeeper, and Coastal Environmental Rights Foundation (collectively "Environmental Groups"). Environmental Groups request the Coastal Commission revoke the existing CDP. 14 CCR § 13104.

As detailed below, based upon Poseidon's intentional submission of inaccurate, incomplete, or erroneous information, adequate grounds for revocation exist. Environmental Groups therefore request a full hearing before the Commission on the Request.

I. Background

Poseidon's proposed project is a seawater desalination facility to be constructed and operated at the site of the Encina Power Station ("EPS") in Carlsbad, San Diego County.¹ The Carlsbad Desalination Project ("Project") will withdraw about 304 million gallons per day (MGD) of water from Agua Hedionda Lagoon. The Project was originally proposed to co-locate with EPS. The Project will require 104 MGD of the EPS discharge to produce 50 MGD of potable water. The remaining 200 MGD are needed to dilute the Project's brine discharge, a byproduct of the desalination process.

In 2001, the Metropolitan Water District approved a Seawater Desalination Program to, among other things, promote and provide financial incentives for seawater desalination.² In 2005, MWD authorized an agreement between MWD and the San Diego County Water Authority ("SDCWA") for development of seawater desalination.³ This agreement contained standard contract conditions, to be incorporated into a final agreement once Poseidon completed environmental review documentation.⁴

¹ EPS is a once-through cooling (OTC) power plant that uses water to cool its generators. It draws in water from Agua Hedionda Lagoon, which passes "once-through" the power plant, absorbs heat from the generators, and is discharged thereafter. Coastal Commission Final Adopted Findings for CDP Approval, August 6, 2008, p. 23-25

² November 10, 2009 MWD Board Meeting, Attachment 2.

³ November 10, 2009 MWD Board Meeting, p. 1.

⁴ November 10, 2009 MWD Board Meeting, Attachment 3, p. 3.

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On November 14, 2007, against staff and the Executive Director's recommendation, the Commission approved the CDP for the Project.⁵ In addition to standard conditions of approval, the Commission imposed 17 special conditions upon the Project through the CDP.⁶ Specifically, pursuant to Coastal Act sections 30253(4), the Commission imposed a special condition, requiring an Energy Minimization and Greenhouse Gas Reduction Plan ("GHG Plan"). The Commission found the Project would result in an estimated 61,000 to 90,000 metric tons of carbon dioxide equivalent per year.⁷

Because the Commission voted against the recommendation of staff, new findings were required. 14 CCR 13096(c). Commission staff and Poseidon disagreed about the Commission's basis for approval, necessitating staff's preparation of five different versions of the findings before final approval.⁸ On August 6, 2008, the Commission approved findings for its November 14, 2007 CDP approval. The Commission also approved the GHG Plan at the August 6th meeting. As the Commission made revisions to Poseidon's GHG Plan as submitted, the Commission approved final findings for its August 6, 2008 decision on December 10, 2008.⁹

On November 10, 2009, MWD approved an agreement with all water districts contracted to purchase Project product water.¹⁰ The executed agreement contains a provision terminating the agreement if MWD is required to reduce, defer, or exchange entitlement to or usage of imported water supplies as a result of the Project water.¹¹ Because the November 2009 agreement is an embodiment of the 2005 contract terms, Poseidon knew at the time of CDP and GHG Plan approval its Project water would not offset any imported water.

At the time the GHG Plan was approved, Poseidon was required to offset the Project's "net" GHG emission, as opposed to the "gross" emissions. Poseidon represented its water was replacement water, offsetting imports from MWD, in both 2007 at the time of the initial CDP approval and in 2008 when the Commission approved the GHG Plan. However, the 2001 MWD Seawater Desal Program and final subsidy agreement signed in November 2009 evidence the supplemental nature of the Project product water.

⁵ November 2, 2007 Coastal Commission Recommended Findings, p.3; <http://www.coastal.ca.gov/meetings/mtg-mm7-11.html>

⁶ Coastal Commission Final Adopted Findings for CDP Approval, August 6, 2008, p. 8-13.

⁷ Coastal Commission Final Adopted Findings for CDP Approval, August 6, 2008, p. 3; <http://www.coastal.ca.gov/meetings/mtg-mm8-8.html>

⁸ Findings prepared: on February 21, 2008 for hearing on March 5, 2008; on April 24, 2008 for hearing on May 8, 2008; on May 22, 2008 for hearing June 12, 2008; on July 17, 2008 for hearing on August 6, 2008; on August 5, 2008 as an addendum to July 17, 2008 findings.

⁹ <http://www.coastal.ca.gov/meetings/mtg-mm8-12.html>

¹⁰ <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003702264-1.pdf>; Board Action, November 10, 2009.

¹¹ Draft SDP Agreement No. 70025, October 29, 2009. p. 21 (Environmental Groups have not been able to obtain the final version of the agreement, but understand the draft to be the same as the final agreement approved on November 10, 2009)

Therefore, Poseidon's GHG Plan is no longer accurate or adequate. More importantly, Poseidon's intentional submission of inaccurate, incomplete, and/or erroneous information to that extent requires CDP revocation, as detailed below.

II. Request for Revocation and Initial Review

Section 13105 of the Commission's regulations defines the "grounds" for consideration of a request for revocation:

Intentional inclusion of inaccurate, erroneous, or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application.

14 CCR 13105 (emphasis added). Additional regulations further clarify parties who may submit a Request for Revocation and the process for initial review of the Request. Eligibility to Request Revocation:

Any person who did not have an opportunity to fully participate in the original permit proceeding by reason of the permit applicant's intentional inclusion of inaccurate information or failure to provide adequate public notice as specified in section 13105 may request revocation of a permit by application to the executive director of the commission specifying, with particularity, the grounds for revocation.

14 CCR 13106 (emphasis added). In regard to initial review:

The executive director shall review the stated grounds for revocation and, unless the request is patently frivolous and without merit, shall initiate revocation proceedings. The executive director may initiate revocation proceedings on his or her own motion when the grounds for revocation have been established pursuant to the provisions of Section 13105.

Id. As detailed below, the grounds for revocation are easily met. Poseidon intentionally included inaccurate, erroneous and/or incomplete information during the proceedings before the Commission that, had information been fully disclosed, would have required at a minimum different conditions of approval. Environmental Groups have been denied an opportunity to fully participate in the original proceedings by reason of Poseidon's submittal of this inaccurate, erroneous, and/or incomplete information.¹² The information, detailed in this Request for Revocation is significant—it cannot be dismissed as "patently frivolous and without merit". Therefore, the Executive Director, in accordance with the clear language of the Commission's regulations, must initiate revocation proceedings.¹³

¹² Environmental Groups provided both written and oral testimony throughout the Commission's review of the CDP, and participated at the Commission's November 14, 2007 and August 6, 2008 hearings on the matter. Environmental Groups also have a revocation request currently pending before the Commission regarding the Project's impingement impacts, velocity calculations, and capacity.

¹³ The term "shall" in the regulations is commonly interpreted to limit the discretion of the decisionmaker. It is effectively an affirmative order.

III. Applied Elements Of The Request For Revocation

Detailed below are specifics related to Poseidon's intentional submittal of information, mandating a revocation hearing.

1. Intentionally Withheld Accurate and Complete GHG Data

The Coastal Act and recent statewide developments related to global warming informed and mandated the Commission's review of the Project's energy consumption and resultant GHG emissions. During CDP review, the Commission found the Project's contribution to global warming attributable to its energy use would impact coastal resources:

The global heating, sea level rise, and ocean acidification resulting from greenhouse gas emissions affects public access (Coastal Act Sections 30210-30214), recreation (Sections 30212.5, 30213, 30220-30222), marine resources (Sections 30230-30231), wetlands (Sections 30231, 30233), ESHA (Section 30240), agriculture (Sections 30241-30242), natural land forms (30251), and existing development (Sections 30235, 30253).¹⁴

Indeed, the Project is more energy intensive than any other water supply option.¹⁵

However, at the time of GHG Plan approval, Poseidon argued against the Commission staff suggestion to require offset of all of the Project's emissions because "the Project [would] produce 56,000 AFY of desalinated water that [would] directly replace, on a one-for-one basis, water that would have been imported to the Project's customers from the State Water Project."¹⁶

In response to Commission staff's suggestion, Poseidon intentionally submitted inaccurate, erroneous, and/or incomplete information regarding the Project's GHG emissions. Poseidon's repeated assertions, and MWD's complicit involvement, regarding the Project's offset of imported water were made with the full knowledge no such offset would occur. Indeed, in 2005, the MWD entered into a Seawater Desalination Program agreement with the SDCWA which outlined the basic contract terms, including protection of MWD's imported water supply related to Project implementation.¹⁷

By failing to provide the Commission and the public with accurate information, necessary for both meaningful analysis and true evaluation of the Project under the Coastal Act, Poseidon impeded the public's ability to fully participate in the original permit proceedings. 14 CCR § 13106. Further, had Poseidon presented the Commission information that was not incomplete, inaccurate, and/or erroneous,

¹⁴ Coastal Commission Final Adopted Findings for CDP Approval, August 6, 2008, p. 75.

¹⁵ Coastal Commission Final Adopted Findings for CDP Approval, August 6, 2008, p. 75.

¹⁶ Poseidon Resources Letter to Commission Re GHG Plan, August 2, 2008, pp. 4-5.

¹⁷ MWD and SDCWA Seawater Desalination Program Basic Contract Terms, Attachment 2 of MWD July 12, 2005 Board Action, p. 8-12.

it would have denied the application, or alternatively imposed different or additional conditions upon the CDP. 14 CCR 13105.

a. Poseidon Intentionally Provided Inaccurate Information Regarding the Project Water Intended Use

In November 2009, Poseidon signed a contract with MWD for a \$250 per acre-foot subsidy under the MWD Seawater Desalination Program.¹⁸ The agreement contains the following termination provision: "Metropolitan has right to terminate agreement if: (iii) Operation of the project impairs Metropolitan's existing water supply entitlements."¹⁹ This language mirrors that of the MWD agreement with the SDCWA in 2005, requiring "protection of Metropolitan's imported water supplies as related to project implementation."²⁰

Thus, Poseidon and MWD knew in 2007, at the time of CDP approval, and in 2008 at the time of GHG Plan approval, the Project water would never replace MWD imported water. Nonetheless, Poseidon claimed its water would replace imported water on a one-for-one basis.²¹ Poseidon Vice President, Peter MacLaggan maintained at the November 2007 hearing:

The water is to be provided at a guaranteed price throughout that 30-year term, at a price not to exceed what [the water districts] would have paid for the imported water that they no longer require. All water will be appropriated for public use...This water supply will result in a one-for-one replacement of imported water purchases for these agencies, or by these agencies...²²

The GHG Plan presented to the Commission and approved in 2008 also relied on the Project's offset of imported water.²³ Poseidon's GHG Plan detailed the reduction in State Water Project water being conveyed to the SDCWA due to such offset.²⁴ The Project's GHG emissions were thus reduced from nearly 100,000 metric tons to 30,000 metric tons of carbon dioxide equivalent.²⁵

Poseidon further pointed to MWD's ability to audit the individual water districts to purchase water from Poseidon, and MWD's letter to Executive Director Peter Douglas as support for its contention regarding offsets. The July 29, 2008 MWD letter stated "[o]ffsetting demand for imported water is a condition for receiving [MWD's] financial incentives" and therefore MWD and Poseidon recommended net carbon neutrality as the appropriate mitigation measure.²⁶

¹⁸ <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003702264-1.pdf>; Board Action, November 10, 2009.

¹⁹ MWD Proposed Agreement Terms, November 10, 2009, Attachment 2, Project-specific term 3.b.iii.

²⁰ MWD and SDCWA Seawater Desalination Program Basic Contract Terms, Attachment 2 of MWD July 12, 2005 Board Action, p. 8-12.

²¹ Poseidon Resources Letter to Commission Re GHG Plan, August 2, 2008, p. 5.

²² Peter MacLaggan Testimony November 14, 2009; Court Reporting Services, p.56.

²³ Poseidon's GHG Plan, July 30, 2008; pp. 13-14.

²⁴ *Id.*

²⁵ Poseidon's GHG Plan, July 30, 2008; p. 32 (Table 1).

²⁶ MWD Letter to Peter Douglas, July 29, 2008, p.2.

Both Poseidon and MWD's intentional misrepresentation of the 2005 agreement terms at the time of CDP approval and GHG Plan approval constitute submission of inaccurate, incomplete, and/or erroneous information. The 2005 MWD agreement terms directly contradicted Poseidon's promise to offset imported water supplies. The 2009 MWD agreement now affirms what Environmental Groups and Commission staff knew at the time of CDP approval – Poseidon's Project would provide surplus rather than replacement water.

b. The Commission Relied on Poseidon and MWD's Representations of Offsets to Establish Baseline Conditions for Project GHG Emissions

The July 30, 2008 GHG Plan is premised on the offset of State Water Project water, equivalent to annual emissions of approximately 67,000 metrics tons of carbon dioxide equivalent.²⁷ Poseidon defended these calculations though it knew MWD would not reduce its supply of imported water due based upon production of Project water. Indeed, the 2005 MWD general contract terms forbade interference with MWD imported water supplies.²⁸

Nonetheless, Poseidon opined its water would provide a "one-for-one" offset of imported water before the Commission at all relevant hearings. Such promises became the basis for the Commission's approval of the GHG Plan offset for a "net" carbon-neutral Project, as opposed to a truly carbon neutral Project. Indeed, the Commission's Deputy Director recently sent a letter to Poseidon reflecting this concern:

As you know, the Commission's approval last year of Poseidon's [GHG Plan] provided Poseidon with emission credits for reduced water imports, based in part on Poseidon's characterization that its facility would result in MWD importing less water to Southern California. However, with this new agreement in place, import reduction is no longer a part of Poseidon's project, and therefore requires a modification in the approved GHG Plan.²⁹

The Commission's reliance on Poseidon's intentional submission of incomplete, inaccurate, and/or erroneous information regarding its offset of imported water and GHG emissions thus necessarily impacted the Commission's approval of the CDP and its imposition of mitigation measures. At the very least, Poseidon would have been required to offset all GHG emissions attributable to the Project – not a calculation excluding energy consumption attributable to State Water Project imports. Poseidon's CPD must therefore be revoked.

IV. Environmental Groups Pursue This Request with Due Diligence

The MWD agreement was signed on November 10, 2009. This request is submitted less than one month after the MWD decision, approving the terms of the agreement. A separate revocation request is currently

²⁷ Poseidon's GHG Plan, July 30, 2008; pp. 13-14; see also, Findings to support the GHG Plan approval, <http://documents.coastal.ca.gov/reports/2008/12/W16b-12-2008.pdf>

²⁸ MWD and SDCWA Seawater Desalination Program Basic Contract Terms, Attachment 2 of MWD July 12, 2005 Board Action, p. 8-12.

²⁹ Letter from Alison Dettmer, Deputy Director, Commission Energy, Ocean Resources, and Federal Consistency Division to Poseidon, November 13, 2009.

pending before the Commission, to be heard at the December Commission hearing. This request is filed in time for scheduling at the next available Commission hearing in January 2010.

In addition, Environmental Groups also believed the Commission would require Poseidon to submit a CDP amendment in response to the 2009 MWD agreement. Such reliance was based in part on the Commission's letter to Poseidon on November 13, 2009. Environmental Groups have recently learned Poseidon will not be submitting a permit amendment application.

Therefore, Environmental Groups pursue this request with due diligence.

V. Conclusion

In conclusion, the elements of a Revocation Request have been met:

- Poseidon intentionally provided incomplete, inaccurate, and/or erroneous information in connection with its Coastal Development Permit; and
- That information, had it been disclosed, would have led to different conditions placed on approval of the CDP, or resulted in denial of the application.

Further, the omission of such information resulted in Environmental Groups' denial of the opportunity to "fully participate in the proceedings." 14 CCR § 13106. Given the above facts and circumstances, the Executive Director may not find this Request for Revocation "patently frivolous and without merit." 14 CCR § 13106. The Director must proceed with a revocation hearing and suspend the CDP until such hearing. 14 CCR § 13107.

Respectfully Submitted,

SURFRIDER FOUNDATION



Joe Geever
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SAN DIEGO COASTKEEPER

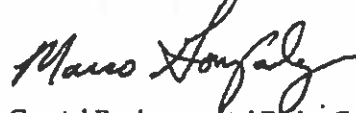


Gabriel Solmer
Legal Director
Gabe@sdcoastkeeper.org

Attachments:

1. Coastal Commission Letter to Poseidon, November 13, 2009
2. MWD October 2009 Draft Agreement with Member Agencies
3. November 10, 2009 MWD agenda item documents
4. August 6, 2008 GHG Plan submissions:
<http://documents.coastal.ca.gov/reports/2008/8/W5a-8-2008.pdf>
5. MWD 2005 Action re agreement with SDCWA

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January 13, 2010

VIA FEDEX AND EMAIL

Chairperson Neely and Honorable Commissioners
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Peter Douglas
Executive Director
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Re: Carlsbad Desalination Project (Coastal Development Permit No. E-06-013):
Response to December 8, 2009 Permit Revocation Request

Dear Chairperson Neely, Honorable Commissioners, and Mr. Douglas:

On behalf of Poseidon Resources (Channelside), LLC ("Poseidon"), we are responding to the December 8, 2009 revocation request ("Revocation Request") regarding the Carlsbad Desalination Project's (the "Project") Coastal Development Permit ("CDP") submitted by Surfrider Foundation, Coastal Environmental Rights Foundation and San Diego Coastkeeper (the "Opponents"). As discussed in detail in this submittal and in Poseidon's January 7, 2010 letter to Alison Dettmer and Tom Luster (which is attached hereto as Exhibit 1¹), Opponents' assertions have no merit and are contrary to the overwhelming evidence in the Project's administrative record.


Opponents' claims are based entirely on their misreading and misunderstanding of a Seawater Desalination Program ("SDP") Agreement for the Project approved by the Metropolitan Water District of Southern California ("MWD") on November 10, 2009, as well as required terms for the Agreement that MWD approved in July 2005 (the "July 2005 Required Contract Terms"). Opponents admit the SDP Agreement merely memorialized the July 2005 Required Contract Terms, which required MWD to preserve its own imported water entitlements,² and then fail to acknowledge that the Coastal Commission approved the Project's

¹ Poseidon's January 7, 2010 letter to Alison Dettmer and Tom Luster ("January 7, 2010 Letter") responds to Commission staff's November 13, 2009 letter requesting that Poseidon submit a permit amendment application to modify its Energy Minimization and Greenhouse Gas Reduction Plan ("GHG Plan"), and is incorporated as part of this response by this reference.

² Revocation Request, p. 5.

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HTB-Attachment A

EXHIBIT NO. 2
APPLICATION NO.
R2-E-05-013
 California Coastal Commission

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Energy Minimization and Greenhouse Gas Reduction Plan ("GHG Plan") with the full understanding that MWD would not forgo its imported water entitlements or its right to redirect imported water the Project replaces to other locations within MWD's service territory. As nothing has changed regarding this issue since the Commission approved the GHG Plan, and the Project's customers still must reduce their water imports from MWD under the SDP Agreement, Opponents' Revocation Request is nothing more than a sham to delay the Project, force Poseidon to bear significant additional expense responding to frivolous claims, and to improperly force the Commission to use its scarce time and resources to revisit an issue (i.e. "gross" v. "net" GHG offsets) it already decided. For those reasons and the other numerous reasons set forth below, the Revocation Request should be deemed frivolous and denied.

The Revocation Request Is Patently Frivolous And Without Merit →

On its face, the Revocation Request is "patently frivolous and without merit", and as such, no revocation hearing before the Commission is necessary or required.³ The Coastal Commission's regulations (the "CCC Regulations") set a very high standard for CDP revocation, which requires Opponents to prove three elements under CCC Regulations Section 13105(a): (1) that the applicant intentionally submitted inaccurate, erroneous or incomplete information to the Commission; (2) that the information intentionally submitted is in fact inaccurate, erroneous or incomplete; and (3) that the Commission would have required additional or different conditions or denied the CDP had accurate and complete information been submitted.⁴ The Opponents bear the burden of proving *all three prongs* to establish that revocation is necessary, and have failed to satisfy any of those prongs or show that Poseidon has engaged in any conduct that meets the grounds for revocation.

Most significantly, the Revocation Request *does not present a single material fact* that demonstrates Poseidon has engaged in any conduct whatsoever, intentional or otherwise, that falls within the scope of CCC Regulation Section 13105(a), and Opponents *have not cited to any single instance where Poseidon provided inaccurate, erroneous or incomplete information* to the Commission or shown how the Commission could have reached a different result. By failing to show any such necessary evidence in their Revocation Request, Opponents have failed to satisfy any of the three prongs necessary for revocation, and therefore their request must fail. Without citing a single material fact supporting the standard for revocation, the Revocation Request is patently frivolous and without merit, and the Executive Director should not initiate revocation proceedings.

The Grounds For Revocation Have Not Been Met

Even if the Executive Director decides to initiate revocation proceedings, which Poseidon strongly contends is contrary to the facts before the Commission, Opponents have not shown that any of the grounds for revocation have been met. Accordingly, and based on the arguments

³ See CCC Regulations § 13106.

⁴ See CCC Regulations § 13105, subd. (a).

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below and the facts already in the Commission's record, the Executive Director should recommend to the Commission that Opponents' request is without merit and should be denied. Further, since the grounds for revocation have not been met, the Executive Director should not and may not suspend Poseidon's CDP because the CCC Regulations only allow for the suspension of a CDP where the Executive Director has found that "grounds exist for revocation of a permit."⁵

I. OPPONENTS' REQUEST IS PATENTLY FRIVOLOUS AND WITHOUT MERIT BECAUSE THEY CANNOT MEET THEIR BURDEN OF PROOF

Section 13106 of the CCC Regulations provides that when a revocation request is submitted to the Commission, "[t]he executive director shall review the stated grounds for revocation and, *unless the request is patently frivolous and without merit*, shall initiate revocation proceedings."⁶ Thus, the Executive Director has the authority to deny a revocation request upon his determination that the request is "patently frivolous and without merit." Opponents' Revocation Request is patently frivolous and without merit because it is clear that Opponents have not cited a single fact to support that any of the grounds for revocation of the CDP have been satisfied.⁷

A. Opponents Have Not and Cannot Satisfy Any of Section 13105(a)'s Elements

Section 13105(a) of the CCC Regulations is divided into three elements: (i) intentional inclusion; (ii) of inaccurate, erroneous or incomplete information in connection with a coastal development permit application; (iii) where the Commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application. While the CCC Regulations do not provide a definition of the phrase "patently frivolous and without merit," a revocation request that fails to provide any evidence supporting any one of the three required prongs in Section 13105(a) should be considered patently frivolous and without merit because the request cannot succeed if any one of the three prongs remains unproven. The Revocation Request submitted by Opponents fails to provide evidence supporting any of the three required elements in Section 13105(a) as follows:

1. **No Intent**. As discussed in detail in Section II(A) below, Opponents do not cite to a single piece of evidence that demonstrates in any way that Poseidon intentionally provided the Commission with inaccurate, erroneous or incomplete information regarding the Project's GHG emissions or MWD's imported water entitlements. As demonstrated in Poseidon's January 7, 2010 Letter to the Commission (**Exhibit 1**), Poseidon and MWD consistently maintained during the Commission's GHG Plan approval process that MWD would

⁵ See CCC Regulations § 13107; Section III, below.

⁶ CCC Regulations § 13106 (emphasis added.)

⁷ The Revocation Request focuses solely on the revocation grounds contained in CCC Regulations Section 13105(a). Since Opponents do not assert any defects in noticing the Project's CDP as governed by CCC Regulations Section 13105(b), there are no grounds for revocation of Poseidon's CDP based on those issues.

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not relinquish any imported water entitlements in connection with the Project or give up the right to redirect imported water the Project replaces to other locations. The Opponents cannot show that Poseidon intended to convince the Commission otherwise. Failure to demonstrate intent is a fatal defect to the Revocation Request, and thus the Executive Director should find it to be patently frivolous and without merit.

2. No Inaccurate, Erroneous or Incomplete Information. As discussed in detail in Section II(B) below, Opponents have falsely claimed that Poseidon submitted inaccurate, erroneous and/or incomplete information to the Commission, *but have not provided a single fact to support their claims.* Contrary to Opponents' assertions, and as shown in Poseidon's January 7, 2010 Letter, Poseidon provided the Commission with accurate and complete information regarding how the Project's desalinated water would offset corresponding demand for water imports into the San Diego region, and about how MWD would not relinquish any imported water entitlements in connection with the Project or give up the right to redirect imported water the Project replaces to other locations. There are no facts supporting a finding that any of this information is inaccurate, and thus the Executive Director should find the Revocation Request to be patently frivolous and without merit.

3. No Different Result. As discussed in detail in Section II(C) below, Opponents also have not made the required showing that the Commission would have reached a different result regarding the Project's CDP. Opponents cannot make this showing because (i) the record shows the Commission had full knowledge that MWD would not relinquish any of its imported water entitlements when the Commission approved the Project's GHG Plan; and (ii) even if the SDP Agreement did alter any of the GHG Plan's water import reduction assumptions, which it does not, CDP Special Condition 10 does not address the GHG Plan's specific contents, including MWD's water supply entitlements or the Project's GHG offset requirements. As the Revocation Request has not and cannot overcome the burden of showing that the Commission would have required additional or different conditions on the CDP or denied the application (or even would have changed the GHG Plan's content), the Executive Director should find the request patently frivolous and without merit.

B. The Opponents Made the Revocation Request with Improper Motive

In addition to failing to satisfy their administrative burden in the Revocation Request, Opponents' request also should be found "patently frivolous and without merit" because Opponents have brought it with improper motive. In the context of judicial appeals, courts have found an appeal to be frivolous "when it is prosecuted for an improper motive—to harass the respondent or delay the effect of an adverse judgment. . ."⁸ The Revocation Request admits that Opponents are pursuing revocation of Poseidon's CDP not because the standards for revocation have been satisfied, but because Opponents had believed "the Commission would require Poseidon to submit a CDP amendment in response to the 2009 MWD Agreement."⁹ Opponents

⁸ *Avila v. Continental Airlines, Inc.* (2008)165 Cal.App.4th 1237, 1262.

⁹ Revocation Request, p. 7.

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also admit that when they learned that Poseidon "would not be submitting a permit amendment application,"¹⁰ it pursued the Revocation Request. As Commission staff is aware, revocation of a CDP is only appropriate where specific regulatory requirements have been satisfied.

While Opponents claim that the grounds for revocation of the CDP have been satisfied, those claims belie Opponents' actual intent to delay the Project. The fact that Opponents' filed their Revocation Request only after Commission staff recommended that the Commission deny Opponents' prior revocation request filed on October 8, 2009, demonstrates that Opponents are only seeking to delay or stop the Project and not to inform the Commission of some alleged intentional misrepresentation or inaccuracy by Poseidon (which would be impossible since no such intentional misrepresentation or inaccuracy has occurred.) *Seeking CDP revocation only for purposes of delaying or stopping a Project that Opponents do not like is an improper motive*, and therefore the Executive Director also should find that the Revocation Request to be patently frivolous and without merit on that basis.

II. OPPONENTS HAVE FAILED TO SHOW THAT THE GROUNDS FOR REVOCATION HAVE BEEN MET

Even if the Executive Director determines that the Revocation Request is not patently frivolous and without merit, which Poseidon contends it is, based on the facts before the Commission the Executive Director must conclude that the grounds for revocation do not exist and recommend denial. For the following reasons, the Revocation Request fails to demonstrate that any of the three required grounds have been satisfied.

A. Opponents Have Not Demonstrated Intent

While the Revocation Request claims that "Poseidon intentionally submitted inaccurate, incomplete and erroneous information regarding the Project's GHG emissions",¹¹ *Opponents do not cite to a single piece of evidence that demonstrates such intent*. Instead, the Revocation Request inaccurately claims that statements Poseidon and MWD made to the Commission regarding how the Project's desalinated water would offset demand for imported water in the San Diego region are inconsistent with an unrelated contract term included in MWD's November 10, 2009 SDP Agreement with the San Diego County Water Authority ("Water Authority") and nine local retail water agencies ("LRAs"), as well as in the MWD's July 2005 Required Contract Terms for the SDP Agreement, both of which protect MWD's own imported water entitlements.¹² As demonstrated below and detailed in Poseidon's January 7, 2010 Letter

¹⁰ *Id.*

¹¹ Revocation Request, p. 4.

¹² On July 12, 2005, the MWD Board authorized MWD staff to enter into SDP agreements with five of its member agencies, including the Water Authority. The Board's approval of each of the agreements included a set of required contract terms (the "July 2005 Required Contract Terms") to be used consistently in all of the agreements. Article 14 of the July 2005 Required Contract Terms states: "Metropolitan's Imported Water Entitlements. Protection of Metropolitan's imported water supplies as related to project implementation." Section 13 of the SDP Agreement

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(Exhibit 1), Commission staff, the Opponents, Poseidon and MWD expressly conveyed to the Commission at the Commission's GHG Plan hearing that MWD would not relinquish its imported water entitlements in connection with the Project or give up its right to redirect imported water the Project replaces to other locations within MWD's service territory.¹³

Thus, Poseidon and MWD's statements are fully consistent with MWD's July 2005 Required Contract Terms that require "[p]rotection of Metropolitan's imported water supplies as related to project implementation," and with the SDP Agreement that memorializes and implements that requirement. Since the record clearly shows that Poseidon explained MWD's consistent position on its imported water entitlements to the Commission at the Commission's GHG Plan hearing, the Opponents have not and cannot demonstrate intent. As this is a required finding under CCC Regulations Section 13105(a), and it has not been met, the Executive Director cannot determine that this ground for revocation exists.

B. Opponents Have Not Identified Any Inaccurate, Erroneous Or Incomplete Information

As summarized in Section I(2) above, the Revocation Request does not demonstrate the "*inclusion of inaccurate, erroneous or incomplete information in connection with . . .*" Poseidon's CDP application.¹⁴ Opponents falsely claim that Poseidon submitted inaccurate, erroneous or incomplete information regarding the Project's GHG Plan and the reduction in GHG emissions the Project would achieve by replacing imported water that the Water Authority would otherwise receive from MWD. However, the Opponents ignore the overwhelming evidence in the Commission's administrative record showing that:

- (i) the "net" emissions approach in the GHG Plan – for which Poseidon advocated and which the Commission ultimately approved – is consistent with CEQA principles in that it does not require MWD to relinquish water entitlements in the amount of water the Project replaces, and instead places the obligation of providing mitigation for emissions associated with importing the replaced water into other parts of MWD's service territory on hypothetical future users of that water;
- (ii) the fact that MWD would not relinquish its rights to its imported water entitlements or its ability to direct imported water the Project replaces to other

implements and memorializes Article 14 of the July 2005 Required Contract Terms and permits MWD to terminate the SDP Agreement if it reasonably determines that:

[A]s a result of Water Authority's or LRA's action or support, Metropolitan is required by any statute or administrative order, court, or other entity to reduce, defer, or exchange entitlement to or reduce usage of Colorado River water, State Water Project water, or other water supplies contracted for by Metropolitan as a result of expected or actual production of the Desalinated Seawater by the Project.

¹³ See January 7, 2010 Letter, pp. 7-9, 15-16.

¹⁴ CCC Regulations § 13105, subd. (a).

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locations within MWD's service territory was a key issue the Commission considered when it approved Poseidon's "net" emissions approach in the GHG Plan without restricting MWD's rights to its imported water entitlements; and

- (iii) MWD has consistently required in each of the SDP agreements it has entered into with its member agencies that it would not relinquish its imported water entitlements as a result of any desalination project, and MWD's position has not changed since the Commission considered the Project and the GHG Plan.

This evidence is presented in explicit detail in Sections I and II of the January 7, 2010 Letter,¹⁵ and is hereby incorporated into this letter. Nevertheless, we take this opportunity to revisit some of the key facts which support the conclusion that Opponents have not demonstrated that Poseidon intentionally submitted inaccurate, incomplete, or erroneous information to the Commission.

1. The Coastal Commission Approved The GHG Plan With Full Knowledge That MWD Would Not Contractually Relinquish Any Water Entitlements.

Testimony at the GHG Plan hearing and Poseidon's prior written submissions demonstrate that Poseidon provided complete and accurate information to the Commission regarding MWD's continuing right to use its imported water entitlements after the Project commences operations. Prior to the Commission's approval of the GHG Plan, Poseidon argued that emissions reductions from the Project's replacement of imported water must be analyzed by determining the "net" change in GHG emissions relative to existing conditions, or the "baseline", factoring in both increases and decreases in emissions caused by the Project.¹⁶ Poseidon explained that existing emissions associated with energy used to pump 56,000 acre-feet of water per year into the San Diego Region that the Project's water will replace are part of the existing "baseline", and thus should be "netted-out" when determining the Project's GHG emissions because that water will no longer be pumped to the Project's customers once the Project is operating.¹⁷ Poseidon also argued that this "net" approach is appropriate under CEQA because (i) it is speculative that the replaced water would be pumped into the region; and (ii) even if the replaced water is pumped into the region, the associated carbon emissions from such pumping should be the responsibility of the uses that require the water to be imported.¹⁸

¹⁵ See January 7, 2010 Letter, pp. 2-17.

¹⁶ See *id.*, pp. 7-9.

¹⁷ See Letter from Poseidon to Coastal Commission, Aug. 2, 2008, pp. 4-5. Various state agencies, including the Air Resources Board, California Energy Commission, and Department of Finance, as well as the Lieutenant Governor supported the "net" approach. See January 7, 2010 Letter, pp. 10-11 and Exhibits C-F thereto. MWD and the Water Authority further supported this approach. See Letter from MWD to Peter Douglas, dated July 29, 2008, at p. 1, attached to January 7, 2010 Letter as Exhibit M; Letter from San Diego County Water Authority to Coastal Commissioners, dated July 24, 2008, at p. 1, attached to January 7, 2010 Letter as Exhibit N.

¹⁸ See January 7, 2010 Letter, p. 8.

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Commission staff and the Opponents argued, however, that Poseidon should be responsible for offsetting the Project's "gross" GHG emissions, which included emissions associated with the imported water the Project replaces, because Poseidon could not guarantee that the replaced water would no longer be imported into MWD's service territory for another use.¹⁹ Commission staff and the Opponents asserted that Poseidon should only be allowed to reduce this "gross" emissions requirement for the imported water if Poseidon could show that the reduction measure was verifiable and enforceable under AB 32 criteria – such as through a contractual agreement from MWD relinquishing its imported water entitlements.²⁰ After considering all of the arguments on this issue, the Commission approved Poseidon's "net" approach in the GHG Plan, and did not require MWD to relinquish any of its water entitlements.²¹

In its presentation to the Commission at the GHG Plan hearing, Poseidon corrected inaccurate information provided by certain Project opponents and made clear that the "net" approach is appropriate under CEQA, and that Poseidon's proposed GHG Plan would not affect MWD's ability to redirect water the Project replaces to other locations within MWD's service territory:

Rick Zbur: "Staff asserts that Poseidon must offset the carbon from the imported water, because it cannot guarantee that it will not be used. . . . If water continues to be pumped to Southern California from the State Water Project, it would be for new or expanded uses. Those new uses would be required under CEQA to address the impacts of importing the new water. . . [S]ince only new or expanded projects would be using this imported water, and those projects are required to mitigate the carbon impacts under CEQA, staff's proposal would result in double mitigation for the same impacts.

....

First point I wanted to address was Mr. Mitton's assertion that we have asserted that water will not be used in other places. That is actually not accurate. What we have said is that Poseidon's customers, the water districts, have agreed to replace the water, and therefore that the water that is replaced, where that goes is speculative, but wherever it goes, CEQA will apply to require those people to mitigate it.

So, our view is that the new users of the water should be responsible for the environmental mitigation of that. That is consistent with CEQA methodology. That is consistent with -- we have assurances that the attorney general will enforce that.

¹⁹ See *id.*, pp. 4-7.

²⁰ *Id.*

²¹ See *id.*, pp. 11-13.

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In addition, this Commission determined that the project was not growth inducing. That was part of your findings. The requirement that Poseidon be assigned the mitigation for the replaced water is just not consistent with the determination that you have already made that the project is not growth inducing.

Another point that we wanted to address is the request by Mr. Massara that the AB32 criteria should apply to the energy reduction from replaced water. This is really the key issue related to the [gross]²² versus net issue, and is the crux of what is before the Commission. Essentially what the staff does is they apply these vague principles to the replaced water, which in effect, would impose the [gross]²³ requirements, because the principles would require that the replaced water have contractual agreements that the replaced water would be retired and not used by anyone. That effectively would not allow – it effectively imposes the [gross]²⁴ requirement . . . Each of the agencies that are responsible for the implementation of AB 32 have supported Poseidon's ability to take credit for the replaced water . . .²⁵

Poseidon advanced these same arguments in its written submissions to the Commission.²⁶

During their deliberations concerning the Project's GHG Plan, various Coastal Commissioners confirmed that they understood and made clear for the full Commission that the "net" approach that Poseidon advocated in the GHG Plan did not require MWD to relinquish any water entitlements or prevent MWD from redirecting water the Project replaces to other locations.²⁷ For example:

- Commissioner Shallenberger: "Metropolitan Water District is going to, and needs to, and has a right to take all of the water that is available to them out of the delta."²⁸
- Commissioner Scarborough: "In essence, what I understand from a Resources perspective -- indeed we are arguing within our family as well -

²² The word "growth" was inaccurately transcribed here in the Reporter's Transcript of Proceedings. Mr. Zbur used the word "gross" at the hearing.

²³ The word "growth" was inaccurately transcribed here in the Reporter's Transcript of Proceedings. Mr. Zbur used the word "gross" at the hearing.

²⁴ The word "growth" was inaccurately transcribed here in the Reporter's Transcript of Proceedings. Mr. Zbur used the word "gross" at the hearing.

²⁵ Testimony of Rick Zbur, Reporter's Transcript of Proceedings, State of California Coastal Commission, Aug 6., 2008, at pp. 92:5-17; 93:3-6; 165:16-166:21, 166:23-167:1 (emphasis added).

²⁶ See Letter from Poseidon to Coastal Commission, Aug. 2, 2008, at Exhibit B: Response to Staff Report, pp. 8-9.

²⁷ See January 7, 2010 Letter, at pp. 9-10.

²⁸ Testimony of Commissioner Shallenberger, Reporter's Transcript of Proceedings, State of California Coastal Commission, Aug. 6, 2008, at p. 222:15-17.

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- is that, yes, Met will continue to receive that water. They are not going to turn the state tap off. Other projects that will then need to use that water will then have to go through a process by which they get the okay to use that water. And, it is that new project that will then have to be in compliance with CARB and APCD, or whatever local district, on their greenhouse gas emission reductions for that project.”²⁹

Following the Commission’s deliberations, the Commission approved the GHG Plan containing the “net” approach that Poseidon proposed by a ten to two vote. Because the Project will displace imported water by the Project’s nine LRA customers, the GHG Plan reduces Poseidon’s emissions offset obligations in the amount of GHG emissions that are avoided from imported water the Project replaces.³⁰ Notably, there is no text in the GHG Plan that in any way limits or restricts MWD’s management of its imported water supply, or that requires MWD to relinquish any of its imported water entitlements. Accordingly, there is no foundation for any claim that the Commission did not understand, or was not fully aware of this issue when the Commission approved the GHG Plan, and the record shows that Poseidon did not submit any inaccurate, incomplete, and/or erroneous information to the Commission.³¹

2. The Requirement In The SDP Agreement That MWD Not Relinquish Water Entitlements Has Not Changed Since The GHG Plan’s Approval.

The Revocation Request bases its claim of inaccurate, erroneous and/or incomplete information on Opponents’ own inaccurate understanding of a provision contained in MWD’s July 2005 Required Contract Terms for all SDP agreements that protects MWD’s imported water entitlements, which MWD implemented and memorialized in its November 10, 2009 approval of the SDP Agreement with the Water Authority and nine LRAs. Specifically, Opponents incorrectly conclude that because the SDP Agreement allows MWD to terminate the Agreement if MWD’s rights to its own water entitlements are impacted by the Project, then the Project must be providing “surplus rather than replacement water” to the San Diego region.³² However, contrary to the Opponents’ flawed understanding, the SDP Agreement only confirms what Poseidon clearly conveyed to the Commission – that MWD would not relinquish its imported

²⁹ Testimony of Commissioner Scarborough, Reporter’s Transcript of Proceedings, State of California Coastal Commission, Aug. 6, 2008, at p. 225:1-9.

³⁰ The quote Opponents use in the Revocation Request from Poseidon Vice President Peter MacLaggan is fully consistent with the Commission’s decision. Mr. MacLaggan stated that the Project’s “water supply will result in a one-for-one replacement of imported water purchases for these agencies or by these agencies.” (Revocation Request, p. 5.) The Project will continue to result in a one-for-one replacement of imported water purchases by the LRAs, and the Opponents have not cited to any evidence that shows otherwise.

³¹ Furthermore, the Commission adopted revised findings regarding its approval of the GHG Plan on December 10, 2008, which confirmed that Poseidon would be required to offset only its “net” emissions. See January 7, 2010 Letter, pp. 11-13.

³² Revocation Request, p. 6.

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water entitlements or its right to redirect imported water the Project replaces to other locations within MWD's service territory.³³

The Revocation Request also fails to recognize that MWD's approval of the SDP Agreement does not change in any way any of the Commission's bases for approving the GHG Plan. The MWD Board's final approval of the SDP Agreement on November 10, 2009, which the Revocation Request admits "mirrors that of the MWD agreement with the SDCWA in 2005, requiring 'protection of Metropolitan's imported water supplies as related to project implementation,'"³⁴ did not change MWD's water import reduction obligations, the obligations of any of the other parties to the SDP Agreement or Poseidon's obligations under the GHG Plan approved by the Commission. As discussed above and in detail in Poseidon's January 7, 2010 Letter, the Commission approved the GHG Plan on August 6, 2008 with the complete understanding that, while the Project would result in water import reductions by the LRAs, MWD would not relinquish any imported water entitlements.³⁵ Because nothing has changed, there is no merit to any claim by the Opponents that the Commission did not have complete and accurate information before it regarding MWD's ability to use its water entitlements or redirect imported water the Project replaces when the Commission approved the GHG Plan.

MWD's General Manager also confirmed in a December 17, 2009 letter to Executive Director Douglas that the SDP Agreement protects MWD's rights to its imported water entitlements consistent with the July 2005 Required Contract Terms, which is also consistent with Poseidon's testimony and prior submissions to the Commission:

"In 2005, Metropolitan authorized agreements with the SDCWA and four other member agencies that included a uniform provision to protect Metropolitan's water rights and entitlements. This provision appears as Section 13 of the draft SDP Agreement. . . . Section 13's sole purpose is to protect Metropolitan's imported water supply rights and entitlements."³⁶

It is because the July 2005 Required Contract Terms already had been approved at the time of the Coastal Commission hearing on the GHG Plan and that Article 14 of those Terms required all SDP agreements to protect MWD's imported water supplies, which Poseidon believed could not be altered, that Poseidon, MWD, the Water Authority and the LRAs all acknowledged during the Commission's proceedings on the GHG Plan that MWD would not contractually relinquish its imported water entitlements.³⁷ Commission staff also conveyed this

³³ See January 7, 2010 Letter, pp 7-9.

³⁴ Revocation Request, at p. 5.

³⁵ See, e.g., January 7, 2010 Letter, pp. 9-13.

³⁶ See December 17, 2009 Letter from Jeffrey Kightlinger to Peter Douglas, attached to January 7, 2010 letter as Exhibit H (emphasis added).

³⁷ See, e.g., *id.*, pp. 15-16.

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same information to the Commission in its arguments against Poseidon's GHG Plan during the August 6, 2008 hearing:

Commission staff Tom Luster: "As you have heard several times today, the state water project will not necessarily reduce its electrical use or its emissions, due to Poseidon's project

....

Met describes its desal program as allowing Metropolitan to redirect imports, not necessarily reduce them. For example, Met's recent integrated water resources plan from 2004 -- which staff is adding to the record -- states that desal is expected to offset water use in one area of its service area, and allow it to send additional imported water to other parts of its service area."³⁸

We also understand that Opponents wrongly believe that the definition of "Eligible Yield" in Section 1.4 of the SDP Agreement demonstrates that the Project's water is not replacing water that would have otherwise been imported to the San Diego region. The SDP Agreement defines "Eligible Yield" as "the amount of Desalinated Seawater actually delivered to an LRA's or Water Authority's local potable water distribution system from the Project in a Fiscal Year, excluding any Desalinated Seawater that Metropolitan reasonably determines will not augment water supply available to Metropolitan's service area, including Metropolitan's imported water." Opponents incorrectly claim that the use of the word "augment" in this definition indicates that water produced by the Project will supplement water already imported to the region, rather than replace it.

Section 1.4 of the SDP Agreement confirms that desalinated water supplies from the Project must displace demand otherwise placed on Metropolitan, or the desalinated water supplies will not qualify as "Eligible Yield" that is entitled to Metropolitan's financial incentives under SDP Agreement Sections 6 and 7. This understanding is supported by Recital O of the SDP Agreement, which provides that MWD established the Seawater Desalination Program "to provide financial incentives for seawater desalination projects that reduce demand for imported water supplies from Metropolitan through the State Water Project and Colorado River Aqueduct."³⁹ The Opponents' narrow reading of the term "augment" fails to take into account

³⁸ Testimony of Tom Luster, Reporter's Transcript of Proceedings, State of California Coastal Commission, Aug. 6, 2008, at p. 172:18-20; 173:6-12.

³⁹ This understanding finds further support in a letter from MWD's General Manager to the Commission's Executive Director, dated July 29, 2008, which states that "water agencies receiving desalinated supplies from the Project must demonstrate that the water offsets an equivalent amount of water imported from Metropolitan." Letter from MWD to Peter Douglas, dated July 29, 2008, at p.1, attached to the January 7, 2010 Letter as Exhibit M. In addition, MWD's 2001 Request for Proposals for its Seawater Desalination Program states: "Project production for any beneficial use must replace an existing demand or prevent a new demand on Metropolitan's imported supplies."

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the larger context of the SDP Agreement, which shows that the Project must actually deliver additional water supply to Metropolitan's customers for Metropolitan to reduce its imported water supplies to those customers and provide them with financial incentives to purchase the replacement water.

In light of the significant evidence in the record that the Commission was fully aware that MWD would not relinquish its imported water entitlements at the time it approved the GHG Plan, and the fact that nothing has changed since MWD approved the July 2005 Required Contract Terms to protect its rights to those entitlements, the Opponents have failed to demonstrate in any way that Poseidon submitted inaccurate, incomplete, or erroneous information to the Commission.

C. Opponents Have Not Shown That The Commission Would Have Reached A Different Result

The third element the Opponents must prove to establish grounds for revocation is that the Commission would have reached a different result. Even if Poseidon intentionally submitted inaccurate, erroneous or incomplete information to the Commission, which it did not, under CCC Regulations Section 13105(a), the standard for revocation requires:

"Intentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application where the Commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or to deny an application . . ." (emphasis added).

Opponents cannot meet this burden because the record clearly shows that the Commission approved Poseidon's "net" emissions approach in the GHG Plan with the full knowledge that MWD would not forgo its imported water entitlements or limit its ability to redirect imported water the Project replaces. Moreover, as discussed above, nothing has changed with respect to the requirement that desalinated water supplies from the Project displace demand otherwise placed on Metropolitan in order for those supplies to qualify for the financial incentives provided under the SDP Agreement. Accordingly, the fact that MWD's SDP Agreement with the Water Authority and the LRAs protects MWD's imported water entitlements would not alter the Commission's endorsement of the "net" approach in the GHG Plan.

Further, even if the SDP Agreement did alter any of the GHG Plan's water import reduction assumptions, which it does not, Section 10 of the CDP only requires the approval of an Energy Minimization and Greenhouse Gas Reduction Plan and does not place restrictions or limitations on the assumptions to be used in that plan. More specifically, Special Condition 10 does not require that MWD relinquish any of its water supply entitlements, obligate Poseidon to demonstrate that the desalinated water produced by the Project results in a reduction of imported

See MWD Seawater Desalination Program Request for Proposals, November 2001, attached to the January 7, 2010 Letter at Exhibit L.

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water to the San Diego region, or require Poseidon to offset the Project's "gross" GHG emissions. Instead, Special Condition 10 states:

PRIOR TO ISSUANCE OF THE PERMIT, the Permittee shall submit to the Commission a Revised Energy Minimization and Greenhouse Gas Reduction Plan that addresses comments submitted by the staffs of the Coastal Commission, State Lands Commission and the California Air Resources Board. The permit shall not be issued until the Commission has approved a Revised Energy Minimization and Greenhouse Gas Reduction Plan after a public hearing.

Commission staff proposed this language to the Commission in its Staff Report regarding the November 15, 2007 hearing on the CDP, and the Commission adopted it verbatim when it approved the CDP.

Opponents can point to no evidence that shows the Commission would have altered Special Condition 10's requirements in any way. Accordingly, since the Opponents cannot meet the burden of proof under the third element of CCC Regulations Section 13105(a) for either the CDP or the GHG Plan, the Revocation Request must be denied.

III. THERE IS NO BASIS TO SUSPEND THE CDP

The legal requirement for suspending the Permit cannot be met because: (1) the Executive Director is not initiating revocation proceedings on his or her own motion; and (2) as discussed in Sections I and II above, there is no basis for the Executive Director to recommend revocation. The standard for suspension of the Permit presents a very high bar. In order to suspend the CDP under CCC Regulations Section 13107, the Executive Director must affirmatively determine "that grounds exist for revocation of a permit." Unlike the standard for setting a revocation request for hearing, which requires a review of the request and a determination of whether it is "patently frivolous and without merit," in order to suspend a CDP, the Executive Director must engage in an affirmative analysis and determine that the grounds do in fact exist for revocation, meaning that staff must be prepared to recommend revocation. As discussed in Sections I and II above, there are no grounds that support revocation of the CDP. Therefore, the CDP cannot be suspended.

We also note that even if grounds to revoke and suspend the CDP existed under the Commission's existing regulations, which they clearly do not, any "automatic suspension" of the CDP without Commission or judicial review would violate Poseidon's procedural due process rights. Poseidon has acquired a fundamental vested right in the Coastal Commission's November 2007 CDP approval, as it has invested substantial money and resources in reliance on that final approval.⁴⁰ Case law is clear that important rights, such as a medical or other

⁴⁰ See *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1526 ("When an administrative decision affects a right which has been legitimately acquired or is otherwise vested, and when that right is of a fundamental nature from the standpoint of its economic aspect or its effect...then a full and independent judicial review of that

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professional license or permit, cannot be suspended automatically upon a mere allegation or claim.⁴¹ Because of its vested right, Poseidon is entitled to a hearing before a nonbiased decision maker before any suspension can occur.⁴² Commission regulations should be interpreted in a manner which does not conflict with procedural due process rights, and therefore, automatic suspension should not be considered.

IV. COASTAL ENVIRONMENTAL RIGHTS FOUNDATION DOES NOT HAVE STANDING

Poseidon believes that Coastal Environmental Rights Foundation ("CERF") is not a proper party to the Revocation Request. Section 13106 of the CCC Regulations only allows revocation requests to be brought by "[a]ny person who did not have an opportunity to fully participate in the original permit proceeding. . . ." As shown on the California Secretary of State's website (a printout of which is attached as Exhibit 2), CERF was not registered as a business in California until October 17, 2008 – well after the Commission's November 15, 2007 hearing on the Project's CDP and its August 6, 2008 hearings on the Project's mitigation plans. Accordingly, CERF is not a proper party to the Revocation Request because it did not exist at the time of those hearings, and thus could not have even had an "opportunity to fully participate" in those hearings. Thus, we request that the Revocation Request be dismissed as to CERF.

V. CONCLUSION

In sum, the evidence from the Commission's administrative record conclusively shows that Poseidon and MWD consistently maintained to the Commission that, while the Project's water supply would result in the replacement of imported water purchases by the Project's customers, MWD would not relinquish its imported water entitlements or limit its ability to redirect water the Project replaces to other locations within MWD's service territory. The Revocation Request provides no new information that shows Poseidon's testimony and submissions on this issue were inaccurate, incomplete or erroneous in any way. Moreover, the Revocation Request is an improper attempt to revisit the debate concerning whether Poseidon should be required to offset the Project's "gross" or "net" greenhouse gas emissions – a debate which was settled when the Commission approved Poseidon's "net" approach in the GHG Plan

decision is indicated because the abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction.").

⁴¹ See, e.g., *Goat Hill Tavern*, 6 Cal.App.4th at 1525 ("If an administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence and find an abuse of discretion if the findings are not supported by the weight of the evidence..."); *Raley v. California Tahoe Regional Planning Agency* (1977) 68 Cal.App.3d 965, 975; *Santa Monica Pines, Ltd. v. Rent Control Board* (1984) 35 Cal.3d 858, 866.

⁴² Courts have also upheld this procedural due process right in other contexts (See, e.g., *Gray v. Superior Court* (2005) 125 Cal. App. 4th 629 (holding that professional licenses cannot be immediately suspended without due process, and a showing of danger to the public requiring immediate suspension).)

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and rejected staff's and Opponents' "gross" approach.⁴³ Accordingly, and for the reasons set forth above, the Revocation Request is a frivolous and completely meritless attempt to delay Poseidon's Project, and we therefore request that you decline to set the Revocation Request for hearing. Finally, we also respectfully request that you deny the request for suspension, which has no basis in law or in fact.

Very truly yours,



Rick Zbur
of LATHAM & WATKINS LLP

Attachments

cc: **Governor Arnold Schwarzenegger**
President Pro Tempore Darrell Steinberg, California State Senate
Speaker Karen Bass, California State Assembly
Senator Dennis Hollingsworth, California State Assembly
Senator Christine Kehoe, California State Assembly
Senator Mark Wyland, California State Assembly
Senator Denise Moreno Duchen, California State Assembly
Assemblymember Kevin Jeffries, California State Assembly
Assemblymember Nathan Fletcher, California State Assembly
Assemblymember Mirni Walters, California State Assembly
Assemblymember Martin Garrick, California State Assembly
Assemblymember George Plescia, California State Assembly
Assemblymember Lori Saldana, California State Assembly
Assemblymember Joel Anderson, California State Assembly
Assemblymember Marty Block, California State Assembly
Assemblymember Mary Salas, California State Assembly
Secretary Lester Snow, Natural Resources Agency
Andrew Sienkiewich, Metropolitan Water District
Ken Weinberg, San Diego County Water Authority
Alison Dettmer
Tom Luster
Peter MacLaggan

⁴³ As noted above and in footnote 17, various state agencies, including the Air Resources Board, California Energy Commission, and Department of Finance, as well as the Lieutenant Governor, MWD, and the Water Authority all supported the "net" approach.

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-3219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400



November 3, 2009
Permit: E-06-013

COASTAL DEVELOPMENT PERMIT

On November 15, 2007, by a vote of 9-3, the California Coastal Commission granted to Poseidon Resources Coastal Development Permit #E-06-013, subject to the attached standard and special conditions, for development consisting of:

Seawater desalination facility and associated pipelines.

The development is located at and near the Encina Generating Station in the City of Carlsbad, San Diego County.

Issued on behalf of the Coastal Commission on November 3, 2009.

PETER DOUGLAS
Executive Director

By: ALISON J. DETTMER
Deputy Director
Energy, Ocean Resources, and Federal Consistency Division

EXHIBIT NO. 3
APPLICATION NO.
R2-E-06-013
California Coastal Commission

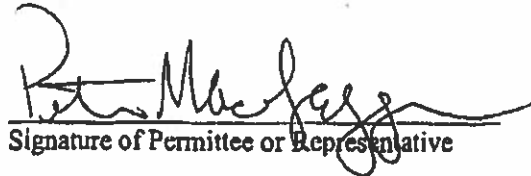
Acknowledgment:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned permittee acknowledges that Government Code Section 818.4, which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance... of any permit..." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE (14 Cal. Admin. Code Section 13158(a).)

11/3/09
Date


Signature of Permittee or Representative

STANDARD CONDITIONS

- 1) **Notice of Receipt and Acknowledgment:** This permit is not valid until a copy of the permit is signed by the Permittee or authorized agent, acknowledging receipt of the permit and the acceptance of the terms and conditions, and is returned to the Commission office.
- 2) **Expiration:** Construction activities for the proposed project must be initiated within two years of issuance of this permit. This permit will expire two years from the date on which the Commission approved the proposed project if development has not begun. Construction of the development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made at least six months prior to the expiration date.
- 3) **Interpretation:** Any questions of intent or interpretation of any condition will be resolved by the Executive Director of the Commission (hereinafter, "Executive Director") or the Commission.
- 4) **Assignment:** The permit may be assigned to any qualified person, provided the assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5) **Terms and Conditions Run with the Land:** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

- 1) **Liability for Costs and Attorneys Fees:** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 2) **Proof of Legal Interest:** PRIOR TO ISSUANCE OF THE PERMIT, the Permittee shall provide for Executive Director review and approval documentation of the Permittee's legal interest in all property within the coastal zone needed to construct and operate the project, including:
 - Lease(s) from the California State Lands Commission for structures on state tidelands. Any conflicts between conditions of the lease(s) and those adopted by the Coastal Commission shall be presented to the Coastal Commission for resolution.
 - Lease(s) or other forms of approval from the power plant owner allowing the Permittee to use portions of the power plant site and Agua Hedionda Lagoon.
 - Lease(s) or other forms of approval from the City of Carlsbad and other local governments for the project's water delivery pipelines.

- 3) **Lease and Deed Restriction: PRIOR TO ISSUANCE OF THE PERMIT**, the applicant shall provide to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against its leasehold interest(s) in the property governed by this permit a lease restriction (in which any private owner of the fee interest in such property shall join or to which it shall agree to be bound), in a form and content acceptable to the Executive Director (a) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the Property, subject to terms and conditions that restrict the use and enjoyment of the Property; and (b) imposing all of the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the Property. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the Property so long as either this permit or the development it authorizes – or any part, modification, or amendment thereof – remains in existence on or with respect to the Property.
- 4) **Other Approvals: PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Permittee shall submit to the Executive Director for review and approval documentation showing that the project has obtained final approvals for project construction and operation from the City of Carlsbad, the Regional Water Quality Control Board, the California Department of Health Services, the National Marine Fisheries Service, and the U.S. Fish and Wildlife Service, or documentation showing that these approvals are not needed.
- 5) **Assumption of Risk and Waiver of Liability**: The Permittee acknowledges and agrees, on behalf of itself and all successors and assigns: (i) that the project site may be subject to hazards from seismic events, liquefaction, storms, waves, floods and erosion; (ii) to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the landowner.
- 6) **Limits of Development**: This permit authorizes the construction and operation of the Poseidon Carlsbad Desalination Project and associated infrastructure as described in the project description of this staff report, as clarified and modified by these conditions.
- 7) **Final Plans: PRIOR TO COMMENCEMENT OF CONSTRUCTION**, the Permittee shall submit to the Executive Director for review and approval final plans for the project components located in the coastal zone. The Permittee shall undertake development in accordance with the approved plans and any changes shall be reported to the Executive Director. No material changes within the coastal zone shall occur without a Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary. Changes to the project requiring review for amendment would include changes in the physical, operational, or delivery capacity increases, or extension of water supply distribution pipelines beyond those shown on the final plans.

- 8) Marine Life Mitigation Plan: PRIOR TO ISSUANCE OF THE PERMIT**, the Permittee shall submit to and obtain from the Commission approval of a Marine Life Mitigation Plan (the Plan) that complies with the following:
- a) Documentation of the project's expected impacts to marine life due to entrainment and impingement caused by the facility's intake of water from Agua Hedionda Lagoon. This requirement can be satisfied by submitting a full copy of the Permittee's Entrainment Study conducted in 2004-2005 for this project.
 - b) To the maximum extent feasible, the mitigation shall take the form of creation, enhancement, or restoration of aquatic and wetland habitat.
 - c) Goals, objectives and performance criteria for each of the proposed mitigation sites. It shall identify specific creation, restoration, or enhancement measures that will be used at each site, including grading and planting plans, the timing of the mitigation measures, monitoring that will be implemented to establish baseline conditions and to determine whether the sites are meeting performance criteria. The Plan shall also identify contingency measures that will be implemented should any of the mitigation sites not meet performance criteria.
 - d) Requires submittals of "as-built" plans for each site and annual monitoring reports for no less than five years or until the sites meet performance criteria.
 - e) Defines legal mechanism(s) proposed to ensure permanent protection of each site -- e.g., conservation easements, deed restriction, or other methods.

The Permittee shall comply with the approved Plan. Prior to implementing the Plan, the Permittee shall submit a proposed wetlands restoration project that complies with the Plan in the form of a separate coastal development permit application for the planned wetlands restoration project.

- 9) Change in Seawater Withdrawal:** If at any time during the life of the project Poseidon proposes or is required to withdraw more than an average flow of 304 MGD of seawater, it must obtain first an amendment to this permit.
- 10) Energy Minimization and Greenhouse Gas Reduction Plan: PRIOR TO ISSUANCE OF THE PERMIT**, the Permittee shall submit to the Commission a Revised Energy Minimization and Greenhouse Gas Reduction Plan that addresses comments submitted by the staffs of the Coastal Commission, State Lands Commission and the California Air Resources Board. The permit shall not be issued until the Commission has approved a Revised Energy Minimization and Greenhouse Gas Reduction Plan after a public hearing.
- 11) Public Access Enhancements: PRIOR TO COMMENCEMENT OF OPERATIONS**, Poseidon shall cause to be dedicated, in accordance with the City of Carlsbad's Precise Development Plan PDP 00-02, the below-described parcels of land. The dedications shall be in the form of easements, title transfers, and/or deed restrictions, whose purpose is to further Coastal Act goals of maximizing public access and recreational opportunities along the coast in the South Carlsbad Coastal Resource Redevelopment Area and maintaining, restoring and enhancing marine resources. The four sites are:
- **Fishing Beach:** public access and parking easement in favor of the City of Carlsbad covering approximately 2.4 acres of land along the west shore of Agua Hedionda Lagoon.

- **Bluff Area:** approximately 10.2 acres of land on the west side of Carlsbad Boulevard opposite the power plant, which shall be dedicated in fee title to the City of Carlsbad for recreational and coastal access uses.
 - **Hubbs Site:** approximately 2 acres of land along the north shore of Agua Hedionda Lagoon to be used for a fish hatchery, aquatic research, and public access, which shall be deed restricted to uses such as fish hatchery, aquatic research, and trails.
 - **South Power Plant Parking Area:** an access easement over approximately 0.3 acres of land on the east side of Carlsbad Boulevard near the south entrance of the power plant that shall be dedicated to the City of Carlsbad for public parking.
- 12) **Dredging:** This permit does not authorize dredging that may be needed to maintain flows to the desalination facility's intake structure. The Permittee shall submit separate coastal development permit applications for proposed dredging operations.
- 13) **Visual Resources:** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval a Screening Plan. Desalination plant exterior mechanical equipment and facilities, including tanks, heating, air conditioning, refrigeration equipment, plumbing lines, duct work and transformers, shall be screened from view on all sides visible to the public. The design and material used for screening shall be architecturally compatible with the building.
- 14) **Lighting Plan:** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit a Lighting Plan to the Executive Director for review and approval. Exterior lighting for the desalination facilities shall serve the purpose of operations, security and safety only. The Lighting Plan shall demonstrate that project lighting is shielded from surrounding areas, and that only the minimum amount of lighting required for safety purposes is provided to avoid adverse effects on surrounding areas. In general, lighting fixtures shall be shielded downward and away from the ocean, Lagoon and adjacent properties. Construction of the desalination plant and related facilities and improvements shall be in conformance with the approved plan.
- 15) **Construction Plan:** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit to the Executive Director for review and approval a Construction Plan. The Construction Plan shall identify the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view in the coastal zone. The Plan shall identify any expected disruptions to public access to the shoreline and shall include measures to avoid, minimize, or mitigate for those disruptions.

The Plan shall also identify the type and location of erosion control/water quality best management practices that will be implemented during construction to protect coastal water quality, including the following:

- Silt fences, or equivalent apparatus, shall be installed at the perimeter of the construction areas to prevent construction-related runoff and/or sediment from entering the dunes and/or the Pacific Ocean.
- Grading and land alteration outside of the approved construction zone is prohibited.

- Equipment washing, refueling, and/or servicing shall not take place on the beach or sandy dune area. All construction equipment shall be inspected and maintained at an off-site location to prevent leaks and spills of hazardous materials at the project site.
- The construction site shall maintain good construction housekeeping controls and procedures (e.g., clean up all leaks, drips, and other spills immediately; keep materials covered and out of the rain (including covering exposed piles of soil and wastes); dispose of all wastes properly, place trash receptacles on site for that purpose, and cover open trash receptacles during wet weather; remove all construction debris from the beach).
- All erosion and sediment controls shall be in place prior to the commencement of construction as well as at the end of each workday. A copy of the approved Construction Plan shall be kept at the construction job site at all times and all persons involved with the construction shall be briefed on its content and meaning prior to commencement of construction. The Permittee shall notify the Executive Director at least three working days in advance of commencement of construction, and immediately upon completion of construction. The Permittee shall undertake construction in accordance with the approved Construction Plan. Any proposed changes to the approved Construction Plan shall be reported to the Executive Director. No material changes to the approved Construction Plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is necessary.

16) Storm Water Pollution Prevention Plan: PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval a Storm Water Pollution Prevention Plan (SWPPP). At minimum the SWPPP shall include the following Best Management Practices (BMPs):

- Gravel bags, silt fences, etc. shall be placed along the edge of all work areas as determined appropriate by the City's construction inspector in order to contain particulates prior to contact with receiving waters.
- All concrete washing and spoils dumping will occur in a designated location.
- Construction stockpiles will be covered in order to prevent blow-off or runoff during weather events.
- A pollution control education plan developed by the General Contractor and implemented throughout all phases of development and construction.
- Severe weather event erosion control materials and devices shall be stored onsite for use as needed.

17) Water Quality Technical Report: PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval a Water Quality Technical Report as specified in the City of Carlsbad Standard Urban Stormwater Mitigation Plan (April 2003) (Carlsbad SUSMP) for the post construction desalination facility, prepared by a licensed Civil Engineer, which shall include plans, descriptions and supporting calculations. The Storm Water Management Plan shall incorporate all feasible Best Management Practices (BMPs) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater leaving the developed areas of the site. The plan shall include the following criteria:

- Post-Development peak runoff rates and average volumes shall not exceed pre-development conditions.

- **Runoff from all parking areas, turnouts, driveways and other impermeable surfaces (e.g., roofs) shall be collected and directed through a system of structural BMPs including vegetated and/or gravel filter strips or other media filter devices or other equivalent means. The filter elements shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration and/or biological uptake. The drainage system shall also be designed to convey runoff in excess of this standard from the developed site in a non-erosive manner.**
- **Provisions for maintaining the drainage and filtration systems so that they are functional throughout the life of the approved development. Such maintenance shall include the following: 1) the drainage and filtration system shall be inspected, cleaned and repaired prior to the onset of the storm season, but not later than September 30th each year and 2) should any of the project's surface or subsurface drainage/filtration structures fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area.**
- **A drainage system approved by the City Engineer to ensure that runoff resulting from 10-year frequency storms of 6 hours and 24 hours duration under developed conditions, are equal to or less than the runoff from a storm of the same frequency and duration under existing developed conditions. Both 6-hour and 24-hour storm durations shall be analyzed to determine the detention basin capacities necessary to accomplish the desired results.**

The Permittee shall implement and maintain the Plan for the life of the project.

R2-E-06-013
Poseidon Resources (Channelside) LLC

EXHIBIT 4
Letters of Support

CALIFORNIA ENERGY COMMISSION
 1515 NORTH STREET
 SACRAMENTO, CA 95814-1512
 WWW.CEC.CA.GOV



July 29, 2008

Patrick Krueger, Chairman
 California Coastal Commission
 North Central Coast District
 45 Fremont, Suite 2000
 San Francisco, CA 94105-2219

John Chiang, Chairman
 California State Lands Commission
 100 Howe Ave Suite 100 South
 Sacramento, CA 95825-8202

Re: Carlsbad Seawater Desalination Project CDP Application No. E-06-013
 Energy Minimization and Greenhouse Gas Reduction Plan

Dear Chairman Krueger and Chairman Chiang:

After sending you both my July 18, 2008 letter regarding Poseidon's Carlsbad Desalination Project's *Energy Minimization and Greenhouse Gas Reduction Plan* (Plan), as revised July 3, 2008, I had an opportunity to meet with representatives of Poseidon Resources. The meeting, which occurred on July 23, 2008, was informative and left me with clarifications and a better understanding of the Plan. Consequently, by this letter, I wish to retract the comments in my July 18, 2008 letter.

First, it is notable that the Poseidon Project demonstrates that desalination of ocean and brackish water is becoming an important component of the state's strategy to meet its water needs. Indeed, the Energy Commission has long studied ocean and brackish water desalination and invested in research to improve technologies and address issues associated with desalination. The Poseidon Project is consistent with our efforts to improve the efficiency and environmental effects of desalination and lower its costs to customers. Towards those ends, the project and the plan for mitigation are laudable.

At the July 23, 2008 meeting, representatives of Poseidon Resources and I discussed the desalination project, the City of Carlsbad's environmental impacts report (EIR), and the comments in my July 18, 2008 letter. Subsequently, Poseidon Resources sent me additional information and a letter on July 25, 2008, further amplifying what we had discussed. Based on clarifying information and further consideration of the environmental review done on the project, I am persuaded that Poseidon's commitment

EXHIBIT NO. 4

APPLICATION NO.

R2-E-06-013

 California Coastal Commission

Chairman Patrick Krueger
Chairman John Chiang
July 29, 2008
Page 2

to offset 100 percent of its "net" or incremental increase in greenhouse gas emissions above baseline conditions is reasonable under the California Environmental Quality Act (CEQA). Indeed, the approach is consistent with how the Energy Commission, itself, analyzes the significance of impacts under CEQA, for example, in its power plant licensing cases.

More specifically, I understand the "baseline" under CEQA is typically the existing conditions as of the start of environmental analysis of the project. Accordingly, Poseidon's Plan to mitigate the carbon emissions from the increase in electricity required to deliver the project's water to customers, as compared with the "baseline" of current electricity required to serve those customers with State Water Project water, is supportable by the Energy Commission. Any implication in the Energy Commission's comments that Poseidon should further mitigate impacts yet to be ascertained from the diversion of State Water Project water for use elsewhere is not intended. Poseidon's Plan to mitigate the project's indirect impacts, as discussed, appropriately focuses on what is reasonably foreseeable, which is what I understand CEQA requires in an environmental analysis.

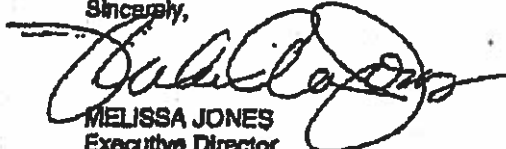
Finally, Poseidon's point about both the City's and the Coastal Commission's environmental analyses concluding the project would not cause growth inducing impacts is salient. In deference to the City's EIR and the Coastal Commission's substantiated conclusions, I accept the point. Please consider the comments in my July 18, 2008 letter regarding the project's growth-inducing impacts as having been withdrawn. Understandably, such comments fuel unnecessary speculation of impacts, which departs from the reasonably foreseeable impacts that Poseidon proposes to mitigate. Moreover, the Plan for mitigation represents an approach acceptable to the permitting agencies. The Energy Commission, with no evidence to contradict the Plan, takes no issue with it.

The representatives I met with also informed me that Poseidon has applied to become a member of the Climate Action Registry and is committed to following the accounting protocols for reporting emissions and reductions. Compliance with the accounting protocols enhances the credibility of Poseidon's Plan. I see Poseidon's membership with the Registry as an important step, not only in implementing the Plan, but also in supporting the role of the Registry in furthering the accountability of emissions reductions used to meet the state's goals under AB'32.

Chairman Patrick Kruer
Chairman John Chiang
July 29, 2008
Page 3

We appreciate the efforts of Poseidon Resources to address our concerns and those of your staff to consider the points we have raised regarding this important project. If you have any questions, please contact me at (916) 854-4998.

Sincerely,



MELISSA JONES
Executive Director

cc: Paul D. Thayer, Executive Officer, SLC
Peter M. Douglas, Executive Director, CCC
Mike Chrisman, Secretary for Resources
Jackelyne Pfannenstiel, Chairman, California Energy Commission
Pat Peraz, Assistant Director, California Energy Commission
Lorraine White, Senior Water-Energy Lead, California Energy Commission
Cynthia Bryant, Governor's Office of Planning and Research
Walter Winrow, President and COO, Poseidon Resources
Peter MacLaggan, Senior Vice President, Poseidon Resources



MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Executive Office

July 29, 2008

Mr. Peter Douglas
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Mr. Douglas:

Carlsbad Desalination Project's Energy Minimization and Greenhouse Gas Reduction Plan

The Metropolitan Water District of Southern California (Metropolitan) and the San Diego County Water Authority are statewide leaders in water conservation, recycling, and brackish groundwater desalination. However, in addition to these demand management achievements, our resource strategy benefits from other progressive actions including seawater desalination. Metropolitan's responsibility to the public is to manage future challenges including population growth, climate change impacts, increased uncertainty in the Bay-Delta, and earthquake disruptions to imported water pipelines.

The proposed Carlsbad Seawater Desalination Project (Project) would help secure supply reliability in Southern California by mitigating against these uncertainties. Metropolitan has previously supported and continues to support the project.

Metropolitan has committed to providing incentives of \$250 per acre-foot for locally-developed seawater desalination supplies that offset the demands for imported supplies, up to \$14 million annually to support the Project. To receive the incentive, water agencies receiving desalinated supplies from the Project must demonstrate that the water offsets an equivalent amount of water imported from Metropolitan.

Coastal Commission staff have questioned if it is appropriate for the Carlsbad Desalination Project's proposed Energy Minimization and Greenhouse Gas Reduction Plan (GHG Plan) to account for the fact that seawater desalination would lessen the need for additional water to be imported into the region. Metropolitan believes it is appropriate for the Project's GHG Plan to be based on offsetting net carbon emissions because San Diego County will use 56,000 acre-feet per year less imported water upon Project start up. By net, we mean the difference in energy related emissions required for moving water through the State Water Project compared to operating the seawater desalination project.

Mr. Peter Douglas

Page 2

July 29, 2008

Offsetting demand for imported water is a condition for receiving Metropolitan's financial incentives. Reduced demand will assist Metropolitan's ability to store wet-year water, improve operational flexibility and reduce requirements for dry-year water transfers delivered through State Water Project infrastructure. If the Project is not approved, regional demand for imported water will not be reduced by the 56,000 acre-feet per year to be produced by the Project.

The conditions placed on the Carlsbad Desalination Project set an important precedent for seawater desalination development in California. In that light, Metropolitan supports the Project's GHG Plan, which we believe will achieve carbon neutrality by offsetting the Project's net greenhouse gas emissions.

Thank you for considering our comments.

Yours truly,


Jeffrey Kishlinger
General Manager

WAT:tw

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cc: Ms. Maureen A. Stapleton
General Manager
San Diego County Water Authority
4677 Overland Avenue
San Diego, CA 92123

Mr. Peter M. MacLaggan
Poseidon Resources Corporation
501 West Broadway, Suite 840
San Diego, CA 92101



Linda S. Adams
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Arnold Schwarzenegger
Governor

August 5, 2008

Mr. Patrick Kruer, Chairman
California Coastal Commission
45 Fremont, Suite 2000
San Francisco, CA 94105-2219

Re: Carlsbad Desalination Project-Poseidon Resources
Energy Minimization and Greenhouse Gas Reduction Plan

Dear Chairman Kruer:

State law charges the Air Resources Board (ARB) with implementing the Global Warming Solution Act of 2006 (AB 32). AB 32 requires ARB to develop a plan to achieve reductions in emissions based on projected growth in the population and economy of the State. According to the Draft Scoping Plan we released in June, California needs to achieve 169 million metric tons CO₂ equivalent (MMTCO₂E) reduction from a projected 596 MMTCO₂E business-as-usual (BAU) case to meet the Legislative mandate to return to 1990 levels by 2020. The Draft Scoping Plan provides a preliminary recommendation for achieving these reductions through a mix of regulatory measures, including market mechanisms.

Working with the Governor's Office of Planning and Research, ARB is also examining the thresholds of significance and appropriate mitigation measures that can be applied under the California Environmental Quality Act (CEQA) to address new projects. We are also working with local and regional government organizations to address the role of land use and transportation planning in meeting our climate goals. These discussions are ongoing; nevertheless, it is important to address new projects while recognizing that relevant policies are still under development.

As part of our efforts to reduce GHG emissions, ARB is working with other agencies to seek opportunities to improve the efficiency and GHG impact of our State water supply. We will continue to evaluate options, including appropriate sector-wide policies for new water development projects. This evaluation will include the appropriate mechanisms for providing GHG credits for displacing existing water supplies.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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Mr. Patrick Kruer, Chairman
August 5, 2008
Page 2

ARB staff has reviewed Poseidon Resources' Energy Minimization and Greenhouse Gas Reduction Plan (Plan). We appreciate their voluntary pledge to reduce their contribution to greenhouse gas (GHG) emissions. Since there are minimal direct emissions associated with the project, the primary contribution is from indirect emissions associated with electricity use.

For this project, we believe the amount of emissions reduction that should be required need not exceed the net impact; that is, the direct emissions and any new indirect emissions from the project, less emissions that would be associated with providing an equivalent amount from existing supplies.

Thank you for this opportunity to comment on this matter before the Commission. If you have any questions, please call Mr. Robert D. Fletcher, Chief, Stationary Source Division, at (916) 324-8167 or via email at rfletche@arb.ca.gov.

Sincerely,

/s/

Mary D. Nichols
Chairman

cc: Mr. John Chiang, Chairman
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202

Ms. Cindy Tuck
Undersecretary
California Environmental Protection Agency

Mr. Robert D. Fletcher, Chief
Stationary Source Division



LIEUTENANT GOVERNOR JOHN GARAMENDI

July 31, 2008

Patrick Krueger, Chairman
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Re: Poseidon Desalinization Project

Dear Chairman Krueger:

There appears to be confusion over the issue of achieving a carbon neutral desalinization project. I want you to know my views on this issue.

I believe that the greenhouse gas emission resulting from the project should be mitigated. In determining the amount of mitigation, the calculation should be based on the assumption that the water delivered to the contracting water agencies *replaces* water that the water agencies currently and in the future would receive from Metropolitan Water District (MWD). The amount of mitigation is therefore the net not the gross power consumed.

The argument that the desalinization's plant water is new water is based upon the assumption that the replaced water would be used *elsewhere* in the MWD service area. Even if this were true, it is not the desalinization's plant to mitigate that new use. It is the responsibility of the entity that receives that water. Furthermore, the most likely scenario is that the replaced water will stay in the river as ordered by the federal courts.

Sincere


Signature on File

JOHN GARAMENDI
Lieutenant Governor

cc: Paul Thayer, State Lands Commission

STATE CAPITOL, ROOM 1114, SACRAMENTO, CALIFORNIA 95814 • PHONE (916) 445-8994



DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR

STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

August 5, 2008

Mr. Patrick Kruer, Chairman
California Coastal Commission
North Central Coast District
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dear Chairman Kruer:

As the Department of Finance representative on the State Lands Commission (SLC), I am writing the about the Poseidon Desalination Project currently pending before the California Coastal Commission. Specifically, I would like to address the sponsor's greenhouse gas mitigation plan.

During the SLC's hearing last October in San Diego, the sponsors of the project committed to our Commission that the project would be "carbon neutral". Needless to say as the Schwarzenegger administration's representative on the SLC, such a commitment is critical in meeting the goals of AB 32, the California Global Warming Solutions Act of 2006.

However, since the time of our meeting, there has been much discussion as to how "carbon neutral" should be interpreted. While one perspective is that the project should mitigate all the greenhouse gas emissions from the electricity required to serve those current water customers in the San Diego region, such an approach is beyond what the sponsors proposed and a more stringent standard than seems equitable under the circumstances. Poseidon has agreed to mitigate its "net" or incremental increase in greenhouse gas emissions for this project. This approach is consistent with practice under the California Environmental Quality Act (CEQA) and appears appropriate to satisfy permit conditions. At our meeting in October, SLC directed staff to provide additional information on this issue which we will consider at our August 22nd meeting.

This desalination project is an historic opportunity for the State of California to meet two critical environmental goals; an additional source of water to meet our growing demand and a real reduction in greenhouse gas emissions. Thank you for your consideration.

Sincerely,

Anne Sheehan
Chief Deputy Director

cc: Paul Thayer, SLC

Comment Letter LA WATERKEEPER

From: Melissa Kelly
To: [West Basin Desal EIR](#); [Patrick Sheilds](#)
Subject: Desal DEIR Comment Period Extension Request
Date: Friday, April 27, 2018 10:28:05 AM
Attachments: [image001.jpg](#)
[WB Ocean Desal DEIR Comment Period Extension Request 04.27.2018.pdf](#)

Please find attached a request to extend the comment period for the draft Environmental Impact Report for West Basin's proposed Ocean Water Desalination Project.



LAW-1

Thank you,
Melissa Kelly

MELISSA KELLY
Staff Attorney
(310) 394-6162 x105
@LAWaterkeeper





April 27, 2018

West Basin Municipal Water District
17140 South Avalon Boulevard
Carson, CA 90746

Sent via e-mail to desalEIR@westbasin.org; PatrickS@westbasin.org

Board President Dear, Vice President Houston, and Board Members:

I am writing on behalf of the Smarter Water LA Coalition (Los Angeles Waterkeeper, Surfrider Foundation – South Bay Chapter, Desal Response Group, and Heal the Bay) to request a 30-day extension to the comment period for the Draft Environmental Impact Report (DEIR) for West Basin Municipal Water District’s (WBMWD) proposed Ocean Water Desalination Project. We are requesting that the deadline for comments be extended to 5 p.m. on June 25, 2018.

WBMWD’s proposed Ocean Water Desalination Project involves a commitment of a significant amount of limited resources and impacts the future of Los Angeles County’s water supply. As such, the Smarter Water LA Coalition is committed to providing thorough comments on this DEIR.

To date, our review of the DEIR has required locating and reviewing an extensive number of lengthy documents that, while referenced in the DEIR, are not included in the DEIR or the appendices. Preliminary review of such documents has revealed that they bear directly on analyses at issue in the DEIR. In light of this, we believe the current 60-day comment period does not allow adequate time to provide meaningful comments and request that the comment period be extended to 5 p.m. on June 25, 2018. Because the DEIR is a culmination of WBMWD’s Ocean Water Desalination Program that initially began in 2002, a brief 30-day extension will promote more thoughtful public comments without significantly impacting the project schedule.

Thank you for your consideration.

Sincerely,

Melissa Kelly
Staff Attorney
Los Angeles Waterkeeper

LAW-1



June 25, 2018

Zita Yu, Ph.D., P.E.
Project Manager
West Basin Municipal Water District
17140 South Avalon Boulevard, Suite 210
Carson, California 90746-1296

Sent via e-mail to: DesalEIR@WestBasin.org

RE: Los Angeles Waterkeeper Comments on West Basin Municipal Water District Ocean Desalination Draft Environmental Impact Report

Dear Dr. Yu:

Los Angeles Waterkeeper (LAW or Waterkeeper) thanks you for this opportunity to comment on West Basin Municipal Water District’s (West Basin) Draft Environmental Impact Report (DEIR) prepared pursuant to the California Environmental Quality Act (CEQA) for the proposed Ocean Water Desalination Project (Project). LAW appreciates that West Basin extended the comment period from 60 days to 91 days.

Founded in 1993, LAW is an environmental non-profit with over 3,000 members dedicated to protecting and restoring Los Angeles County’s inland and coastal waterways and ensuring an environmentally sustainable water supply for the region. LAW advocates for a “4R approach” to our water supply: Reduce, Reuse, Recycle, Restore. This approach includes increasing conservation and efficiency measures to alleviate demand, greater investment in multi-benefit stormwater capture projects, expanding recycling of wastewater (including West Basin’s successful water recycling program), and remediating groundwater, including through brackish desalination.

LAW does not oppose ocean desalination under appropriate circumstances, rather, LAW believes West Basin should use the 4R approach to pursue more cost-effective and environmentally sound options to increasing our local water supplies first. Ocean desalination not only adversely impacts marine life, but it is the most energy-intensive and expensive method of meeting our local water supply needs.¹ At a time when we must be doing everything in our

LAW2-1

¹ See Attachment A at pages 15 and 22; HEATHER COOLEY ET AL., KEY ISSUES IN SEAWATER DESALINATION IN CALIFORNIA: MARINE IMPACTS (Pac. Inst. 2013), available at <http://pacinst.org/wp-content/uploads/2013/12/desal-marine-impacts-full-report.pdf>; HEATHER COOLEY & MATTHEW HEBERGER, KEY ISSUES IN SEAWATER DESALINATION IN CALIFORNIA: ENERGY AND GREENHOUSE GAS EMISSIONS (Pac. Inst. 2013), available at

Comment Letter LA Waterkeeper2

power to reduce our carbon footprint, LAW does not support investing limited resources in a project whose energy demand will exacerbate climate change impacts, the burden of which will disproportionately impact the communities least equipped to deal with them. Ocean desalination should only be used as a last resort, once more cost-effective water supply options have been exhausted.²

LAW2-1

Waterkeeper submits the following comments on the DEIR:

While the stated Project objectives (DEIR, 1-2) appear to be sound water supply management goals, it becomes clear that the DEIR is ultimately aimed at West Basin building an ocean desalination plant and that the Project objectives are interpreted accordingly. The purpose of CEQA is to disclose to decision makers and the public the significant environmental impacts of a proposed project and to require agencies to avoid or reduce those environmental impacts by implementing feasible alternatives or mitigation measures. (CEQA Guidelines § 15002(a).) The DEIR asserts that the only significant and unavoidable impacts of the Project are construction-related air quality and noise impacts. (DEIR, 1-8–1-9; 1-24–1-26.) However, the DEIR does not provide substantial evidence to support its conclusion that all other environmental impacts of the Project are less than significant or that mitigation will address the impacts. The DEIR fails to analyze the Project’s significant and unavoidable impacts to greenhouse gas emissions, energy consumption, land use, marine biological resources, water quality, environmental justice, and climate change. As a result, the DEIR does not evaluate alternatives to the Project that would avoid or substantially lessen those impacts and the only ‘build’ alternatives the DEIR analyzes are variations on building an ocean desalination plant. (See DEIR, Section 7.) The DEIR thus fails to uphold the main objectives of CEQA by failing to disclose the Project’s significant and unavoidable impacts and the alternatives that would address those impacts.

LAW2-2

I. The Greenhouse Gas Emissions Analysis and Energy Analysis Are Inadequate.

Ocean desalination is *the* most energy-intensive means of increasing local water supplies.³ As the DEIR itself states, “the Project would consume more energy to desalinate water than is currently consumed (or would be consumed in the future) by importing water.” (DEIR, 5.5-19.) The 20 million gallons per day (MGD) ocean desalination plant would contribute as much as 44,702 metric tons of CO₂e emissions per year and the 60 MGD plant would contribute as much as 146,879 metric tons per year.⁴ The strain an ocean desalination plant places on the energy grid and the greenhouse gas (GHG) emissions it would contribute to the atmosphere create an

LAW2-3

<http://pacinst.org/wp-content/uploads/2013/05/desal-energy-ghg-full-report.pdf>; HEATHER COOLEY & RAPICHAN PHURISAMBAN, THE COST OF ALTERNATIVE WATER SUPPLY AND EFFICIENCY OPTIONS IN CALIFORNIA, (Pac. Inst. 2013), available at http://pacinst.org/wp-content/uploads/2016/10/PI_TheCostofAlternativeWaterSupplyEfficiencyOptionsinCA.pdf.

² See CAL. STATE ASSEMBLY SELECT COMM. ON WATER CONSUMPTION AND ALTERNATIVE SOURCES, NEW SOURCES FOR CALIFORNIA’S WATER SUPPLY 3 (2016), available at <https://mavensnotebook.com/wp-content/uploads/2016/04/Final-Report-Select-Committee-on-Water-Consumption-and-Alternative-Sources.pdf> (making the policy recommendation that desalination should be used as an option of last resort).

³ NAT. RES. DEF. COUNCIL, ET AL., PROCEED WITH CAUTION II: CALIFORNIA’S DROUGHTS AND DESALINATION IN CONTEXT 3–4 (2016), available at <https://www.nrdc.org/sites/default/files/california-drought-desalination-2-ib.pdf>.

⁴ Attachment A, p. 21.

insidious cycle that exacerbates climate change, which in turn, increases the occurrence of the hazards that stress our water supply—the very thing ocean desalination is attempting to address in the first place. The Project would result in significant adverse environmental impacts due to wasteful, inefficient, and unnecessary consumption of energy, and as such, the energy analysis, GHG analysis, and the mitigation measures proposed are inadequate. Conservation, stormwater capture, recycling, brackish desalination, or any combination of these are far more environmentally responsible and economically viable alternatives to the Project. Further, these alternatives would diversify West Basin’s water supply portfolio and reduce dependency on imported water, improve climate resiliency, increase water reliability, and improve water security as well as long-term price stability.

LAW2-3

A. The Project’s Energy Impacts Should be Considered Significant.

- i. The Project Would Result in Inefficient, Wasteful, and Unnecessary Consumption of Energy.

Appendix F of the CEQA Guidelines “requires that EIRs include a discussion of the potential energy impacts of proposed projects, with a particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.” (See Pub. Res. Code § 21100(b)(3).) The DEIR energy analysis fails to comply with these directives in light of the water supply alternatives available. These alternatives are not only far less energy-intensive than ocean desalination, but also would allow West Basin to achieve most of its basic Project objectives.

Water conservation provides the starkest contrast to the proposed Project because conservation results in energy savings, as opposed to energy consumption. Between June 2015 and May 2016, when statewide conservation measures were in place, California’s conservation rate of 24.5% over 2013 levels resulted in electricity savings of 1,830 GWh or the electricity use of 274,000 average Californian homes for a year.⁵ As explained in detail in Section V.D. below, West Basin has significant unrealized conservation opportunities, and consequently, energy savings opportunities. Thus, pursuing the most energy-intensive option to increasing water supplies, when alternatives exist that would not only have less energy impacts than the Project, but would also have the benefit of energy savings, is inefficient, wasteful, and unnecessary.

LAW2-4

Mere compliance with federal and state energy standards does not cure the fact that the 20 MGD plant (Local Project) would have the electricity demand of as much as 18,185 homes and the 60 MGD plant (Regional Project) would have the electricity demand of as many as 59,751 homes.⁶ (See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109 [“In each instance, notwithstanding compliance with a pertinent threshold of significance, the agency must still consider any fair argument that a certain environmental effect may be significant.”].) This demand is a significant energy impact that is inefficient, wasteful, and unnecessary due to the numerous opportunities available in increasing conservation,

⁵ Edward S. Spang et al., 2018 *Environ. Res. Lett.* 13 014016, 2, 5–6.
⁶ Attachment A, p. 19.

Comment Letter LA Waterkeeper2

stormwater capture, recycling, and brackish water desalination that the DEIR fails to adequately analyze, and which are explored further in Section V below.

LAW2-4

ii. The Energy Analysis is Not Supported by Substantial Evidence.

The DEIR finds the Project has less than significant impacts with respect to energy demand and infrastructure. The DEIR states the Project would have a significant energy impact if it would “[r]esult in an increase in demand for electricity or natural gas that exceeds available supply or distribution infrastructure capabilities that could result in the construction of new energy facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.” (DEIR, 5.5-10.) The DEIR then concludes that because the Project will comply with state and federal energy efficiency standards and mitigation measures will be in place, the impacts would be less than significant. The DEIR also emphasizes the Project’s electricity in comparison to the electricity use of all of LA County. (DEIR, 5.5-22.)

LAW2-5

The DEIR fails to provide substantial evidence that the Project does not trigger the significance threshold. In fact, the DEIR states that “[i]t is anticipated that the SCE electrical power grid may require upgrades to supply the Project operations,” but that SCE could not “confirm the necessary upgrades to their power grid” and thus, “subsequent evaluation of these upgrades may be required.” (DEIR, 5.5-21.) SCE has stated that available generation may not be sufficient to meet peak summer demand within a few years, and yet the DEIR does not factor in the recent SoCalGas Aliso Canyon natural gas storage facility blowout and the fact that the “grid operator may now impose limits on natural gas usage by electric generators under certain peak demand conditions.”⁷ This omission is significant given that the California Public Utilities Commission is currently investigating the feasibility of either minimizing or shutting down operations at the facility.⁸ Governor Brown has also asked the Energy Commission to “plan for the permanent closure of the Aliso Canyon Facility” and the Commission has recommended that it be closed within the next ten years.⁹ The DEIR’s discussion of cumulative energy impacts also fails to discuss this. (DEIR, 5.5-24–5.5-25.) The Local Project’s energy intensity at 4,867 kWh/AF to 5,477 kWh/AF and the Regional Project’s at 5,358 kWh/AF to 5,998 kWh/AF is a significant increase in demand on the energy grid, and the DEIR does not provide substantial evidence for its conclusion that the Project’s energy impacts would be less than significant.¹⁰

iii. The Energy Analysis Improperly Defers Mitigation.

Considering the known limitations of SCE’s energy generation capacity and the additional energy strain resulting from the construction and operation of the Project, the DEIR’s lack of discussion about anticipated upgrades to SCE’s power grid (DEIR, 5.5-21) constitutes an improper deferral of environmental analysis and mitigation. The absence of information in the

LAW2-6

⁷ Attachment A, pp. 22–23.

⁸ *Aliso Canyon Well Failure Order Instituting Investigation*, CALIFORNIA PUBLIC UTILITIES COMMISSION, <http://www.cpuc.ca.gov/AlisoOII/> (last visited June 19, 2018).

⁹ Press Release, Cal. Energy Comm’n and Cal. Pub. Utilities Comm’n, Agencies Release Energy Assessment for Southern California, Express Concern about Existing Pipeline Outages (Nov. 28, 2017).

¹⁰ See DEIR, 5.5-12–5.5-13; Attachment A, p. 19.

DEIR about possible future upgrades precludes the public from commenting on the likely impacts that these subsequent projects may have. Mention of “subsequent evaluations” provides no assurance that mitigation measures will be implemented in the event that significant impacts are later found. (*Sacramento Old City Assn v. City Council* (1991) 229 Cal.App.3d 1011; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) This is particularly troubling given the high likelihood of major upgrades due to the large amount of energy required to power the Project’s operations. (DEIR, 5.5-20–23.) The possibility for further EIRs if the Project moves forward “does not excuse [West Basin] from adequately analyzing reasonably foreseeable significant environmental effects.” (CEQA Guidelines § 15152(b).) While the DEIR need not provide every detail, the brief mention about possible upgrades neither adequately assures that West Basin is committed to mitigating any resulting impacts nor establishes standards for acceptable results. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777 [where a deferral of mitigation was improper because there was no indication of commitment to mitigation or established standards for future plans].)

LAW2-6

The DEIR’s lack of analysis of the foreseeable impacts and likely mitigation necessary due to upgrades to SCE’s power grid, in combination with the lack of substantial evidence and the failure to comply with Appendix F, render the energy analysis inadequate.

B. The Project’s GHG Impacts Should be Considered Significant.

i. The GHG Analysis Uses an Improper Baseline.

The DEIR erroneously applies a “net zero” threshold of significance to evaluate whether the Project would have significant GHG impacts. The DEIR states, “West Basin is committed to reducing the Project’s GHG emissions to ‘net zero’ (net carbon neutral) *compared to continued use of imported water supplied by M[etropolitan] W[ater] D[istrict]*” (MWD). (DEIR, 5.7-20 [emphasis added].) The DEIR GHG analysis assumes that the Project will reduce MWD imported water on a one-to-one basis. By that logic, the “net GHG emissions” are equal to the Project’s gross GHG emissions minus the GHG emissions associated with importing an equivalent amount of water. This calculation is inherently flawed because the DEIR fails to provide any evidence that MWD will reduce the volume of imported water as a result of the Project. In fact, there is evidence to the contrary.

LAW2-7

While the DEIR references the Carlsbad Desalination Plant’s (Poseidon) plan to compare the plant’s electricity usage to that required to deliver State Water Project (SWP) water, the DEIR fails to mention that after the California Coastal Commission approved the plan, it came to light that Poseidon intentionally misrepresented that it would be net carbon neutral. An MWD agreement, which is in place through 2035, prohibits “desalination projects from reducing MWD’s entitlements or usage of water imported,” and MWD “anticipates continuing to take its full SWP entitlements and allotments for the foreseeable future, due to current water shortage conditions in Southern California.”¹¹ Thus, just as the Poseidon plant does not reduce the amount of MWD imported water, West Basin’s Project will not result in a one-to-one reduction

¹¹ See Attachment B, p. 2.

Comment Letter LA Waterkeeper2

in the amount of MWD imported water. The DEIR GHG analysis is not supported by substantial evidence that the Project’s GHG emissions will be reduced to “net zero.” As a result, the DEIR underestimates the GHG impacts of the Project.

LAW2-7

The Project would result in a greater contribution of GHG emissions into our atmosphere than importing water over hundreds of miles through the SWP.¹² Even in the DEIR’s flawed “net zero” scenario, the Local Project would still contribute at least 15,064 metric tons of CO₂e emissions and the Regional Project would contribute at least 45,192 metric tons of CO₂e. (DEIR, 5.7-24, 5.7-27.) Once again, water conservation provides the starkest contrast to ocean desalination when it comes to GHG impacts. The energy savings from water conservation when statewide conservation measures were in place from June 2015 to May 2016, as described in Section I.A.i. above, represent 521,000 metric tons in avoided GHG emissions, which is the equivalent of taking 111,000 cars off the road for a year.¹³ The Project would result in significant GHG impacts that could be avoided by pursuing alternatives such as conservation, stormwater capture, recycling, or brackish groundwater desalination, which is discussed in Section V below.

LAW2-8

The DEIR should have compared the GHG impacts of the Project to the baseline: the existing environmental setting. (CEQA Guidelines § 15064.4(b)(1).) The existing baseline includes the imported water supplies and is therefore additive—the Project emissions must be added to the existing imported water emissions. First, as explained above, the Project will not result in an offset in imported water supplies. Further, even if the Project would result in such offsets (it does not), nothing in the record establishes that such water would remain in the San Joaquin Valley or Colorado River. Indeed, MWD recently voted (with the help of member agency West Basin) to invest heavily in twin tunnels to bring water to Southern California.¹⁴ MWD and West Basin’s willingness to invest \$11 billion to bring SWP water to the region undermines the DEIR’s speculation that the Project would offset imported water supplies. The DEIR’s attempt to conceal the Project’s true GHG impacts by using an improper baseline is disingenuous at best.

LAW2-9

ii. The GHG Impacts Analysis is Inadequate.

The DEIR should have determined the Project’s energy and GHG impacts, and consequently the Project’s impacts on climate change, to be “*cumulatively* considerable in the sense that ‘the incremental effects of [the] individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.’” (*Ctr. for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 219, emphasis in original.) In light of the Project’s increase in GHG emissions (even under the flawed “net” carbon neutral analysis) is also squarely at odds with the Supreme Court’s recognition that new projects should be more, not less efficient. (*Id.* at 226 [“Indeed, it seems that new development must be more GHG-efficient than this average, given that past and current

LAW2-10

¹² Attachment A, p. 22.

¹³ Spang et al., *supra* note 5 at 7.

¹⁴ Bettina Boxall, *Southern California Water Agency Votes to Fund Controversial Plan to Build Two Delta Tunnels*, L.A. TIMES (Apr. 10, 2018, 8:15 PM), <http://www.latimes.com/local/lanow/la-me-delta-tunnel-mwd-20180410-story.html>.

Comment Letter LA Waterkeeper2

sources of emissions, which are substantially less efficient than this average, will continue to exist and emit.”.)

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LAW2-10

iii. The Project Conflicts with Applicable Plans and Policies Adopted for the Purpose of Reducing GHG Emissions.

Because the Project would create a new, more energy-intensive water supply, it further frustrates the State’s GHG reduction goals and the 2017 Scoping Plan. (See 2017 SCOPING PLAN 93–95 (2017) [“Water conservation and management strategies that are energy efficient can also ensure a continued supply of water for our health and well-being.”].) The DEIR fails to acknowledge this inconsistency, instead claiming (i) provision of an essential service is paramount and (ii) the end-user is ultimately responsible for the greatest energy use associated with water supply. (See DEIR, 5.5-15, 5.7-10.) Such concealment is a direct assault on CEQA’s requirement of a good faith reasoned analysis and disclosure. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712 [CEQA requires an EIR to reflect a good faith effort at full disclosure].) First, the Project will increase energy use and GHG emissions using any baseline. Further, the Project includes conveyance. Thus, there is substantial “potential for water-related energy savings” in the context of the Project. (DEIR, 5.7-10.)

LAW2-11

In addition, all member agency Local Climate Action Plans (“CAP”) rely on increased water conservation as a measure to reduce GHG emissions.¹⁵ Not only will the Project result in greater GHG emissions related to water supply, it will disincentivize conservation. (DEIR, p. 5.7-37.) As a major capital investment allocated to all member agencies, the Project will encourage inefficient water use as a sunk cost.¹⁶ Though not all such jurisdictions have direct permitting authority over the Project, the Project nonetheless has the potential to frustrate the goals and implementation of such local CAPs. And some of these local agencies will rely on the DEIR to authorize conveyance infrastructure and assess consistency with their local regulations and policies, including their CAPs. (See DEIR, 3-41; CEQA Guidelines §§15080, 15124(d)(1)(C).) The DEIR’s failure to include such analysis for responsible agencies and the public renders it insufficient. “The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.” (*Banning Ranch Conservancy, supra*, 2 Cal.5th 918, 941.) The DEIR’s failure to disclose the

LAW2-12

¹⁵ CITY OF CARSON, CLIMATE ACTION PLAN (2017); CITY OF EL SEGUNDO, CLIMATE ACTION PLAN (2017); CITY OF GARDENA, CLIMATE ACTION PLAN (2017); CITY OF HAWTHORNE, CLIMATE ACTION PLAN (2017); CITY OF HERMOSA BEACH, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF INGLEWOOD, ENERGY AND CLIMATE ACTION PLAN (2013); CITY OF LAWDALE, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF LOMITA, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF MANHATTAN BEACH, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF PALOS VERDES ESTATES, CLIMATE ACTION PLAN (2018); CITY OF RANCHO PALOS VERDES, EMISSIONS REDUCTION ACTION PLAN (2017); CITY OF REDONDO BEACH, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF ROLLING HILLS, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF ROLLING HILLS ESTATES, ENERGY EFFICIENCY CLIMATE ACTION PLAN (2015); CITY OF WEST HOLLYWOOD, CLIMATE ACTION PLAN (2011).

¹⁶ Ceres, *Does Water Conservation Have to Be the Enemy of Financial Stability?*, NAT’L. GEOGRAPHIC: CHANGING PLANET (July 16, 2014), <https://blog.nationalgeographic.org/2014/07/16/does-water-conservation-have-to-be-the-enemy-of-financial-stability/>.

Project’s significant impacts related to its increased energy use and GHG emissions only compounds this prejudicial error.

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LAW2-12

C. DEIR Fails to Adopt Adequate Mitigation for Energy and GHG Impacts.

The mitigation measures proposed in the DEIR’s energy and GHG analyses are inadequate. The DEIR uses an improper baseline in determining the energy consumption and GHG emissions subject to mitigation because it relies on the flawed calculation used in claiming the Project’s GHG emissions would be reduced to “net zero.” Because the DEIR incorrectly assumes the Project would reduce MWD imported water on a one-to-one basis without providing any evidence, the GHG emissions and energy consumption that must be mitigated is actually greater than is analyzed in the DEIR. Therefore, the DEIR fails to analyze and adopt adequate mitigation measures and to serve its informational purpose, (Pub. Res. Code §§ 21002.1(a), 21061) and as a result, significant impacts remain significant and unmitigated.

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LAW2-13

II. Land Use Impacts Should Be Considered Significant.

A. Land Use Impacts Should Be Considered Significant Because the Project Conflicts with El Segundo’s Local Coastal Program.

The DEIR states that the Project would have a significant adverse environmental impact if it would “[c]onflict with any applicable land use plan, policy or regulation of an agency with jurisdiction over the Project . . . adopted for the purpose of avoiding or mitigating an environmental effect.” (DEIR, 5.10-13.) The California Coastal Act of 1976 (Coastal Act) was adopted for the purpose of protecting the resources of California’s coastal zone and public access to the ocean. (See Pub. Res. Code § 30001.) Development within the coastal zone requires a Coastal Development Permit issued by the California Coastal Commission or a local government that has a certified Local Coastal Program. (Pub. Res. Code § 30600(a), (d).) El Segundo has a certified Local Coastal Program (ESLCP).¹⁷

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LAW2-14

i. El Segundo’s Local Coastal Program Was “Adopted for the Purpose of Avoiding or Mitigating an Environmental Effect.”

The DEIR states that because “there are no El Segundo LCP policies or regulations adopted for the purpose of avoiding or mitigating a construction-related impact,” no impact would occur with respect to construction of the ocean water desalination facility. (DEIR, 5.10-21.) The LCP is a planning mechanism through which development in the coastal zone is regulated to ensure the requirements of the Coastal Act are met. (See Pub. Res. Code § 30108.6.) The regulation of development in the context of the Coastal Act inevitably contemplates construction-related impacts on coastal zone resources and public access to the ocean. The ESLCP specifically states that “applicable Coastal Act policies place a very high priority on maximum access to the shore and protection of the beach area,” and even more specifically that any shoreline erosion prevention structures “be designed to eliminate or mitigate, to the maximum extent feasible,

¹⁷ See Attachment C.

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adverse impacts on adjacent beach areas.”¹⁸ Thus, there are in fact ESLCP policies and regulations adopted for the purpose of avoiding and mitigating construction-related impacts of new development in the coastal zone in El Segundo. Because there are such policies and regulations, the land use analysis should have evaluated the construction-related impacts’ potential to conflict with the ESLCP.

LAW2-14

ii. El Segundo’s Local Coastal Program Did Not Anticipate Construction of an Ocean Desalination Facility.

The onshore coastal zone within El Segundo is approximately 50 acres and is “extensively developed with energy facilities.¹⁹ Thus, “[t]hose provisions of the Coastal Act which address the locating and planning of new development have only limited applicability in El Segundo due to the fact the area is already extensively developed.”²⁰ The El Segundo Generating Station (ESGS) site, the proposed location for the Project, is designated as “Power Plant” with the following designated uses: 1) electrical generating station; 2) accessory buildings and uses customarily incidental to electrical generating station; 3) on-site repowering; and 4) on-site modifications to existing facilities.²¹ As such, the “only new developments expected to occur within the El Segundo portion of the coastal zone are minor modifications of existing energy facilities, minor public works projects,²² or possibly construction of shoreline protective structures.”²³

LAW2-15

The shoreline area is protected as open beach area.²⁴ However, “the entire length of shoreline in El Segundo, due to the potential for erosion, could be considered to be a hazard area.”²⁵ The ESLCP “identifies shoreline erosion as being an issue of greater than local significance” and states that “shoreline structures and beachfront protective devices will be allowed where necessary to provide protection for existing energy facilities and the bike path.”²⁶ It further notes that “[i]t is anticipated that very few, if any structures will be developed in the shoreline area in the future. The susceptibility of the shoreline area to coastal erosion will preclude any significant new developments.”²⁷

Despite the ESLCP’s clear designation of the ESGS site as “Power Plant” and the fact that the ESLCP expressly states that “[a]ny new developments in the coastal zone will be limited to

¹⁸ Attachment C, Section IV. City of El Segundo Coastal Zone Specific Plan, p. 28–29.

¹⁹ Attachment C, Section III. Issue Identification, p. 3.

²⁰ *Id.* at 8.

²¹ Attachment C, Section IV. City of El Segundo Coastal Zone Specific Plan, p. 27; Appendix 9, p. 32.

²² Attachment C, Staff Summary & Recommendation, p. 11 (“All public works necessary to serve the coastal zone in El Segundo are existing. Therefore, Section 30254 of the Coastal Act is not relevant.”).

²³ *Id.* at 10.

²⁴ *Id.* at 4.

²⁵ *Id.* at 9.

²⁶ *Id.* at 8.

²⁷ Attachment C, Section IV. City of El Segundo Coastal Zone Specific Plan, p. 30.

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modifications of existing facilities or limited shoreline recreational development,”²⁸ the DEIR does not find land use impacts to be significant. (DEIR, 5.10-16.)

↑ LAW2-15

iii. El Segundo’s Local Coastal Program Would Need to Be Amended to Allow for Construction of an Ocean Desalination Facility.

Waterkeeper believes, and the DEIR itself seems to confirm,²⁹ that the ESLCP would need to be amended before a Coastal Development Permit (CDP) could be issued for the Project. The California Coastal Commission also comes to this same conclusion in its comments on the DEIR. The proposed Project location is within a parcel zoned exclusively for Power Plants, adjacent to shoreline that the ESLCP has identified as hazardous due to erosion, and accordingly, the ESLCP anticipates only minor new developments related to the existing energy facilities and construction of shoreline protective structures. The Project is clearly not an energy facility or energy-related development.

The DEIR relies on the bare assertion that the Project represents a “use of greater than local importance and a coastal-dependent use which has priority under Coastal Act Section 30255.” (DEIR, 5.10-22.) While the Project is coastal-dependent and may be a “use of greater than local significance,” the ESLCP is “almost completely developed with energy facilities,”³⁰ which the ESLCP identifies as coastal-dependent uses of greater than local significance. The existing energy facilities “have been in place for many years . . . The Coastal Act indicates that in general where energy facilities currently exist, preference should be given to the onsite intensification of existing facilities rather than the construction of entirely new facilities.”³¹ Construction of a 20 to 60 MGD ocean desalination facility is not a minor development allowed by the ESLCP. Thus, the Project conflicts with the ESLCP, and the ESLCP would need to be amended before a CDP could be issued. The DEIR, however, brushes off the significance of the incompatibility with the ESLCP by claiming that any future amendment to the ESLCP would ensure consistency, and thus there is no conflict with the ESLCP. This argument is circular and applies an incorrect baseline to the analysis. The conflict with the ESLCP triggers the significance threshold. Therefore, the DEIR should have evaluated the significant land use impacts of the Project in the event of an amendment to the ESLCP.

LAW2-16

B. *The DEIR’s Failure to Consider the Impacts of an Amendment to the ESLCP Might Constitute a Violation of CEQA and the Coastal Act.*

In *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, the City of Newport Beach argued it was inappropriate to consider a project’s impacts on environmentally sensitive habitat areas (ESHA) in the project’s EIR on the basis that only the California Coastal Commission could make ESHA determinations, and that ESHA impacts would be considered

LAW2-17

²⁸ Attachment C, Section V. A Resolution of the City Council of the City of El Segundo Submitting the City’s Total Local Coastal Program to the Coastal Commission for Approval, p. 33.

²⁹ DEIR, 5.10-22; 3-41 (noting LCP amendment and LCP “consistency” review by El Segundo and Coastal Commission will be required).

³⁰ Attachment C, Staff Summary & Recommendation, p. 1.

³¹ *Id.* at 15.

before the Coastal Commission later, during the permitting phase. Here, the DEIR has entirely deferred consideration of the impacts of an LCP amendment without offering any explanation, despite admitting an amendment to the ESLCP will be required. (DEIR, 5.10-22; 3-41.) This failure constitutes a violation of both CEQA and the Coastal Act.

Just as the City of Newport Beach was ultimately required to consider ESHA impacts in its EIR, West Basin is required to consider the impacts of an LCP amendment in its DEIR. (*Banning Ranch Conservancy, supra*, 2 Cal.5th 918.) CEQA mandates that local agencies have a duty to “integrate [CEQA requirements] with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively.” (*Id.* at 936 [citing Pub. Res. Code § 21003, subd. (a)].) By deferring consideration of the impacts of an LCP amendment to consideration by the City of El Segundo and Coastal Commission later, West Basin has “ignored its obligation to integrate CEQA review with the requirements of the Coastal Act.” (*Id.* at 936 [stating that the City of Newport Beach’s failure to consider ESHA impacts in an EIR violated the Coastal Act].)

That West Basin has no authority to enact LCP amendments does not obviate the need to consider an amendment’s impacts in the DEIR. Pursuant to *Banning Ranch*, lead agencies are not required to make legal determinations in an EIR, such as whether a project site is ESHA, or whether an LCP should be approved, but still must discuss potential impacts and their ramifications for mitigation measures and alternatives when there is credible evidence that impacts might be present. (*Banning Ranch, supra*, 2 Cal.5th at 938 [rejecting an argument that the City of Newport Beach could decline to consider ESHA impacts in its EIR on the basis that only the Coastal Commission had authority to make ESHA determinations].)

Likewise, the fact that the City and Coastal Commission will consider the impacts of an LCP amendment in the future does not justify the DEIR’s failure to do so now. (See CEQA Guidelines §§15080, 15124(d)(1)(C).) As in *Banning Ranch*, “such a delay is inconsistent with CEQA’s policy of integrated review . . . [as a] lead agency must consider related regulations and matters of regional significance when weighing project alternatives.” (*Banning Ranch, supra*, 2 Cal.5th at 939 [rejecting a City of Newport Beach argument that declining to consider ESHA in their project’s EIR was justifiable on the grounds that ESHA would be fully considered later in the permitting phase of the project, citing Pub. Resources Code § 21300, subd. (a), and CEQA Guidelines, § 15126.6].) To comply with CEQA and the Coastal Act, the DEIR must consider the impacts of an ESLCP amendment.

The DEIR failed to analyze the significant land use impacts of the Project in the event of an amendment to the ESLCP. Notwithstanding the requisite LCP amendment, the ESLCP clearly does not anticipate any major development in the El Segundo coastal zone, let alone a major development—such as the Project—unrelated to the existing energy facilities. Thus, the land use impacts from both construction and operation of the Project are significant, and the DEIR’s land use analysis is inadequate for failing to analyze these significant impacts.

LAW2-17

C. *The DEIR Fails to Adopt Adequate Mitigation Measures for Land Use Impacts.*

The only mitigation measures adopted for land use impacts pertain to the aesthetic impacts of the Project. (DEIR, 5.10-23.) Because the DEIR erroneously concludes that the Project does not conflict with the ESLCP, the DEIR fails to account for the significant construction and operation-related land use impacts and resulting measures required to mitigate such impacts. As such, the land use mitigation measures in the DEIR are inadequate to address the potential significant impacts.

LAW2-18

In light of the fact that the Project conflicts with the ESLCP, thus triggering the significance threshold, the DEIR should have considered the significant land use impacts of the Project and analyzed and adopted mitigation measures accordingly. With the hazards of sea-level rise and the fact that the ESLCP identifies the shoreline in El Segundo as being susceptible to erosion, it is unwise to invest half-a-billion dollars to build infrastructure that will exacerbate these very conditions that threaten the Project location.

III. The Marine Biological Resources and Hydrology and Water Quality Analyses Are Inadequate.

A. *The DEIR Uses an Improper Baseline to Determine Significant Impacts and Thereby Fails to Evaluate a Reasonable Scope of Potential Impacts.*

The DEIR uses an improper baseline to determine the potential significant marine biological resources and water quality impacts of the Project. A project’s environmental setting “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines § 15125(a).) The DEIR describes the environmental setting as the Santa Monica Bay, but instead of assessing impacts on the baseline physical conditions of the Santa Monica Bay, the DEIR arbitrarily limits the analysis to “the marine study area”—a small 1 by 1.5 nautical mile rectangle immediately offshore of the ESGS site. (DEIR, 5.11-10.) The DEIR does not present substantial evidence to support limiting the marine study area to a small rectangular portion of the Santa Monica Bay. As a result, the scope of the potential impacts analyzed in the DEIR is unreasonably narrow and fails to account for the interconnectivity between biological communities and marine habitat and ecosystems within Santa Monica Bay as a whole, as described in Hermosa Beach’s comment letter and incorporated by reference herein.

LAW2-19

In particular, the DEIR fails to analyze the significant impacts to the Mugu Lagoon to Latigo Point Area of Special Biological Significance, the Point Dume State Marine Conservation Area (SMCA) and State Marine Reserve (SMR), the Point Vicente SMCA, and the Abalone Cove SMCA. The Marine Life Protection Act was enacted with the purpose of increasing the network of Marine Protected Areas’ (MPAs’) “coherence and its effectiveness at protecting the state’s marine life, habitat, and ecosystems.” (Cal. Fish & Game Code § 2853.) Waterkeeper, along with other groups, worked for years to build support for these critical reserves, which are designated areas where fishing and other consumptive activities are limited or prohibited to combat decades of pollution, overfishing, and habitat degradation. The DEIR’s limited marine

study area, fails to account for the interconnectivity between this network of marine protected areas. Therefore, at a minimum, the DEIR should have analyzed the impacts to marine biological resources and water quality in the Santa Monica Bay at a whole. However, for the reasons explained in Hermosa Beach’s comment letter and incorporated by reference herein, the physical conditions of the Southern California Bight is the more appropriate baseline for evaluation of the significant regional impacts of the Project.

LAW2-19

B. *The Objective of the California Ocean Plan Desalination Amendment Should be Included as a Key Threshold of Significance.*

The California Ocean Plan Desalination Amendment (Ocean Plan) is the regulatory framework adopted specifically to address the water quality and marine biological effects of seawater desalination facilities.³² It requires that desalination plants be sited, designed, utilize technology, and be operated to “minimize intakes and mortality to all forms of marine life.”³³ Although the DEIR’s marine biological resources and hydrology and water quality analyses discuss the Ocean Plan requirements, the significance thresholds do not include the Ocean Plan’s requirement to reduce impacts to all forms of marine life. As described in Hermosa Beach’s comment letter and incorporated by reference herein, the DEIR’s marine biological resources and hydrology and water quality analyses should have evaluated the extent to which the Project will “minimize intakes and mortality to all forms of marine life” and applied this as a threshold of significance.

LAW2-20

C. *Impacts to Marine Biological Resources and Water Quality Should be Considered Significant.*

The DEIR does not provide substantial evidence to support its conclusion that impacts to marine biological resources and water quality would be less than significant. As described in Hermosa Beach’s comment letter and incorporated by reference herein, the impacts of wedgewire screen intakes are uncertain and may be significant.

The impacts of impingement and entrainment from desalination plants on the marine environment are not well understood. Much of what is known has been drawn from studies on coastal power plants that use once-through cooling (OTC) systems. In an analysis of coastal and estuarine power plants in California, York and Foster (2005) find that “impingement and entrainment impacts equal the loss of biological productivity of thousands of acres of habitat” (York and Foster 2005).³⁴

LAW2-21

³² See ST. WATER RESOURCES CONTROL BOARD, FINAL STAFF REPORT INCLUDING THE FINAL SUBSTITUTE ENVIRONMENTAL DOCUMENTATION FOR THE AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE WATERS OF CALIFORNIA, ADDRESSING DESALINATION FACILITY INTAKES, BRINE DISCHARGES, AND THE INCORPORATION OF OTHER NON-SUBSTANTIVE CHANGES, Adopted May 6, 2015, (hereinafter “Final Staff Report for Desal Amendment”), available at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2015/rs2015_0033_sr_apx.pdf.

³³ *Id.* at 11.

³⁴ COOLEY ET AL., *supra* note 1, at 3.

Similarly, the impacts of brine discharges from desalination plants are also uncertain and may be significant.

Because of a lack of baseline ecological data, most of the available studies are based on a comparative analysis of environmental conditions at the discharge location and at least two other nearby locations believed to be unaffected by brine discharge. Most of these studies report some sort of environmental degradation due to exposure to desalination discharge (Fernandez Torquemada et al. 2005, Gacia et al. 2007, Sanchez-Lizaso et al. 2008, Ruso et al. 2007, 2008). In a recent review, Roberts et al. (2010) conclude that both laboratory and field studies “clearly demonstrate the potential for acute and chronic toxicity and small-scale alterations to community structure in marine environments.”³⁵

The fact that such technology is permissible under the Ocean Plan does not preclude the potential for significant impacts.

LAW2-21

The DEIR states that the intake and discharge system will consist of “repurposing and upgrading existing offshore intake and discharge tunnels that would deliver raw ocean water to the desalination facility and discharge concentrated seawater back to the ocean.” (DEIR, 3-1.) These “existing offshore intake and discharge tunnels” are decommissioned OTC infrastructure. Such infrastructure was phased out because it was not considered the “best technology available for minimizing adverse environmental impact” as required by Section 316(b) of the Clean Water Act.³⁶ Instead, closed cycle cooling is required.³⁷ The DEIR asserts that the Project will not have significant impacts despite the fact that the Project is replacing an open ocean intake system that was decommissioned due to its adverse environmental impacts with another open ocean intake system. It is difficult to imagine the impacts to marine biological resources and water quality will not be significant, particularly in light of the analytical gaps on wedgewire screens and brine discharge. Additionally, while admitting that the construction of the intake and discharge system “would temporarily disturb both soft-bottom and hard-bottom habitat in the area,” the DEIR declines to further analyze these impacts on the unsupported basis that “pelagic species and groundfish are anticipated to avoid the Project area.” (DEIR, 5.10-36–5.10-37.) The DEIR’s unsubstantiated position amounts to sheer speculation, which obscures the Project’s likely significant impacts to such species. (Pub. Res. Code §21082.2(c); CEQA Guidelines §§15064(f), 15384 [“Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate . . . does not constitute substantial evidence.”].) The DEIR marine biological resources and hydrology and water quality analyses should have analyzed all the above potential significant impacts.

LAW2-22

³⁵ *Id.* at 14.

³⁶ ST. WATER RESOURCES CONTROL BOARD, Res. No. 2015-0018, ADOPTION OF AN AMENDMENT TO THE WATER QUALITY CONTROL POLICY ON THE USE OF COASTAL AND ESTUARINE WATERS FOR POWER PLANT COOLING,

https://www.waterboards.ca.gov/water_issues/programs/ocean/cwa316/docs/appendix_a.pdf.

³⁷ *Id.*

For these reasons and those described in Hermosa Beach’s and Heal the Bay’s comment letters, the marine biological resources and hydrology and water quality analyses are inadequate.

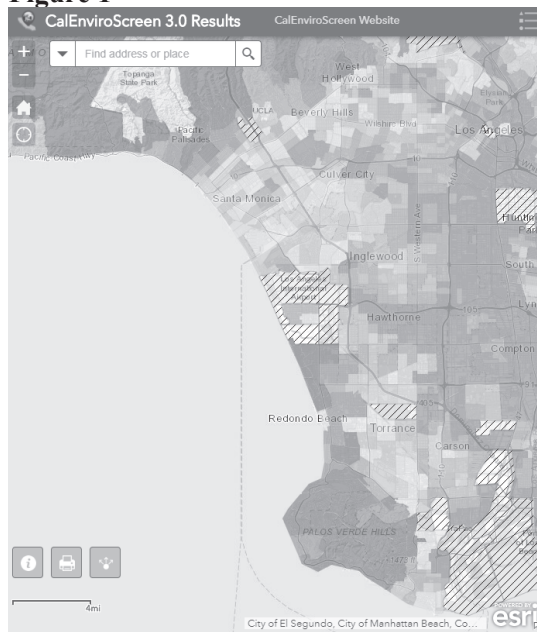
LAW2-22

IV. The Environmental Justice Analysis is Inadequate.

West Basin’s service area is a study of the ‘haves’ and ‘have nots.’ Eleven of the cities in West Basin’s service area have populations with 0% to 0.4% disadvantaged communities (DAC), while four cities (Inglewood, Hawthorne, Gardena, and Lawndale) are 100% DAC and Carson is 82.1% DAC.³⁸ Figure 1, below, shows the CalEnviroScreen Map of West Basin’s service area. The California Communities Environmental Health Screening Tool, CalEnviroScreen 3.0, “uses a science-based method for evaluating multiple pollution sources in a community while accounting for a community’s vulnerability to pollution’s adverse effects.”³⁹ The map in Figure 1 shows that areas within West Basin’s service area have some of the highest CalEnviroScreen scores (areas in red), indicating populations in such areas experience a much higher pollution burden than areas with the lowest scores (areas in green). The DEIR environmental justice analysis does not even attempt to evaluate the Project’s impacts on the areas within West Basin’s service area with the highest CalEnviroScreen scores and DAC percentages relative to those areas with the lowest CalEnviroScreen scores and DAC percentages.

LAW2-23

Figure 1⁴⁰



LAW2-24

³⁸ Attachment D.

³⁹ JOHN FAUST ET AL., CALENVIROSCREEN 3.0 1 (Allan Hirsh & David Siegel eds., 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

⁴⁰ OFFICE OF ENVTL. HEALTH HAZARD ASSESSMENT, CALENVIROSCREEN 3.0 MAP, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited June 6, 2018).

A. *The DEIR Uses an Improper Baseline to Determine Significant Environmental Justice Impacts.*

The DEIR describes the environmental setting as the cities where aboveground infrastructure would be implemented—El Segundo and Hawthorne—because “the environmental analysis focuses on the permanent impacts to the low-income and minority populations. The proposed conveyance pipelines would have temporary construction impacts but would be returned to pre-project conditions once in operation so the tracts in which the pipelines would occur are not included in the analysis.” (DEIR, 6-10.) This is not an appropriate baseline by which to determine whether environmental justice impacts of the Project are significant.

LAW2-25

i. The Environmental Justice Analysis Arbitrarily Excludes an Analysis of Temporary Impacts to Low-Income and Minority Populations.

The DEIR does not provide any support for limiting the environmental justice analysis to “permanent impacts.” Temporary impacts still have the potential to significantly and disproportionately impact low-income or minority populations. Considering the DEIR’s finding of significant and unavoidable construction-related, air quality impacts (DEIR, 5.2-29–35), at a minimum, the DEIR should have analyzed the environmental justice impacts from the significant and unavoidable construction-related air quality impacts, even if considered “temporary.” More appropriately, the environmental justice analysis should have evaluated the Project’s potential for permanent *and* temporary disproportionate impacts to low-income or minority populations in all 17 of the impacted census tracts, as opposed to only those in the 6 tracts impacted by what the DEIR deems “permanent” impacts.

LAW2-26

ii. The Environmental Setting is Unreasonably Geographically Limited.

Further, by limiting the environmental setting to the cities where aboveground infrastructure would be implemented and comparing those impacted census tracks “to the overall characteristics of their respective cities,” the DEIR fails to evaluate a reasonable scope of potential environmental justice impacts. (DEIR, 6-13.) Comparing one section of Hawthorne to Hawthorne as a whole seems to assume that environmental justice impacts related to, for example, air quality, energy, GHG, and climate change, are confined to the census tracks in which aboveground infrastructure would be implemented. This is not only unreasonable, but is contrary to the other sections of the DEIR in which such environmental impacts are discussed in the context of environmental settings that extend beyond the immediate census track. The DEIR’s limited environmental setting in the environmental justice analysis results in its failure to adequately inform the public of the relative impacts of the Project on additional low-income and minority populations within West Basin’s service area, such as Carson and Inglewood.

LAW2-27

B. *At a Minimum, West Basin’s Service Area as a Whole is the Appropriate Environmental Setting for Analysis of the Project’s Environmental Justice Impacts.*

The DEIR states that “West Basin’s goal is to guarantee future water supply reliability for service area customers by adding a locally produced, drought-proof potable water source to the

West Basin supply portfolio.” (DEIR, 1-2.) The Project is intended to provide a water supply to all customers in West Basin’s service area. However, the adverse environmental impacts of an energy-intensive and costly ocean desalination plant will inevitably impact DAC populations differently than more affluent populations. West Basin’s service area is made up of cities with diverse demographics and median incomes. Therefore, the more appropriate environmental setting would encompass, at a minimum, all of West Basin’s service area to more accurately capture the relative impacts of the Project on the different cities in West Basin’s service area. As explained further below, the environmental setting for the environmental justice analysis may need to encompass areas outside of West Basin’s service area as well.

LAW2-27

C. *The DEIR Applies a Narrow and Unsupported Interpretation of the Significance Threshold.*

The DEIR describes the significance threshold as follows: the Project “would be considered to have a significant effect on environmental justice if it would: Affect the health or environment of minority or low-income populations disproportionately.” (DEIR, 6-12.) However, in its analysis, the DEIR applies a narrow interpretation of “disproportionately” stating, “an area is considered to have a significantly greater minority population if the affected census tract or group of tracts has a minority population of at least 10 percent greater on average than the overall city or census-designated place.” (DEIR, 6-10.) The DEIR does not provide any information as to the source of this criterion or an explanation as to why “at least 10 percent greater” is an appropriate threshold.

LAW2-28

The DEIR then applies this interpretation in looking at Hawthorne. The DEIR compares the demographics of the 3 impacted census tracts in Hawthorne to the demographics of the city of Hawthorne as a whole. (DEIR, 6-10–6-11.) However, in doing so, the DEIR averages the minority population percentages of the 3 impacted census tracts *before* comparing them to the minority population percentage of the whole city of Hawthorne, thus diluting the actual minority percentages of the individual, impacted tracts. (DEIR, 6-11.) This allows the DEIR to find that the impacted census tracts do not meet the “at least 10 percent greater” threshold, and thus, do not have significantly greater minority populations. (DEIR, 6-10.) As a result, the DEIR finds that the Project does not disproportionately impact minority populations. (DEIR, 6-13.)

This Hawthorne-to-Hawthorne comparison is disingenuous. Hawthorne’s population is 100% DAC. The narrow and unsupported interpretation of the significance threshold coupled with the unreasonably limited environmental setting does not adequately account for disproportionate impacts to Hawthorne’s DAC population relative to non-DAC populations and fails to account for impacts to DAC communities in Carson, Inglewood, Gardena, and Lawndale.

D. *The DEIR Fails to Account for a Reasonable Scope of Environmental Justice Impacts.*

As discussed in other sections of the DEIR, the Project’s potential impacts stem from construction and operation of the ocean water desalination facility, the offshore intake and discharge facilities, and the inland conveyance system, and include environmental impacts discussed in Section 5 of the DEIR. The environmental justice analysis, however, does not

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address any of this. Instead, using an improperly limited baseline and applying an unsupported criterion for determination of “significantly greater minority population,” the DEIR concludes environmental justice impacts would be less than significant. This conclusion is unsupported by substantial evidence.

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i. The DEIR Does Not Analyze the Environmental Justice Impacts Related to the Project’s Air Quality or Energy Impacts.

Ocean desalination is the most energy-intensive option for increasing local water supplies.⁴¹ The continuous energy demand of the 20 MGD desalination plant is equivalent to the average annual energy demand of almost twice the number of households in Lawndale.⁴² Many of West Basin’s low-income and minority customers are among those most disproportionately burdened by multiple sources of pollution.⁴³ These communities already suffer from poor air quality.⁴⁴ Southern California Edison (SCE) would supply the energy needed by the Project, and while the DEIR discusses SCE’s power mix, it does not identify the specific plants on which SCE relies. (DEIR, 5.5-6–5.5-7.) The communities in or near where these plants are located, will be disproportionately impacted by the Project’s adverse impacts to air quality. Yet, the DEIR does not disclose which communities these are or analyze the impacts.

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ii. The DEIR Does Not Analyze the Environmental Justice Impacts Related to the Project’s GHG and Climate Change Impacts.

The 20 MGD ocean desalination plant would contribute as much as 44,702 metric tons of CO₂ emissions per year and the 60 MGD plant would contribute as much as 146,879 metric tons per year.⁴⁵ The Project’s significant GHG emission contributions will exacerbate climate change, and disproportionately impact low-income and minority communities, which are least able to adapt to or recover from climate change impacts.⁴⁶

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iii. The DEIR Does Not Analyze the Environmental Justice Impacts Related to the Project’s Water Rates Impacts.

Ocean desalination is the most expensive option for increasing our local water supplies at \$2,100 to \$2,500 per acre-foot.⁴⁷ West Basin estimates the cost to build the Project will be half-a-billion dollars. The Project will inevitably increase water rates for West Basin’s ratepayers. This increase in water rates will disproportionately impact low-income populations in West Basin’s service area relative to the more affluent populations, and yet, the DEIR does not analyze these

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⁴¹ COOLEY & HEBERGER, *supra* note 1; NAT. RES. DEF. COUNCIL, ET AL., *supra* note 3.

⁴² *See* Attachment A, p. 19.

⁴³ CALENVIROSCREEN 3.0, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> (last visited June 4, 2018).

⁴⁴ *Ibid.*

⁴⁵ Attachment A, p. 21.

⁴⁶ U.S. GLOBAL CHANGE RESEARCH PROGRAM, THE IMPACTS OF CLIMATE CHANGE ON HUMAN HEALTH IN THE UNITED STATES: A SCIENTIFIC ASSESSMENT (2016), available at <https://health2016.globalchange.gov/>.

⁴⁷ COOLEY & PHURISAMBAN, *supra* note 1, at 13.

impacts. The DEIR also does not account for the cumulative impact on water rates that the Project may have in light of, for example, MWD’s commitment to funding the multi-billion-dollar twin-tunnels project, as discussed in I.B.i above.

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iv. The DEIR Does Not Account for the Fact that the Project Will Effectively Result in DACs Subsidizing Affluent Communities’ Excessive Water Consumption.

As described further in Section V.D. below, DACs in West Basin’s service area generally have a lower residential per capita water usage, while some of the more affluent populations have a residential per capita water usage almost four times greater than world-wide best practice. There are significant unrealized conservation savings in some of these affluent communities in West Basin’s service area. Increasing water rates by building a half-a-billion-dollar ocean desalination plant would effectively result in low-income communities subsidizing affluent communities’ excessive water consumption.

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For all of these reasons, the DEIR environmental justice analysis is inadequate and fails to comply with the Government Code,⁴⁸ CEQA, and the California Attorney General’s instructive Fact Sheet, *Environmental Justice at the Local and Regional Level Legal Background*.⁴⁹

V. The Alternatives Analysis is Inadequate.

It is evident from the alternatives analysis that this DEIR is “a document of post-hoc rationalization” for a decision already made to build an ocean desalination plant. (*Save Tara v. W. Hollywood* (2008) 45 Cal.4th 116, 136.) Unfortunately, this is not surprising. While the Project has not yet been approved, West Basin has repeatedly, publicly expressed its pro ocean desalination position. West Basin’s Board members have asked their member cities for support for the agency’s ocean desalination program;⁵⁰ Board members currently serve and have served on the CalDesal Executive Committee;⁵¹ for a number of years, West Basin had posted on its

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⁴⁸ “[E]nvironmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12(e)).

⁴⁹ OFFICE OF THE CALIFORNIA ATTORNEY GENERAL, ENTVL. JUSTICE AT THE LOCAL AND REG’L LEVEL LEGAL BACKGROUND (2012), available at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

⁵⁰ City of Palos Verdes Estates, *City Council Meeting – Feb 28th, 2017*, CITY OF PALOS VERDES ESTATES 0:28:55-0:29:20 (Feb. 28, 2017) http://pvestates.granicus.com/MediaPlayer.php?view_id=1&clip_id=924 (showing Richard Nagel stating, “So we’re here to ask you for your consideration in the future for—for conditional support for responsible desal, and those conditions are . . . meet and surpass the most environmentally protective regulations in the world, we will be at least carbon-neutral to the water we’re offsetting, and we’ll be cost-competitive with West Basin’s current re—world-renowned water recycling program”); City of Inglewood, *5-7-16 City of Inglewood Council Meeting*, YOUTUBE 1:08:05-1:08:18 (May 17, 2016) <https://www.youtube.com/watch?v=vzip7hX9-rw> (showing Gloria Gray stating, “I ask for consideration of your support to actually take an action today to direct staff to prepare a letter of conditional support for responsible ocean water desalination”); City of Hawthorne, *City Council - May 10th, 2016*, CITY OF HAWTHORNE 0:44:42-0:45:21 (May 10, 2016), http://hawthorne-ca.granicus.com/MediaPlayer.php?view_id=2&clip_id=390&meta_id=26601 (showing Donald Dear stating, “West Basin requests that the Council consider supporting our [Ocean Water Desalination] program”).

⁵¹ *Harold C. Williams*, WEST BASIN MUN. WATER DIST., <http://www.westbasin.org/board-directors/harold-c-williams> (last visited June 19, 2018).

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website that it was “committed to ocean-water desalination”,⁵² and West Basin Board members even wore “I [heart] desal” buttons at a conference on Direct Potable Reuse.⁵³ To date, West Basin has invested the last 17 years and \$63 million in ocean desalination. “When an agency has not only expressed its inclination to favor a project, but has increased the political stakes by publicly defending it over objections, putting its official weight behind it, devoting substantial public resources to it . . . the agency will not be easily deterred from taking whatever steps remain toward the project's final approval.” (*Id.* at 135.) West Basin’s institutional momentum and bias behind open ocean desalination has prevented the DEIR from properly assessing a reasonable range of alternatives. Except for the “no project” alternative, *all* of the alternatives considered are minor variants on an open ocean desalination facility. It has also prevented West Basin from conducting a proper analysis of the impacts from the various desalination plants proposed. “The core of an EIR is the mitigation and alternatives sections . . . ‘The purpose of an environmental impact report is to identify the significant effects of a project on the environment, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.’” (*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564–65 [quoting Pub. Res. Code § 21002.1(a)].) The flaws in this DEIR’s alternatives analysis thwart the very purpose of the environmental impact report. These flaws must be addressed and the DEIR recirculated before advancing to the final EIR stage.

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CEQA Guidelines state that “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (Guidelines §15126.6(b).) In selecting a “reasonable range of alternatives to the proposed project,” the DEIR “shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects.” (Guidelines § 15126.6(c).)

The DEIR alternatives analysis fails to evaluate a reasonable range of alternatives by narrowly interpreting the Project objectives and including an unsupported objective to develop 21,500 AFY of new water supply. The DEIR also fails to evaluate alternatives to the Project that would avoid or substantially lessen the significant environmental impacts of the Project and to integrate such analysis with the requirements of the California Ocean Plan Desalination Amendment, as discussed in Hermosa Beach’s comment letter and incorporated by reference herein. Such alternatives include conservation, stormwater capture, recycling, and brackish desalination, which in combination or individually, are capable of accomplishing most of the basic objectives of the Project.

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⁵² Attachment E.

⁵³ NSF Workshop: Engaging the Environmental Community on Direct Potable Reuse January 14, 2016 http://www.nwri-usa.org/nsf_dpr_environment.html. West Basin updated these buttons in 2017 to “I [heart] responsible desal.”

A. The Project Objectives Are Unreasonably Interpreted to Artificially Constrain the Range of Alternatives Analyzed.

The CEQA Guidelines require that a project’s description include a “clearly written statement of objectives that will help the lead agency develop a *reasonable range of alternatives* to evaluate in the EIR” (emphasis added § 15124(b).) West Basin’s Project objectives are to:

- Diversify West Basin’s water source portfolio to increase reliability in the near and intermediate term (5–15 years) and the long term (15–30 years) while reducing reliance on imported water.
- Improve water security through West Basin’s increased local control of water supplies and infrastructure.
- Improve West Basin’s local control of future water costs and long-term price stability.
- Improve climate resiliency by developing a water source that is less susceptible to hydrologic variability.
- Develop a potable water supply that is economically viable and environmentally responsible.

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At first blush, these Project objectives appear sufficiently broad to allow evaluation of a reasonable range of alternatives. However, the DEIR interprets these objectives very narrowly, and includes a requirement for 21,500 acre feet per year of supply as a “shadow objective” even though that requirement is not disclosed as an objective. This is a fundamental flaw in the DEIR, and it dooms the alternatives analysis. (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1168 [“A lead agency may not give a project’s purpose an artificially narrow definition,”]; see, e.g., *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 654 [EIR violated CEQA by artificially narrowing objective of pest control project to eradication of the target population, instead of protection of California plants and agriculture].) The DEIR ultimately only evaluates three “build” alternatives and all three alternatives evaluated involve construction and operation of an ocean desalination plant.

Despite being able to achieve the Project objectives through smarter, more cost-effective, environmentally sound alternatives, the DEIR screens such alternatives out as infeasible by applying an artificially narrow interpretation of the Project objectives. In its initial screening process, the DEIR imposes nine “criteria,” all of which must be met by a given alternative in order to warrant further evaluation. This strict all-or-nothing requirement of adherence to such criteria is neither implicitly nor explicitly required by CEQA. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 991 [“There is no legal requirement that the alternatives selected must satisfy every key objective of the project”].) Yet, these criteria effectively operate as shadow objectives that the DEIR uses to eliminate alternatives that would otherwise meet the stated Project objectives.

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The first and most restrictive of these shadow objectives is the “[p]otential to achieve at least 21,500 acre-feet per year (AFY) average annual additional potable water supply.” The DEIR uses this shadow objective to rule out conservation, stormwater capture, recycling, indirect potable reuse (IPR), and direct potable reuse (DPR), among other alternatives, as infeasible in the initial screening process. As a result, the DEIR does not evaluate such alternatives on their ability to “feasibly attain most of the basic objectives” of the Project and is instead left with only

variations on building an ocean desalination plant to evaluate. Thus, the alternatives analysis fails to evaluate a reasonable range of alternatives. It does not even come close.

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B. *The DEIR Relies on an Unsubstantiated Need for 21,500 AFY of New Water Supply.*

In its initial screening process, the DEIR rejects from further analysis any alternative that it finds cannot, alone, achieve the shadow objective of 21,500 AFY of new water supply. The DEIR’s justification for its heavy reliance on this figure is confusing and ultimately circular.

The DEIR references MWD’s Integrated Water Resources Plan (IRP) 2015 Update and West Basin’s 2015 Urban Water Management Plan (UWMP) as the basis for the 21,500 AFY figure. As an initial matter,

the data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. ‘[I]nformation ‘scattered here and there in EIR appendices,’ or a report ‘buried in an appendix’ is not a substitute for ‘a good faith reasoned analysis.’

(*Banning Ranch Conservancy v. Newport Beach* (2017) 2 Cal.5th 918, 941 (citations omitted).) The IRP and UWMP are only two of numerous other documents referenced in the DEIR that not only are left out of the DEIR, they are not even “buried in an appendix.” Such documents are referenced without pin citations, tables within such documents are referenced and not reproduced anywhere in the DEIR or the appendices, and yet such documents are, at a minimum, integral to the alternatives analysis as evidenced by the reliance on the 21,500 AFY figure.

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i. The DEIR Mischaracterizes the Projected Need for New Local Water Supply in MWD’s IRP.

The DEIR states,

[t]he MWD 2015 IRP identifies the need for 230,000 AFY in new local supply from MWD member agencies by the year 2040 . . . West Basin’s proposed Local Project is included among the local supply projects noted in the IRP from where the additional 230,000 AFY in additional local supplies will be developed. (DEIR, 2-29.)

In actuality, the IRP states that by 2040, “approximately 200,000 acre-feet of new local supply and water conservation is needed.”⁵⁴ But the DEIR omits a critical piece of the IRP that breaks down how this 200,000 AF will be achieved. The IRP states, “[t]he water conservation approach . . . will result in approximately 180,000 acre-feet of new water conservation savings” and “the remaining 20,000 acre-feet of additional need” will be met “through recycling, groundwater recovery and seawater desalination.”⁵⁵ Thus, contrary to what the DEIR states, the IRP projects that a majority of the 200,000 AF

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⁵⁴ Attachment F, p. 4.5. While it is not the job of commenters to cure the defects in an EIR for the project proponent, relevant outside documents cited, but not included in this DEIR are included as attachments to this comment letter.

⁵⁵ Attachment F, p. 4.5.

needed by 2040 will be achieved through increased conservation and only 20,000 AF need to come from new local water supplies.

The IRP states that the “goal for local water supplies is primarily to protect existing resources from future risk.”⁵⁶ The total local supply target is 2,426,000 AF by 2040 with the vast majority from existing and under construction local supplies (2,406,000 AF) and 20,000 AF from new local water supplies, as explained above. The 2,406,000 AF of existing and under construction local supplies “only includes projects that are currently producing water or are under construction” in order to provide a higher level of certainty of producing as forecasted.⁵⁷ Thus, neither West Basin’s Local Project nor Regional Project is accounted for in the 2,406,000 AF of existing and under construction local supplies. West Basin’s Project would instead count toward the 20,000 AF of new local water supply needed by 2040. Yet, West Basin is proposing to build a costly ocean desalination plant that would produce more water in a single year than the entire amount of new local water supply the IRP projects will be needed by 2040.

The DEIR’s reliance on the IRP to justify the shadow objective of 21,500 AFY of additional water supply is unfounded, and the IRP does not provide substantial evidence to support the DEIR’s narrow alternatives analysis. In fact, it provides evidence that other water supply alternatives such as recycling and groundwater recovery were improperly omitted from the DEIR alternatives analysis.

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ii. West Basin’s 2015 UWMP Also Does Not Provide a Basis for the 21,500 AFY.

The Urban Water Management Planning Act (UWMP Act) in the California Water Code states, “[t]he management of urban water demands and efficient use of water shall be actively pursued to protect both the people of the state and their water resources.” (Cal. Water Code § 10610.4(a).) The UWMP Act requires urban water suppliers to prepare water supply management plans “to actively pursue the efficient use of available supplies.” (Cal. Water Code § 10610.4(c).) West Basin’s 2015 UWMP provides water supply planning for a 25-year planning period and reports on West Basin’s present and future water resources and demands.⁵⁸

The DEIR, in the initial screening of alternatives, evaluates each alternative for its ability to “compensate for the water supply projected by the 2015 UWMP to be provided through seawater desalination (21,500 AFY).” (DEIR, 7-7). However, the DEIR does not explain how West Basin arrived at this 21,500 AFY figure other than to 1) reference the need projected in the IRP, which, as explained above, does not in fact support the need for 21,500 AFY of ocean desalination water, and 2) make a circular reference to the

⁵⁶ Attachment F, p. 4.5.

⁵⁷ Attachment F, p. 3.22–3.23.

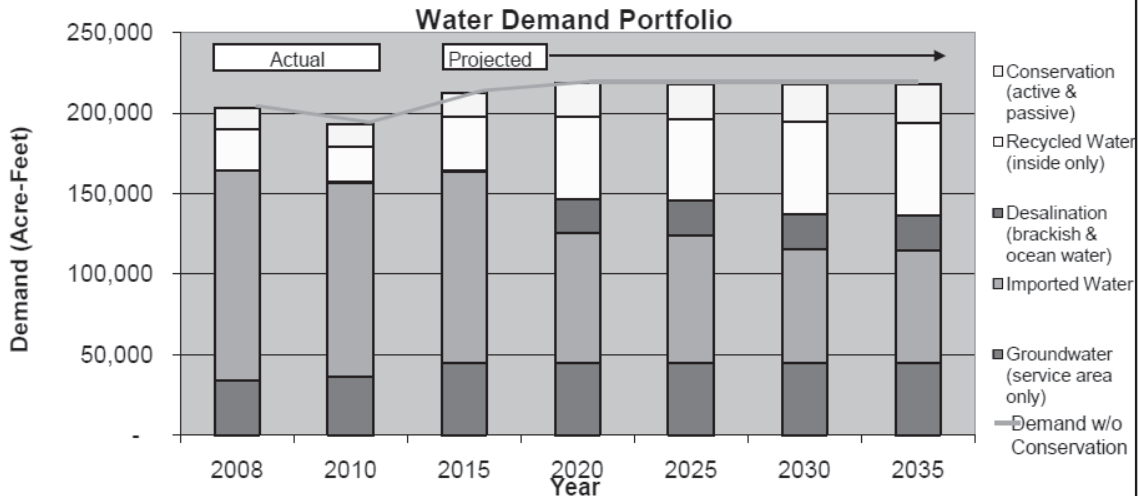
⁵⁸ Attachment G.

fact that its own UWMP projects development of 21,500 AFY of ocean water desalination supply.

West Basin’s 2015 UWMP demonstrates that West Basin does not need 21,500 AFY of ocean desalination water. The 2015 UWMP states that West Basin’s “multiple dry year analysis indicates that an appropriately sized 20 MGD ocean desalination facility will provide the quantity of water necessary to make up the expected shortfall in imported water supplies under future drought conditions.”⁵⁹ However, the analysis actually shows that West Basin can meet **105%** of demand in the third year without or with barely any rainfall.⁶⁰ West Basin seems to be planning for 100% water reliability with zero reliance on MWD’s storage reserves, which is *far* beyond the multiple-year, worst-case-scenario that West Basin is required to plan for in the UWMP. Furthermore, the DEIR states that water use in West Basin’s service area “has followed a downward trend despite an increasing population.” (DEIR, 7-9.) In fact, despite West Basin forecasting a 20,000 AFY increase in demand between 2010 and 2015 in their 2010 UWMP,⁶¹ demand declined in that time period. As a result, in 2015 West Basin realized the 20,000 AFY imported water demand reduction that it had intended the 20 MGD desalination plant to achieve.⁶²

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Figure 2⁶³



Despite this, even with less aggressive imported water use reduction targets than the 2010 UWMP, the 2015 UWMP still manages to find a need for 21,500 AFY of ocean

⁵⁹ Attachment G, p. 10-2.
⁶⁰ Attachment G, Table 5-2.
⁶¹ Attachment H, Figure 3-2.
⁶² Attachment A, p. 7-8.
⁶³ Attachment H, Figure 3-2.

desalination water.⁶⁴ This need for 21,500 AFY is not, however, supported by substantial evidence in either the UWMP or the DEIR. Moreover, demand may be further reduced by the permanent conservation bills signed by Governor Brown in May 2018. (See Assem. 1668, 2018 Leg., Reg. Sess. (Cal. 2018); S. 606, 2018 Leg., Reg. Sess. (Cal. 2018)). Applying the 21,500 AFY as a de facto narrow project objective in a CEQA review means that virtually the entire DEIR analysis relies on a supposition that is unsupported by substantial evidence.



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It is also notable that Urban Water Management Plans are *not* governed by Public Resources Code section 21002 (Cal. Water Code § 10652), and thus the 2015 UWMP was not held to any requirement to consider feasible alternatives that would substantially lessen the significant environmental effects of a 20 MGD ocean desalination facility. As a result, in its 2015 UWMP, West Basin defined its water supply portfolio to include 21,500 AFY of the most expensive, energy-intensive water supply option, and is now relying on that projection of 21,500 AFY of ocean desalination water in the DEIR to rule out alternatives without a CEQA analysis.

This DEIR is a “post-hoc rationalization for a decision already made.” West Basin committed to ocean desalination in its 2010 UWMP and again in its 2015 UWMP. The DEIR now relies on such plans to substantiate the need for the Project. As a result, the DEIR’s alternatives analysis is fatally flawed for failing to analyze a conservation alternative, stormwater capture alternative, recycling alternative, brackish desalination alternative, a water supply hybrid alternative, and a reduced capacity desalination alternative that supports subsurface intakes.

C. *The Alternatives Analysis Fails to Evaluate a Hybrid Alternative.*

Not only does the DEIR apply the improper 21,500 AFY shadow objective to unduly constrain the range of alternatives analyzed, but it also unreasonably evaluates each alternative on its ability to achieve all 21,500 AFY of water supply *on its own*. As explained in greater detail below, a hybrid alternative that includes, for example, a combination of increased conservation, stormwater capture, recycling, and brackish desalination could together achieve 21,500 AFY. The DEIR offers no explanation as to why such a hybrid of the supply alternatives eliminated in the initial screening process was not evaluated. Thus, the DEIR alternatives analysis is inadequate because it fails to evaluate a hybrid alternative that includes any combination of water supply alternatives all of which are capable of avoiding or substantially lessening the significant effects of the Project⁶⁵ and would achieve most of the basic Project objectives.

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D. *The Alternatives Analysis Fails to Evaluate a Conservation Alternative.*

Conservation is not only the most reliable and least expensive means of increasing water supply, but also the most energy friendly, as discussed in Section I above. The DEIR touts West Basin’s

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⁶⁴ See Attachment G, ES-5; Attachment H, ES-4.

⁶⁵ E.g., COOLEY & HEBERGER, *supra* note 1, at 3 (“Communities should consider whether there are less energy-intensive options available to meet water demand, such as through conservation and efficiency, water reuse, brackish water desalination, stormwater capture, and rainwater harvesting”).

significant conservation savings over the past 25 years and claims that, as a result, demand has hardened making it difficult to “make up for the 21,500 AFY to be produced under the Project.” (DEIR, p. 7-10.) As explained in detail in Section V.B. above, it is not evident that West Basin has a need for 21,500 AFY—most notably, when statewide conservation measures were in place, West Basin’s conservation efforts actually eliminated the need for a 20 MGD ocean desalination facility. However, even assuming West Basin does need that amount, West Basin could realize significant conservation savings in its residential per capita water usage (R-GPCD).

The DEIR states that in 2016, West Basin’s residential water use was 79 R-GPCD. (DEIR, 7-9.) In 2017, the City of Los Angeles was at 68.3 R-GPCD, the City of Long Beach was at 63.4 R-GPCD,⁶⁶ and best practice world-wide is even lower, at 30 to 50 R-GPCD. If West Basin were to reduce its R-GPCD to where the City of Los Angeles is (68.3 R-GPCD) or where the City of Long Beach is (63.4 R-GPCD), with a population of 813,000 in 2015 (DEIR, 2-24), that would already amount to a savings of 8.7 MGD to more than 12.68 MGD.

The DEIR states “[t]here is no evidence to indicate that such additional savings can be reasonably anticipated without significant rationing, imposed consumer lifestyle changes, and economic impacts.” (DEIR, 7-11.) This is simply not true. In August of 2017, the average residential per capita water use for the South Coast region was 65.87 R-GPCD, down from 69.63 R-GPCD the previous month.⁶⁷ The DEIR alternatives analysis should have explored conservation as an alternative to at least bring West Basin’s R-GPCD down to levels that have already been achieved elsewhere in the South Coast region.

The DEIR also attempts to make an environmental justice argument, claiming reliance on obtaining more water savings from “low-income communities that are already at very low GPCD levels may raise concerns over Environmental Justice issues . . . obtaining significantly more water conservation from these economically disadvantaged communities would impose an additional burden and would raise issues of fairness in water use requirements.” (DEIR, p. 7-13.) The DEIR then offers Lomita and Inglewood as examples of cities that are below the federal poverty line and had water use at or below 100 GPCD in 2015 and the City of Hawthorne, which had an R-GPCD of 62 in June of 2016. (*Ibid.*) The DEIR does not, however, reveal that affluent communities in West Basin’s service area such as Palos Verdes were at 192 R-GPCD in August 2015, 208 R-GPCD in August 2016, and 226 R-GPCD in August 2017.⁶⁸ The true environmental justice issue is West Basin’s proposal to perpetuate this excessive residential per capita water usage in more affluent communities by building a 20 to 60 MGD ocean desalination plant and indiscriminately imposing the significant costs of the plant on those in West Basin’s service area, whether a resident of Palos Verdes using over 200 gallons per day

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⁶⁶ These figures were calculated by taking the averages of R-GPCD figures for each month of January through December of 2017, found at

https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/conservation_reporting.html.

⁶⁷ *Is California Water Use Increasing?* 89.3 KPCC, <http://projects.scpr.org/applications/monthly-water-use/region/south-coast/> (last visited June 20, 2018.)

⁶⁸ STATE WATER RESOURCES CONTROL BOARD, *August Supplier Conservation*, 9, 10 (2017), https://www.waterboards.ca.gov/water_issues/programs/conservation_portal/docs/2017oct/supplierconservation_100317.pdf.

or a resident of Hawthorne using only 62 gallons per day. While data from cities such as Compton (65 R-GPCD) and some communities in southeast Los Angeles County (less than 45 R-GPCD)⁶⁹ suggest that there may still be potential conservation savings even in low-income cities in West Basin’s service area that are around 100 R-GPCD, it is clear that the greatest conservation savings should come from cities like Palos Verdes, whose residential per capita water usage is well above the South Coast region average. While it may raise an environmental justice issue if an additional burden were placed on residents of Hawthorne in order to obtain significantly more water conservation, such measures are unnecessary when residents of Palos Verdes use over 200 gallons per person per day.

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In summary, West Basin has significant unrealized, residential conservation savings in its service area. The DEIR should have analyzed a conservation alternative. Even if West Basin does need 21,500 AFY of new water supply, there is no excuse for the failure to evaluate maximizing the least expensive, most energy friendly means of increasing water supply in combination with other alternatives to achieve that amount of water supply.

E. *The Alternatives Analysis Fails to Evaluate a Stormwater Capture Alternative.*

Every time it rains, billions of gallons of stormwater runoff flow into LA County’s waterways and out to the ocean.⁷⁰ “[A] one-inch rain event in Los Angeles County can generate more than 10 billion gallons (roughly 30,000 acre-feet) of stormwater runoff.”⁷¹ In an average storm year in LA County, more than 500,000 acre-feet of stormwater “picks up pollutants and goes straight into our rivers and coastal waters with no treatment.”⁷² This is billions of gallons of stormwater that could and should be captured, treated, and reused to increase local water supplies and reduce pollution to our waterways. Furthermore, in the last few years, voters in LA County and the State of California have approved funding for water,⁷³ transit,⁷⁴ and parks⁷⁵ that provides funding for green streets and other stormwater capture and reuse projects, and in July 2018, the LA County Board of Supervisors will be voting on whether to place a funding measure on the November ballot that would provide \$300 million a year for safe clean water programs.⁷⁶ There are significant opportunities available to West Basin to increase its water supply through stormwater

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⁶⁹ Matt Stevens et al., *Some Communities May Have to Cut Water Use By 35%, Regulators Say*, LA TIMES (Apr. 7, 2015, 8:44 PM), <http://www.latimes.com/local/lanow/la-me-ln-some-california-cities-must-cut-water-use-35-amid-drought-20150407-story.html>.

⁷⁰ NAT. RES. DEF. COUNCIL & PAC. INST., STORMWATER CAPTURE POTENTIAL IN URBAN AND SUBURBAN CALIFORNIA (2014), available at <https://www.nrdc.org/sites/default/files/ca-water-supply-solutions-stormwater-IB.pdf>; Bettina Boxxall, *When It Rains, Los Angeles Sends Billions of Gallons of ‘Free Liquid Gold’ Down the Drain*, LA TIMES (Mar. 8, 2017, 3:00 AM), <http://www.latimes.com/local/lanow/la-me-ln-stormwater-20170308-story.html>; Mark Gold, *New Parklands and Shimmering Transit System Won’t Matter If L.A. Doesn’t Solve Its Water Woes*, LA TIMES (Nov. 21, 2016, 12:05 PM), <http://www.latimes.com/opinion/livable-city/la-ol-water-rain-drought-measure-m-hhh-20161121-story.html>.

⁷¹ NAT. RES. DEF. COUNCIL & PAC. INST., *supra* note 70, at 3.

⁷² Gold, *supra* note 70.

⁷³ Proposition 1, 2014 Cal. Stat. 2276 et seq.; Proposition 68, 2017 Cal. Stat. 6293 et seq.

⁷⁴ Measure M, Ballot Pamp., Primary Elec. (June 5, 2018) text of Measure M, p. 3.

⁷⁵ Measure A, Ballot Pamp., General Elec. (November 8, 2016) text of Measure A, p. 2; Proposition 68, 2017 Cal. Stat. 6293 et seq.

⁷⁶ COUNTY OF LOS ANGELES, SAFE CLEAN WATER L.A., <http://safecleanwaterla.org/> (last visited June, 19 2018).

capture with the added benefit of reducing pollution. The DEIR's alternatives analysis should have evaluated a stormwater capture alternative and a hybrid alternative that includes maximizing the stormwater capture potential in West Basin's service area.

Instead, the DEIR immediately writes off groundwater recharge through stormwater capture and infiltration without citation to any studies, stating the "local geology overlaying the confined aquifers of the West Coast Basin is not conducive to successful groundwater recharge without the use of injection wells." (DEIR, p. 7-16.) The DEIR then briefly describes the components of a stormwater capture and injection well system, characterizes such a system as "a very costly process," notes that West Basin does not own the storm drain systems, and as such, "would require extensive coordination with individual cities and Los Angeles County," and concludes "centralized stormwater capture for groundwater recharge through injection is technologically and institutionally infeasible." (*Ibid.*)

The DEIR does not contain substantial evidence to support this infeasibility conclusion. "The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible." (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1181.) The DEIR does not provide any evidence as to why construction of "an entirely new collection, storage, conveyance, and treatment and injection well system" (DEIR, 7-17-7-18) is any more technologically challenging or costly than constructing an entirely new ocean water desalination facility consisting of a pretreatment system and reverse osmosis system, an ocean water intake system, a brine discharge system, and a conveyance system. (DEIR, 3-1.) Without independent analysis to compare the institutional or technological implications of alternatives to the proposed project, merely citing the existence of technological or institutional considerations is insufficient to establish infeasibility. (See *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599 [concluding that a claim of economic infeasibility without comparing costs of alternatives to that of the proposed project is insufficient]; see also *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.3d 1336, 1354 [EIR for proposed home improvement store requiring demolition of a historic building inadequate for lack of detail or meaningful analysis of reduced-size alternative design not requiring demolition].) In fact, the Water Replenishment District's (WRD) Groundwater Basins Master Plan (GBMP) identifies opportunities to develop as much as 30,000 AFY of additional water supply above the current water rights in the West Coast Basin, and includes a planning scenario in which new injection wells are constructed to allow for increased replenishment.⁷⁷ The DEIR fails to include any discussion of WRD's plans to reduce dependence on imported water and increase recharge to and pumping from the West Coast Basin to evaluate whether, for example, WRD's new injection well scenario may make stormwater capture less technologically challenging. The mere fact that West Basin does not own the storm drain systems and would have to coordinate with cities and LA County is not sufficient evidence to render centralized stormwater capture institutionally infeasible. (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1457 ["Even when the project proponent does not own a potential alternative site, the development of the project on the alternative site may nevertheless be feasible when the alternative site can be acquired through a land exchange with a public entity."]); see also *Citizens*

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⁷⁷ WATER REPLENISHMENT DIST. OF S. CAL., GROUNDWATER BASINS MASTER PLAN 3-16-3-17 (2016), available at http://www.wrd.org/sites/pr/files/GBMP_FinalReport_Text%20and%20Appendicies.pdf.

of Goleta Valley v. Bd. of Supervisors (1990) 52 Cal.3d 553, 574 [alternatives requiring alternate sites are more likely to be feasible when the project proponent is a public entity]; see also *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 751 [EIR for proposed public gravesite defective because possibility of land trade between proponent and US Forest Service was identified but not adequately discussed].) The DEIR also does not provide any support for its conclusory statement that such physical improvements required for a centralized stormwater capture system “would result in construction impacts that may be more widespread than the Project.” (DEIR, 7-18.)

In addition, the DEIR fails to compare the environmental impacts from operation of the Project to operation of a stormwater capture system. A stormwater capture system would have less energy impacts than the Project, would avoid the significant land use and marine impacts of the Project, and would have the added environmental benefit of reducing the amount of polluted stormwater runoff from reaching our waterways, not to mention the multi-benefits of distributed stormwater capture projects such as green streets.⁷⁸ Lastly, the DEIR attempts to cut off further discussion of stormwater capture by couching West Basin’s lack of groundwater rights to retrieve injected stormwater from the West Coast Basin as an insurmountable obstacle. Groundwater rights can be negotiated and West Basin would be in a good position to do so if they are recharging the West Coast Basin with thousands of acre-feet of water each year. (*Save Round Valley Alliance v. County of Inyo, supra*, 157 Cal.App.4th 1437, 1457; see also *Citizens of Goleta Valley v. Bd. of Supervisors, supra*, 52 Cal.3d 553, 574; see also *San Bernardino Valley Audubon Society v. County of San Bernardino, supra*, 155 Cal.App.3d 738, 751.)

The DEIR raises the issue of susceptibility to hydrologic variability stating that “stormwater capture would not represent a hydrologically-independent water supply source” and therefore, does not meet the project objective to “improve climate resiliency by developing a water source that is less susceptible to hydrologic variability.” (DEIR, 7-17.) However, maximizing stormwater capture as one part of a hybrid alternative does in fact meet this project objective. Furthermore, even on days without any precipitation, “water from excess landscape irrigation, car washing, industrial processes, and other uses flows into storm sewer systems—an estimated 10 million to 25 million gallons flow into Santa Monica Bay alone for each dry-weather day, and more than 100 million gallons flow to the ocean from across Los Angeles County.”⁷⁹

The DEIR also minimizes the potential for increasing water supply specifically through distributed sources, concluding that “[u]sing rain barrels and cisterns to capture rainwater for direct non-potable uses is not feasible in the volumes required to replace the potable water supply reliability that the Project could provide.” (DEIR, 7-16–7-17.) Once again, the DEIR improperly eliminated distributed stormwater capture from further analysis using the shadow objective of 21,500 AFY of new water supply. The DEIR then cites the Los Angeles

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⁷⁸ NAT. RES. DEF. COUNCIL & TREEPEOPLE, RAIN TO THE RESCUE: STORMWATER’S POWER TO INCREASE CALIFORNIA’S LOCAL WATER SUPPLIES 1–2 (2016), available at <https://www.nrdc.org/sites/default/files/stormwater-ca-local-water-supplies-ib.pdf>.

⁷⁹ NAT. RES. DEF. COUNCIL & PACIFIC INSTITUTE, *supra* note 70, at 3 (citing City of Los Angeles, *Santa Monica Bay Shoreline Monitoring Municipal Separate Storm Sewer System (MS4) Report* (July 1, 2008–June 30, 2009) and City of Los Angeles Bureau of Sanitation, *Stormwater Best Management Practices (BMPs): Home Repair and Remodeling*, san.lacity.org/watershed_protection/pdfs/homerepr.pdf.)

Department of Water and Power (LADWP) Stormwater Capture Master Plan (SCMP) for the estimate that “the potential offset of imported water in the city of Los Angeles through stormwater capture is 1,000 AFY by 2020 and 7,000 AFY by 2035” and concludes that because of West Basin’s smaller square mileage, West Basin’s stormwater capture potential would only be a fraction of this. (DEIR, 7-16.) The DEIR also makes a vague, uncited reference to “a recent study” that estimates “only 900 AFY of decentralized stormwater would be available for direct use within the Dominguez Channel/Los Angeles Harbor watershed.” (DEIR, 7-17.)

First, distributed stormwater capture encompasses more than just rain barrels and cisterns. It includes green streets, greening schools, park retrofits, building retrofits, as well as residential rain capture systems that have the added environmental benefits of increasing green space, energy savings, and improving air quality.⁸⁰ But even if we only look at residential stormwater capture potential, capturing “a portion of the runoff from single-family homes for on-site use . . . would drastically increase overall local water supplies and reduce strain on existing systems.”⁸¹ Locally, this is especially true because, “LA families use most of their drinking quality water for nonpotable uses . . . [a]n average Los Angeles family of four uses a whole 68 percent of its water for toilet flushing, landscaping, washing clothes and other non-drinking uses.”⁸² Thus, maximizing West Basin’s distributed stormwater capture potential to reduce residential use of potable water for nonpotable uses would increase potable water supplies.

Second, it is unreasonable for the DEIR not to analyze the *combined* potential of *both* centralized and distributed stormwater capture—“stormwater capture, using both infiltration to recharge groundwater resources and capture of rooftop runoff for direct nonpotable consumption, is a strong option for improving the resilience and sustainability of water supply for the cities and suburban areas of California.”⁸³ Looking at both centralized *and* distributed stormwater capture, the SCMP shows that LADWP could potentially increase stormwater capture to between 132,000 AFY and 178,000 AFY by 2035.⁸⁴ Even if West Basin’s centralized and distributed stormwater capture potential is 63% less than the City of LA’s, as the DEIR suggests, that would still amount to between 48,000 AFY and 65,000 AFY of stormwater capture potential in West Basin’s 185 square-mile service area. (See DEIR 7-16.)

Thus, the DEIR improperly concludes “solely pursuing stormwater capture would not achieve the Project objectives.” (DEIR, 7-18.) Once again, the need for 21,500 AFY of new water supply is not supported by substantial evidence, and even if there is a need for 21,500 AFY of water, it is inappropriate to evaluate stormwater capture on its ability to achieve all 21,500 AFY of water supply on its own. The DEIR alternatives analysis should have included an analysis of stormwater capture as an alternative as well as an analysis of stormwater capture in the context of a hybrid alternative.

⁸⁰ NAT. RES. DEF. COUNCIL & TREEPEOPLE, *supra* note 78, at 2.

⁸¹ NAT. RES. DEF. COUNCIL & PAC. INST., *supra* note 70, at 6 (stating that in Southern California and the San Francisco Bay regions, “nearly 145,000 acre-feet could be gained via rainwater capture systems installed in our homes.”).

⁸² NAT. RES. DEF. COUNCIL & TREEPEOPLE, *supra* note at 78, at 3.

⁸³ *Id.* at 6.

⁸⁴ Attachment I, p. 77.

F. *The Alternatives Analysis Fails to Evaluate a Recycling Alternative.*

In LA County, we meet only 4% of our water demand with recycled water.⁸⁵ However, there is the potential to produce “up to 400,000 acre-feet per year of water for the region” just by reusing the wastewater treated at the Hyperion Water Reclamation Plant (Hyperion), Donald C. Tillman Water Reclamation Plant, and the Carson Joint Water Pollution Control Plant (JWPCP).⁸⁶ Hyperion, alone, discharges over 200 million gallons of wastewater into the Bay every day and is located only about one mile from the proposed Project.⁸⁷

i. The DEIR Inadequately Explores the Possibility of a Non-Potable Recycling Alternative.

West Basin has been a leader in recycled water with its Edward C. Little Water Recycling Facility (ECLWRF) that came online in the early 1990s and currently recycles approximately 35 MGD of secondary effluent from Hyperion. (See DEIR, 7-18.) However, since that time, other agencies have taken on even more leadership—Orange County produces 100 MGD of recycled water to augment its groundwater supplies⁸⁸ and the proposed Pure Water San Diego would also produce 83 MGD of recycled water to augment local reservoirs.⁸⁹ MWD and the Sanitation Districts of Los Angeles County are exploring a Regional Recycled Water Program that would include an advanced water treatment facility at the Carson JWPCP and would produce 150 MGD of recycled water and serve over 335,000 homes.⁹⁰ Construction of a half-million gallon per day demonstration facility began in November of 2017.⁹¹ As currently envisioned, 15 MGD (~17,000 AFY) of the 150 MGD regional program would go to West Coast Basin injection wells.⁹² This is contrary to the statement in the DEIR that this project “would not provide supplies to West Basin retail agency customers.” (DEIR, 7-22).

As stated in the DEIR, West Basin has entered into an agreement with Los Angeles Bureau of Sanitation and LADWP to increase recycling at ECLWRF to 70 MGD of secondary effluent from Hyperion. (DEIR, 7-19.) Waterkeeper applauds these interagency coordination efforts.

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⁸⁵ MARK GOLD ET AL., UCLA INST. OF THE ENV'T AND SUSTAINABILITY, 2015 ENVIRONMENTAL REPORT CARD FOR LOS ANGELES COUNTY: WATER 12 (2015), available at <https://www.ioes.ucla.edu/wp-content/uploads/report-card-2015-water.pdf>.

⁸⁶ Gold, *supra* note 70.

⁸⁷ CITY OF LOS ANGELES, ENVTL. MONITORING DIV., FALL 2015 HYPERION TREATMENT PLANT EFFLUENT DIVERSION TO THE 1-MILE OUTFALL COMPREHENSIVE MONITORING PROGRAM FINAL REPORT 8 (2017), available at http://sccoos.org/media/filer_public/f1/cd/f1c4bf4c-3248-4449-882c-28b8925f37fb/2015_hip_1-mile_outfall_diversion_final_report.pdf.

⁸⁸ *About GWRS*, ORANGE CNTY. WATER DIST., <https://www.ocwd.com/gwrs/about-gwrs/> (last visited Jun. 21, 2018).

⁸⁹ THE CITY OF SAN DIEGO, PURE WATER SAN DIEGO PROGRAM 2 (2017), available at https://www.sandiego.gov/sites/default/files/pure_water_brochure_final_3_20_17.pdf.

⁹⁰ THE METRO. WATER DIST. OF S. CAL. & SANITATION DIST. OF LOS ANGELES CTY., A NEW SOURCE OF WATER FOR SOUTHERN CALIFORNIA 3 (2017), available at http://mwdh2o.com/PDF/About_Your_Water/Regional_Recycled_Water_Supply_Program.pdf.

⁹¹ *Id.*

⁹² ENGINEERING & OPERATIONS COMMITTEE, REGIONAL RECYCLED WATER PROGRAM 18 (2018), available at http://www.mwdh2o.com/DocSvcsPubs/trwp/assets/mwd_board_item_6-b_staff_presentation_march_2018.pdf.

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However, ECLWRF is “designed for ultimate expansion to 100 MGD.”⁹³ Expanding ECLWRF to its maximum capacity would more than eliminate the need for the Local Project. Further, as a condition of its ECLWRF permit issued by the Regional Water Quality Control Board, West Basin is required to “investigate the feasibility of recycling, conservation, and/or alternative disposal methods of wastewater and/or use of storm water and dry-weather urban runoff” whenever practicable.⁹⁴ By issuing a DEIR that inadequately explores the alternative of expanding ECLWRF capacity and recycling hybrid alternatives, West Basin falls short of the conditions imposed upon it by the ECLWRF permit.

Despite the ECLWRF permit’s mandate and the expansion potential at ECLWRF, the DEIR eliminates the “Increased Non-Potable Recycling Alternative” in the initial screening process. The DEIR cites “current secondary effluent water quality, complex partnership with neighboring jurisdictions, additional treatment and distribution costs,” and the fact that the “economic viability of this alternative is reduced as it is unlikely that West Basin will identify an additional demand for 21,500 AFY of non-potable recycled water” as major obstacles. (DEIR, 7-20–7-21.) The DEIR should have analyzed increased non-potable recycling in the context of a hybrid alternative, rather than improperly eliminating it from further analysis by repeatedly measuring it against the ability to achieve 21,500 AFY of new potable water.

As the DEIR itself states, increased recycling of Hyperion secondary effluent at ECLWRF would “relieve pressure on imported supplies by replacing potable water with recycled water.” (DEIR, 7-20.) Yet, the DEIR does not include any assessment or quantification of the potential in West Basin’s service area for substituting recycled water where potable water is currently being used for non-potable applications. In the context of recycled water for non-potable usage, the DEIR states “West Basin’s service area is limited by a finite customer base” and thus, while “West Basin’s recycled water sales are anticipated to increase in the future,” sales are unlikely to increase by 21,500 AFY. (*Ibid.*) Again, the DEIR fails to explore the extent of that anticipated increase in recycled water sales based on the improper assumption that each water supply alternative must either achieve all 21,500 AFY or be eliminated. (*Ibid.*) The DEIR also fails to discuss the fact that WRD’s GBMP contemplates increased replenishment with recycled water from ECLWRF,⁹⁵ among other plants, and how WRD’s estimated 25,500 AFY of additional replenishment required to meet long-term future pumping demands may create additional demand in West Basin’s service area for recycled water for non-potable usage.⁹⁶ While Waterkeeper is skeptical of non-potable recycling to the extent it incentivizes poor land use

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⁹³ Attachment J.

⁹⁴ CAL. REG’L WATER QUALITY CONTROL BD. L.A. REGION, ORDER R4-2018-XXX, WASTE DISCHARGE REQUIREMENTS AND NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT FOR WEST BASIN MUNICIPAL WATER DISTRICT, EDWARD C. LITTLE WATER RECYCLING FACILITY, DISCHARGE TO THE PACIFIC OCEAN, VIA THE HYPERION TREATMENT PLANT (HTP) “FIVE MILE OUTFALL” F-14 (2018), https://www.waterboards.ca.gov/losangeles/board_decisions/tentative_orders/individual/npdes/ECLittle/ECLittleRevisedTentative20180530final.pdf [hereinafter ECLWRF PERMIT] (citing Cal. Water Code §§ 13000 (1970); Cal. Water Code §§ 13550-13557 (2015); State Water Resources Control Bd. Res. 77-1 (Cal. 1977) (policy with respect to water reclamation in California); State Water Resources Control Bd. Res. 2009-0011 (2009) (policy for water quality control for recycled water)).

⁹⁵ WATER REPLENISHMENT DIST. OF S. CAL., *supra* note 77, at 3-5.

⁹⁶ *Id.* at 2-4.

planning, the DEIR alternatives analysis should have evaluated the combined potential for 1) substituting recycled water where potable water is currently being used for non-potable uses and 2) the anticipated increase in sales of recycled water for non-potable uses as an alternative to the Project and in the context of a hybrid alternative.

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ii. The DEIR Inadequately Explores the Possibility of an Indirect Potable Reuse Alternative.

Again, the DEIR cites to the major obstacles in the form of the source water quality, the complexities and institutional issues surrounding interagency agreements, and the lack of groundwater rights as excuses not to explore Indirect Potable Reuse (IPR) as an alternative to the Project. (DEIR, 7-24—7-25.) These are not insurmountable obstacles. Without studies and cost analyses on water quality improvements to source water from Hyperion, the DEIR does not provide substantial evidence to support its conclusion that the challenges presented by the source water quality are such that further analysis is not warranted. (See *Uphold Our Heritage v. Town of Woodside*, *supra*, 147 Cal.App.4th 587, 599; see also *Preservation Action Council v. City of San Jose*, *supra*, 141 Cal.App.3d 1336, 1354.) To the contrary, West Basin is currently evaluating several modifications at ECLWRF to produce higher quality product water for the nearby refinery, and it appears that the modifications are feasible.⁹⁷ LAW sees no reason why an appropriate level of treatment could not be applied to water from Hyperion to similarly produce product water suitable for indirect or direct potable re-use.

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Moreover, West Basin has already demonstrated its ability to navigate “complex institutional arrangements” by entering into a Memorandum of Agreement (MOA) with LADWP and the Los Angeles Bureau of Sanitation (LASAN) “to investigate treatment improvements at Hyperion that would allow for optimization and expansion of the West Basin Recycled Water Program.” (DEIR, 7-19.) Yet, in discussing the complexity of such coordination, the DEIR improperly interprets the project objectives such that improved water security and increased long-term price stability could not be achieved unless West Basin has sole control over the alternative. (DEIR, 7-25.) Further, the DEIR itself states that Hyperion is not the only source of secondary effluent—the JWPCP is located within West Basin’s service area. (DEIR, 7-22.) West Basin’s lack of groundwater rights also does not render this alternative infeasible—groundwater rights are negotiable. (*Save Round Valley Alliance v. County of Inyo*, *supra*, 157 Cal.App.4th 1437, 1457; see also *San Bernardino Valley Audubon Society v. County of San Bernardino*, *supra* 155 Cal.App.3d 738, 751.) Recycling uses the same reverse osmosis technology as ocean desalination,⁹⁸ but has a fraction of the carbon footprint, is less energy-intensive, and as even admitted in the DEIR, “would avoid the Project’s impacts to marine biological resources.” (DEIR 7-26.) The DEIR alternatives analysis should have included an analysis of an IPR alternative, especially in light of the fact that even if West Basin relies on the 21,500 AFY shadow objective, IPR has the potential of developing that amount of water supply.

⁹⁷ ECLWRF PERMIT, *supra* note 94, at F-12–F-13.

⁹⁸ See, e.g., *Groundwater Replenishment System: Process Steps*, ORANGE COUNTY WATER DIST., <https://www.ocwd.com/gwrs/the-process/process-steps/reverse-osmosis/> (last visited June 21, 2018).

iii. The DEIR Inadequately Explores the Possibility of a Direct Potable Reuse Alternative.

In October of 2017, Assembly Bill 574 was signed into law, which set a 2023 deadline for the development of Direct Potable Reuse (DPR) regulations.⁹⁹ The DEIR, however, concludes that due to the lack of existing DPR regulations, this alternative is legally infeasible and even if DPR was permitted, West Basin does not own surface water reservoirs, surface water treatment plants, or a Drinking Water Treatment Plant. (DEIR, 7-26–7-31.) The lack of implementing legislation, alone, is not sufficient to render an otherwise reasonable alternative infeasible. (*Save Round Valley Alliance v. County of Inyo, supra*, 157 Cal.App.4th 1437, 1465 [concluding, “even if Congress is required to act to effect an exchange, such requirement, without more, is insufficient to establish infeasibility”]; see also *Citizens of Goleta Valley v Bd. of Supervisors, supra*, 52 Cal.3d 533, 574.)). Likewise, the need to coordinate with another entity, in this case a wastewater facility owner, is an inadequate basis for eliminating DPR from further review. The DEIR, again, relies on the improper assumption that without “full institutional control” over an alternative, increased long-term price stability and improved water security could not be achieved. (See DEIR, 7-29.) As explained above, recycling has less significant environmental impacts than ocean desalination, and the DEIR alternatives analysis should have included analysis of DPR, rather than eliminating it in the initial screening process.

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G. The DEIR Failed to Evaluate a Brackish Desalination Alternative.

Due to seawater intrusion, there is a 650,000 AF brackish groundwater plume in the West Coast Basin.¹⁰⁰ This is currently an untapped source of drinking water that the DEIR should have explored remediating as an alternative to the proposed Project. Extracting and remediating this brackish plume would have the added benefit of creating additional storage space¹⁰¹ in the West Coast Basin for recharged stormwater or recycled water.¹⁰² Brackish desalination not only meets most of the basic Project objectives and would avoid or substantially lessen the significant environmental impacts of the Project, it would even meet the shadow objective of developing 21,500 AFY of new water supply.

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Through brackish desalination West Basin would develop a new water source that would increase reliability in the near and long-term while reducing reliance on imported water. In fact, WRD is exploring opportunities for remediation of the brackish groundwater plume as a means of reducing dependence on imported water.¹⁰³ The DEIR repeatedly assumes that anything less than West Basin’s complete control over a water supply source prevents improved water security and control of future water costs and long-term price stability. However, these Project objectives can still be achieved, even in partnership with additional entities such as WRD. Brackish desalination would improve climate resiliency by developing a water source that is less

⁹⁹ Assem. 574, 2017 Leg., Reg. Sess. (Cal. 2017).

¹⁰⁰ WATER REPLENISHMENT DIST. OF S. CAL., *supra* note 77, at 2-8.

¹⁰¹ *Id.* at 1-4 (explaining that there is currently 120,000 acre-feet of unused storage space in the West Coast Basin).

¹⁰² *See, id.* at ES-3.

¹⁰³ *Id.* at 3-2–3-17; Attachment A, p. 10 n. 55.

susceptible to hydrologic variability “as it would provide West Basin with a locally sourced water supply and would reduce dependence on imported water from the Colorado River and SWP.” (DEIR, 7-25.) Brackish desalination would allow West Basin to develop an economically viable water supply despite West Basin’s current lack of groundwater rights. Once again, groundwater rights can be negotiated and brackish desalination is much less expensive than the proposed Project due to the lower energy and treatment costs.¹⁰⁴ Brackish desalination is also an environmentally responsible water supply alternative, especially in comparison to the proposed Project. Desalting brackish water has less energy and GHG impacts than the proposed Project due to the lower salinity of brackish water as compared to ocean water.¹⁰⁵ Brackish desalination would also avoid the significant marine impacts of the proposed Project and the significant land use impacts.



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The DEIR alternatives analysis should have included an analysis of a brackish desalination alternative and an analysis of brackish desalination in the context of a hybrid alternative.

H. DEIR Failed to Evaluate an Alternative that Would Support Subsurface Intakes.

The California Water Code states that for new desalination facilities, “the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life.” (Cal. Water Code § 13142.5(b).) The Ocean Plan states that subsurface intakes are the preferred technology and seawater desalination owners or operators shall “evaluate a reasonable range of nearby sites, including sites that would likely support subsurface intakes.”¹⁰⁶ The DEIR states that “West Basin has extensively evaluated the . . . feasibility of incorporating subsurface seawater intakes,” but ultimately found SSIs to be technically and economically infeasible. (DEIR, 2-37–2-41.) This infeasibility conclusion is based on a “minimum design production capacity” of 20 MGD, “which requires a seawater intake rate of 40 MGD.” (DEIR, Appendix 2A, 2.) West Basin, thus, did not explore whether a reduced intake rate would support subsurface intakes. While Waterkeeper does not advocate for West Basin’s pursuit of ocean desalination at this time, the DEIR alternative analysis should have explored whether a reduced capacity plant may support subsurface intakes. Other agencies have shown the environmentally preferred subsurface intakes are feasible. The South Coast Water District’s proposed 5 to 15 MGD plant will be using subsurface intakes.¹⁰⁷ The DEIR’s improper reliance on the need for 21,500 AFY of additional water supply artificially foreclosed an evaluation of reduced capacity alternatives to the Project that may support subsurface intakes. The DEIR alternatives analysis should have evaluated an alternative that would support subsurface intakes.



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I. Conclusion

The DEIR alternatives analysis is inadequate because it fails to evaluate a reasonable range of alternatives by using an unduly narrow interpretation of the project objectives and imposing a



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¹⁰⁴ COOLEY & PHURISAMBAN, *supra* note 1, at 2.

¹⁰⁵ COOLEY & HEBERGER, *supra* note 1, at 7.

¹⁰⁶ Final Staff Report for Desal Amendment, *supra* note 32, at 31, 62.

¹⁰⁷ SO. COAST WATER DIST., DOHENY OCEAN DESALINATION PROJECT DRAFT ENVIRONMENTAL IMPACT REPORT 3.0-1 (2018), available at <https://scwd.app.box.com/s/au10vuiyco3toasrmosfsiy7yr8w75s6>.

requirement that each alternative develop 21,500 AFY of new water supply. The DEIR alternatives analysis eliminates conservation, stormwater capture, and recycling in an initial screening process that is unsupported by substantial evidence, fails to analyze a hybrid alternative that includes a combination of these water supply options, and fails to include any discussion of brackish desalination. Conservation, stormwater capture, recycling, brackish desalination, and a reduced capacity desalination plant that support subsurface intakes are alternatives that meet most of the basic project objects and would avoid or substantially lessen the significant energy, GHG, climate change, marine, water quality, land use, and environmental justice impacts of the proposed Project. The DEIR alternatives analysis is inadequate for failing to include an analysis of such alternatives.



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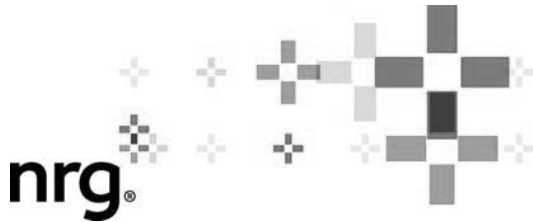
VI. Conclusion

For the reasons outlined above, LAW urges West Basin to use the opportunity presented by the legal necessity of substantial revisions to the DEIR to comprehensively explore the more environmentally sound and cost-effective alternatives to increasing local water supplies and design a water supply portfolio that more accurately reflects West Basin’s commitment to “being an innovative leader in the water industry.”¹⁰⁸ LAW thanks you for your careful consideration of our comments.

Sincerely,

Melissa Kelly
Staff Attorney
Los Angeles Waterkeeper

¹⁰⁸ *About Us*, WEST BASIN MUN. WATER DIST., <http://www.westbasin.org/about-us> (last visited June 21, 2018).



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Project Manager
West Basin Municipal Water District
17140 South Avalon Blvd., Suite 210
Carson, CA 90746-1296

RE: Comments on the Draft Environmental Impact Report for the Proposed Ocean Water Desalination Project, March 2018

Dear Ms. Yu,

NRG Energy, Inc. (NRG) has reviewed the Draft Environmental Impact Report (DEIR) for the Ocean Desalination Project (Project) and provides these high level comments about the overall proposed project which West Basin Municipal Water District (West Basin) proposes to locate on property where the El Segundo Generating Station (ESGS) is located. ESGS and the property on which it is located are owned by an NRG subsidiary.

At this point, NRG is not taking a formal position on the Project and offers no comments on the stated project objectives, proposed technical and economical merits of desalination as a source of new potable water, assumed range of sizes for the project (ranging from 10 million gallons per day [MGD] for Low Capacity alternative to 60 MGD for the programmatic Regional Project), or the proposed preliminary design of the Project. NRG's comments at this time are focused on West Basin's assumptions and analysis of a proposed desalination facility at either the North or South Sites of ESGS.¹ NRG suggests that, based on its comments, further analysis will be warranted and that the DEIR should be recirculated for further comments.

NRG-1

First, NRG requests that the ESGS South Site be removed from consideration. Continuation of industrial uses on the former ESGS tank farm site is not the highest and best use of this parcel. This location is better suited for uses that better integrate with Manhattan Beach's El Porto area and transition more smoothly to the heavy industrial activities that exist at ESGS. Consequently, maintaining heavy industrial land use at the North Site - the current location of retired ESGS Units 3 and 4 which are adjacent to El Segundo Energy Center (ESEC) (i.e., El Segundo Energy Center LLC's 560 megawatt [MW] combined cycle power plant constructed in 2013) - is superior land use planning. While NRG understands that the DEIR favors the ESGS North Site over the ESGS South Site, the ESGS South Site should be eliminated, and not considered further as an option or alternative for either the Local Project (20 MGD) or Regional Project (60 MGD).

NRG-2

¹ The "North Site" refers to land on which two of ESGS's retired power plant turbines, Units 3 and 4 are located. The "South Site" refers to ESGS's former tank farm area located on the south side of the ESGS perimeter.

Ms. Zita Yu
June 25, 2018
Page 2

Second, the Project Description must more clearly delineate the scope for demolition of Units 3 and 4, subsurface excavation and construction methods, and associated potential environmental, geotechnical and structural impacts and mitigation measures. Demolition of Units 3 and 4, subsurface excavations and dewatering activities, structural/foundations designs, and construction of the Project need to be adequately described and developed to ensure there are no impacts to ESEC’s operations, maintenance and general requirements under its obligation to provide electricity to Southern California’s grid. ESEC includes not only the gas turbine and steam turbine structures referenced as Units 5-8, but also includes numerous aboveground and below ground tanks, vessels, piping and electrical and fiber optic conduits the DEIR must consider. Furthermore, the Project Description should describe in greater detail soil staging and management proposed for this Project given the estimated volume of earthmoving that is proposed for the Local and Regional Projects.

NRG-3

Third, the DEIR’s environmental analysis does not adequately account for and evaluate the laws, ordinances, regulations and standards (LORS) that existing assets at the proposed Project site must meet and the Project’s ability to ensure that these requirements are not compromised. For example, the DEIR’s environmental analysis should consider in detail the California Energy Commission’s (CEC) Conditions for Certification for ESEC Application for Certification 00-ACF-14C and the terms of State Lands Lease PRC 858.1 for ESGS’s intake and outfall tunnels. The DEIR’s environmental analysis should also more fully address ESGS’s existing storm water and wastewater National Pollutant Discharge Elimination System (NPDES) permit discharge obligations and how the proposed Project will integrate with those obligations. In addition, the DEIR’s environmental analysis should also elaborate on Risk Management Plan requirements for the Project and how those Project requirements will integrate with existing chemical storage and use requirements for ESEC. Finally, the DEIR should describe how the Project will conform to or potentially modify the associated permit conditions, licenses, and leases imposed on the respective permit owner for existing assets.

NRG-4

NRG-5

NRG-6

NRG-7

We look forward to your responses to these comments. If you should have any questions concerning these comments, please contact me at George.Piantka@nrg.com or 760-710-2156.

NRG-8

Best Regards,



George L. Piantka, PE
Sr. Director, Regulatory Environmental Services
NRG Energy, West Region

- cc: Patrick Shields, West Basin
- Shivaji Deshmukh, West Basin
- Sean Beatty, NRG
- Eric Leuze, NRG
- Mark Rohrlick, NRG
- Ken Riesz, NRG

Comment Letter OCEAN FRONT STRAND PROPERTIES

From: West Basin
To: [Noemi Luna](#)
Subject: West Basin Desal Site Comments
Date: Wednesday, May 23, 2018 11:33:24 PM

Comments - Form from West Basin Desal Site

Name: Ocean Front Strand Properties

Mailing Address:

City: Manhattan Beach

State: CA

Zip: 90266

Telephone # (daytime):

Email Address: hapey2004@aol.com

Organization:

Comments:

To whom it may concern, I'm not going to waste my time explaining why this desalination plant is a terrible idea for the environment or for the people of Manhattan Beach. It's clear that the people in charge of this project have traded everything that's important in this life for greed and personal gain. I've met with twenty of the deepest pocketed residents of Manhattan Beach and if you choose to try and build this monstrosity anywhere near Manhattan Beach you can expect years of legal battles. We won't hesitate to spend millions of dollars to fight this. So I'll save my arguments for that day. When and if we need to, we'll see you in court! Sincerely,
Ocean Front Strand Properties

OFSP-1

From: West Basin
Sent: Thursday, June 21, 2018 2:59 PM
To: Noemi Luna
Subject: West Basin Desal Site Comments
Attachments: SCWestBasinEIRComments062118.docx

Comments - Form from West Basin Desal Site

Name: Charming Evelyn

Mailing Address: 3250 Wilshire Blvd., Suite 1106

City: Los Angeles

State: CA

Zip: 90020

Telephone # (daytime): 213-385-0903

Email Address: bcharmz@aol.com

Organization: Sierra Club

Comments:

Sierra Club regularly reviews and comments on large scale development projects that pose significant threats to the environment and has developed a national policy specific to ocean desalination that provides guidance on the review of proposed ocean desalination plants. After a review of the project documents the Sierra Club Angeles Chapter Water Committee is submitting the following comments on the project. See attached file. Charming Evelyn Chair Sierra Club Angeles Chapter Water Committee

SCLA-1



June 21, 2018

West Basin Municipal Water District
17140 South Avalon Boulevard, Suite 210
Carson, California 90746

RE: Sierra Club Comments on West Basin Ocean Desalination Project EIR

The mission of the Sierra Club is to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club regularly reviews and comments on large scale development projects that pose significant threats to the environment. Sierra Club has developed a national policy specific to ocean desalination that provides guidance on the review of proposed ocean desalination plants. After a review of the project documents the Sierra Club Angeles Chapter Water Committee has the following comments on the project.

SCLA-2

1. There is a lack of demonstrated need for the water from the project. The EIR states that the proposed project designs of 20-60 million gallons a day of water are necessary for future local and regional demand as documented in West Basins 2015 UWMP. The two proposed sizes for the potential facility are evidence of the lack of a definitive need for the project in the cited plans. Further, the EIR does not take into account the new requirements from SB 606 and AB 1668 that were signed on May 31 2018. This legislation includes requirements to substantially reduce urban water use including achieving a per capita use of 55 gallons per day by 2025 and 50 Gallons per day by 2030. The EIR also relies on speculative predictions of imported water availability from the California Delta and Colorado River. We believe the future use prediction in the EIR is arbitrary and unsubstantiated by identification of specific future water needs or consideration of the recent and future reduced water use in the West Basin service area. Sierra Club policy states that "Ocean desalination should not be used for water supply needs that can be met by water conservation, water recycling, and other water use efficiency practices." We believe that conservation along with other alternatives can exceed the capacity of the proposed ocean desalination plant rendering it unnecessary.

SCLA-3

2. A number of viable alternatives were rejected in the draft EIR. As an example, conservation was rejected even though on page 7-10 it says a 15% reduction in current water use would make up for the 21,500 Acre Feet per year the plant would produce. The EIR pg 7-11 states that "There

SCLA-4

is no evidence to indicate that such additional savings can be reasonably anticipated without significant rationing, imposed consumer lifestyle changes, and economic impacts”, and on page 7-12 “Another limiting factor that impacts the feasibility of achieving the additional savings necessary under this alternative is the large amounts of CII water demand in West Basin’s service area”. It is our opinion that the mandatory reduction on water use in 2016-2017 showed otherwise. Residential consumer and industry alike adapted to the mandatory water use requirements without major impacts to consumer lifestyles or industrial processes. Looking at the Figure 7-1, it appears that residential water use is still at about 80 GPCD when new legislation will require that to be 50 GPCD, that leaves a lot of room for improvement. Industrial users are also likely to be able to reduce water use by 15% without significantly impacting their operations. Also, each of the rejected alternatives are examined as a stand alone solution to future water supply when the appropriate analysis would be to consider how a combination of conservation storm water capture, expanded wastewater recycling, increased appliance efficiency, water infrastructure upgrades and other water use efficiency alternatives would meet future needs. The EIR should detail the potential volume of water that could be produced from these alternatives and justify any need for desalinated water in light of full implementation of these alternatives. The sizing of any proposed desalination should be based on the demonstrated need for water over and above the volume that can be produced by alternative means.

SCLA-4

3. The EIR on page 7-13 brings up the issue of Environmental Justice. We agree that Environmental Justice must be a factor in the decision process for this plant. Unfortunately, the EIR ignores the significant impact the increased water costs from the plant will have on low income communities in the West Basin service area. This analysis should be included. It is likely that these communities would derive more benefit from programs to provide new washers, toilets and other indoor water conservation methods that would improve living conditions while reducing their water use.

SCLA-5

4. The project is proposed to be co-located with one of two existing power plants. The national Sierra Club policy specifically calls this out as unacceptable. The California Ocean Plan says the plant must use the best site design and technology to minimize impacts to marine life and that subsurface intakes must be used unless they are not feasible. The primary site consideration for the project must be made based on the feasibility of the use of subsurface intakes not the location of existing, and now outlawed intake structures. A full site analysis, including sites outside the West Basin Service area needs to be completed.

SCLA-6

The cumulative impacts of seawater desalination from existing and proposed desalination plants in the Southern California Bight needs to be analyzed. The EIR states that desalination facilities and other seawater

SCLA-7

Comment Letter SIERRA CLUB - ANGELES CHAPTER

intakes in the Southern California Bight are considered as projects within the cumulative scenario but there is no actual analysis, just a list of the plants with a description. The Southern California Bight acts as a transition point between many different water masses, the Pacific Subarctic, Pacific Equatorial and the North Pacific central water masses to name a few. Due to its central location, marine life and fauna includes species native to these other waters. The destruction of marine life from open ocean intakes is well documented. Potential adverse cumulative effects including interruption of plankton transport, species decline, reduction in biodiversity, should be analyzed in detail for desalination projects beyond the Santa Monica Bay.

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SCLA-7

5. Seawater desalination is energy intensive. The EIR claims West Basin is "committed to reducing the Project's GHG emissions to [net carbon neutral]", and anticipates that "emissions will change over time as California transitions to cleaner energy in accordance with SB 350 and other regulations". However, there is no explanation as to how the project would become carbon neutral or how changes in future energy sources for the plant will determine the carbon footprint. Also since this project is designed to replace imported water it should fully mitigate for the water it is purported to replace continuing to be imported. The MWD has made it clear that it will continue to import all the water it is permitted regardless of new local supplies. Further, the energy demand should be compared to alternative means to achieve a sustainable water supply portfolio locally and regionally.

SCLA-8

6. Sierra Club policy states that seawater desalination plants must not induce growth. The EIR in section 6.2 states that The Project would not provide new homes; therefore, it would not induce direct population growth. The Project would reduce dependency on imported water supplies with desalinated water through its provision of 20 MGD of potable water to the West Basin Municipal Water District (West Basin) service area and a potential additional 40 MGD of potable water to the region. The idea that because the project does not directly produce new homes it would not induce growth is absurd. Augmenting the water supply is integral to increased growth in any area. West Basin Water District says that desalinated water will reduce use of imported water; that needs to be backed up with a real commitment. Specifically, there should be a discussion of the mechanism by which West Basin Water District will work with the MWD for the direct offset of imported water from the State Water Project and/or Colorado River equivalent to the capacity of the plant.

SCLA-9

7. The Ocean is a public trust resource. Our marine and estuarine fisheries are in decline, and their habitats are continually being degraded or destroyed by human activities. The EIR does not demonstrate that the proposed plant individually and cumulatively, would be located, constructed, and operated to assure that it will not add further environmental stresses that would jeopardize efforts to restore these

SCLA-10
↓

Comment Letter SIERRA CLUB - ANGELES CHAPTER

valuable natural resources to be healthy and sustainable. The EIR says the design and operation of the screened ocean intake system with 1 mm open passive wedgewire screens and operating intake flow at < 0.5 fps would eliminate the potential for impingement and greatly reduce the entrainment of plankton and larval fish. This is not true. The state water board expert panel on brine discharges noted that wedgewire screens are only 1% effective in protecting marine life. The EIR needs to acknowledge that wedge wire screens are largely ineffective that the project will have a significant impact on marine life is they are used.



SCLA-10

8. Further, the EIR should specifically discuss the potential impacts to state Marine Protected Areas (MPAs). As the EIR mentions, MPAs are located on either side of the proposed project at Point Dume and Palos Verdes but there is no analysis of potential impacts. Both of these locations are within the source water area for the proposed plant. These MPAs are designed to work as a network including connectivity via larval dispersal and an open ocean intake will have a significant impact on this larval connectivity.



SCLA-11

9. The EIR must include a detailed analysis of the impacts of brine disposal from the project including impacts to benthic and pelagic species. This analysis should include the potential for accumulation of metals and production related chemicals in the sediment and benthic species. It should also examine the temporal and long term impacts to water quality and marine life from chemicals used to eliminate fouling on screens and intakes/outfalls. Toxicity of the concentrated brine discharge must be addressed. Toxicity tests of the concentrated brine from the Poseidon Carlsbad Desalination plant have shown that the brine is often toxic and Toxicity investigations have been unable to identify the toxin(s). This is applicable to the proposed project as West Basin is proposing to discharge concentrated brine directly to the ocean via a diffuser. The brine from the proposed plant must be regularly tested for toxicity before discharge. Discharge of toxic brine must not be allowed.



SCLA-12

10. Use of subsurface intakes is specifically called for in the national Sierra Club Policy. Subsurface intakes are also required under the State Ocean Plan Amendment unless proven infeasible. While surface seawater intakes with screens will prevent larger marine life from entering and fouling the desalination plant they will have a negligible impact on the entrainment of marine life smaller than the screen size. These smaller forms of marine life are entrained into the intake system and killed. The EIR must discuss the full impacts of the use of a surface intake on all marine resources regardless of size. The EIR claims that the proposed locations are acceptable as there are no known endangered, protected or birthing species of coral, fish, marine mammals, invertebrates, or birds; there is no mention of any small organisms that would be affected by the screens.



SCLA-13

Comment Letter SIERRA CLUB - ANGELES CHAPTER

This is an insufficient level of analysis of marine impacts. The EIR did not consider the cost savings of subsurface intakes by avoiding full conventional pretreatment that is required for the proposed open ocean intake. Studies have concluded that life-cycle cost analyses show significant cost saving over operating periods of 10 to 30 years. California pilot studies have demonstrated subsurface intakes do not require full conventional pretreatment, have cheaper life-cycle costs compared to open ocean intakes, and that subsurface intakes may produce water cheaper than the West Basin proposal. While cost savings may vary based on site specific characteristics, the EIR is void of any consideration of this critical information in their analysis.

SCLA-13

11. The EIR must include a detailed description of how West Basin will distribute desalinated water within its service area and a conceptual description of how the desalinated water would be distributed regionally. These descriptions should include proposed pipeline routes, pump stations and other distribution facilities. Distribution of the water is a critical component of the project. The distribution system cannot be considered a separate project.

SCLA-14

In closing, Sierra Club has serious doubts regarding the need for the project at all and specific concerns related to its being co-located with an existing power plant with use of existing surface intakes. Additionally, the plant poses larger regional threats to ocean resources, marine protected areas and increased local air pollution along with the global threat of inducing climate change through increased greenhouse gas production.

SCLA-15

Thank You,

Charming Evelyn
Chair
Sierra Club Angeles Chapter Water Committee



BUILDING AMERICA®

May 25, 2018

VIA EMAIL ONLY TO: desalEIR@westbasin.org

West Basin Municipal Water District
ATTN: Zita Yu, Ph.D., P.E., Project Manager
17140 South Avalon Boulevard
Carson, CA 90746

Re: Comments regarding the Ocean Water Desalination Project (SCH # 2015081087) located at 301 Vista Del Mar, El Segundo, CA and the surrounding cities of El Segundo, Los Angeles, Manhattan Beach, Hawthorne, Redondo Beach, Garden, Torrance, Hermosa Beach, and portions of unincorporated Los Angeles County (the "Project")

Dear Dr. Yu:

Thank you for allowing Union Pacific Railroad Company ("UP") the opportunity to submit the following comments in response to the notice on the above-referenced Project. UP is a Delaware corporation that owns and operates a common carrier railroad network in the western half of the United States, including the State of California. UP's rail network is vital to the economic health of California and the nation as a whole and its rail service to customers in all of the above named cities is crucial to the future success and growth of those customers.



The proposed Project location is adjacent to UP's operating property. UP asks that the City keep in mind that this is an important rail corridor and nearby land uses should be compatible with continuing rail use. UP has significant concerns about the potential for this Project to negatively impact UP's track structure in the vicinity of where the proposed plant would be built. It also appears that there are plans to place water lines across and under UP property. All improvements located on or under UP land must be specifically reviewed, approved and licensed by UP. In addition, land planning decisions should account for the fact that train volumes, and UP's accompanying utilization of its land, near the Project area may increase in the future.

UPRR-1

Increased Traffic Impact

The safety of UP's employees, customers, adjoining land owners, and the communities we operate through is our top priority. Any increase in traffic from the Project may render inadequate the current safety devices in place on any nearby at-grade crossings. Additionally, an increase of pedestrian and vehicular traffic may conflict with train operations causing trains to proceed more slowly through the City, and/or make more frequent emergency stops, which would make rail service less effective and efficient. Should this Project be approved, UP requests that the Project developer and the City examine any increase in vehicular and pedestrian traffic and the impacts on any nearby at-grade road crossings to see if any additional mitigation measures should be included in the Project.

UPRR-2

Ocean Water Desalination Project EIR
May 24, 2018
Page 2

Trespassing

Any increase in pedestrian traffic will increase the likelihood of trespassing onto the railroad right-of-way. UP requests that the developer and the City examine the Project impacts associated with the increased likelihood of trespassing and set forth appropriate mitigation measures. The developer should install vandal resistant fencing at least 8 feet or taller (without impairing visibility), pavement markings and "no trespassing" signs designed to prevent individuals from trespassing onto the railroad tracks. Buffers and setbacks should also be required adjacent to the right-of-way.

UPRR-3

Noise and Vibration Impact

UP's 24-hour rail operations generate the noise and vibration one would expect from an active railway. Any increase in pedestrian and vehicular traffic may result in additional horn use by railroad employees. As a mitigation measure, the developer should disclose to the general public the daytime and nighttime noise levels naturally occurring with rail service, including sounding horns at vehicle crossings where required, as well as the pre-existing and predictably-occurring vibration. These disclosures should note that train volume may increase in the future. The Project's development plans should also include appropriate mitigation measures, such as construction of sound barrier walls or landscape buffers, and/or use of sound-proofing materials and techniques.

UPRR-4

Drainage and Project Construction

UP requests the City ensure that the drainage plan relating to the Project does not shift storm water drainage toward UP property and infrastructure. Any runoff onto UP's property may cause damage to its facilities resulting in a potential public safety issue. If the Project is approved, we ask that the City require the applicant to mitigate all safety risks and the impacts of the railroad's 24-hour operations during the construction of the Project, including contacting UP to arrange for flaggers for work performed within twenty-five feet (25') of the nearest track.

UPRR-5

UPRR-6

UP appreciates the developer and the City giving due consideration to the above concerns, as this proposed Project may result in impacts to land use and public safety. Please give notice to UP of all future hearings and other matters with respect to the Project as follows:

UPRR-7

Paul Nahas, Manager Real Estate
Union Pacific Railroad Company
1400 Douglas Street - STOP 1690 Omaha, NE 68179
(402) 544-8627
plnahas@up.com

Please do not hesitate to contact Mr. Nahas if you have any questions or concerns.

Sincerely,



Madeline E. Roebke
Sr. General Attorney
Union Pacific Railroad Company

Response to Letter BP: Brenntag Pacific

Response BP-1

The reverse osmosis treatment process is described in the Draft EIR on page 3-6. Chemicals used in the desalination process are listed in Table 3-2. Ammonium sulfate is not specifically mentioned in the Draft EIR.

Response to Letter EJ: Environmental Justice, Community, and Indigenous Groups

Response EJ-1

The commenter is referred to: *Master Response: Environmental Justice* (see also Final EIR Section 18), *Master Response: Cost and Rates*, *Master Response: Greenhouse Gas Emissions and Energy*, as well as *Master Response: Water Supply Alternatives*.

Response EJ-2

Regarding the commenter's concern about the adequacy and determination of the environmental justice impacts as result of the Project, refer to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EJ-3

Regarding water rates and cost as a result of the proposed Project on communities such as Inglewood, Hawthorne, Lawndale, and Gardena, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18) and *Master Response: Cost and Rates*. The Draft EIR is not responsible for discussing cumulative impacts on water rates.

Response EJ-4

Regarding the effect the Project may have on communities within West Basin's distribution system, particularly in regards to the water consumption rate disparities between communities in the West Basin distribution area, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EJ-5

Regarding reference populations, demographics, and environmental justice analysis included in the Draft EIR, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

The Cities of Gardena and Lawndale are included in Section 6.3; see *Master Response: Environmental Justice* (see also Final EIR Section 18). While the City of Carson and the City of Inglewood's population is included in West Basin's service area, no Project facilities are proposed and no environmental impacts have been identified in the Draft EIR that would specifically affect either municipality. Therefore, individual census tracts within those cities are not included for analysis of potential environmental justice effects of site-specific physical environmental impacts.

Response EJ-6

Regarding the commenter's concern about the energy intensive process of desalination and the impact that process could have with regards to energy consumption and air quality surrounding the Project area, refer to *Master Response: Environmental Justice*.

Response EJ-7

Regarding the commenter's concern of exacerbated climate change impacts from the Project's greenhouse gas emissions, the commenter is referred to *Master Response: Environmental Justice*. As stated on page 5.7-26 and 5.7-36 of the Draft EIR, any carbon emissions as a result of the Project would be 100 percent offset through a combination of Project design features and mitigation measures resulting in a net carbon neutral greenhouse gas emissions project when compared to an equivalent volume of MWD imported water. The commenter is also referred to *Master Response: Greenhouse Gas Emissions and Energy Use* for further information regarding the proposed Project's greenhouse gas emissions.

Response EJ-8

As described in Draft EIR Subsection 5.11.4, the design and operation of the screened ocean intake system would eliminate the potential for impingement and greatly reduce the entrainment of plankton and larval fish, and the increased salinity from brine discharge is not expected to have any detectable effect on marine habitats and associated biological taxa, including any fish that typically would be caught recreationally or for consumption. Additionally, as described in the Draft EIR on pages 5.11-60 and 5.11-61, the periodic chlorine flush of the intake pipelines would be of no consequence to marine habitat and fish or other organisms in the coastal waters of the Project marine study area. West Basin would be required to implement BMPs for planned discharges to prevent aquatic toxicity by using dechlorination chemical additions, implementing equivalent proven dechlorination methods, and/or ensuring that the chlorine in the discharge dissipates naturally, such that the level of chlorine in the discharge is less than 0.019 mg/L prior to entering a receiving water. Therefore, because no detectable effects on marine biological resources and habitats are expected to occur, no effects are anticipated on fish available to people reliant on subsistence fishing.

Response EJ-9

Regarding compliance with the Government Code and the California OAG Fact Sheet 2012 and impacts related to Environmental Justice, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EJ-10

The commenter is referred to: *Master Response: Cost and Rates*, *Master Response: Environmental Justice* (see also Final EIR Section 18), *Master Response: Greenhouse Gas Emissions and Energy*, *Master Response: Water Supply Alternatives*, and *Master Response: Non-CEQA Issues*.

Response to Letter EOGB: Environmental Organizations and Green Business:

Response EOGB-1

The commenter's position on West Basin pursuing ocean desalination and other supply and demand-related activities is noted for the record. The commenter is also referred to: *Master Response: Water Supply Alternatives*, *Master Response: Cost and Rates*, *Master Response: Greenhouse Gas Emissions and Energy*, and *Master Response: Non-CEQA Issues*. The commenter is also referred to Section 5.11, *Marine Biological Resources*, for a discussion of environmental impacts related to marine biological resources, which were found to be less than significant with implementation of mitigation measures.

Response EOGB-2

Unlike the City of Hollywood in the *Save Tara* case, the District has not committed itself to a "definite course of action regarding the project." The District has not approved an agreement of any kind, conditionally or otherwise, that commits West Basin to move forward with the Project. Rather, the District has spent funds exploring proposed Project feasibility and conceptual design, the products of which are publicly available at: <http://westbasindesal.com/research-and-planning.html>.

CEQA Guidelines Section 15126.6 explains that the lead agency, in this case the District, is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives (see Draft EIR Subsection 7.1.4). There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376). See *Master Response: Water Supply Alternatives*.

Response EOGB-3

With regards to the comment's statement that the proposed Project would result in the inefficient, wasteful, and unnecessary consumption of energy, see response to comment MBCH3-44.

Regarding the comment's statement that there are less energy intensive alternatives than ocean desalination for increasing local water supplies, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response EOGB-4

With regards to the comment's statement that the analysis does not evaluate the potential significant impacts from the SCE electrical power grid upgrades, see response to comment MBCH3-45.

Response EOGB-5

West Basin acknowledges that ocean water desalination is a more energy intensive water supply source than imported water, but ocean water desalination increases water supply stability and

reliability for the overall regional water supply portfolio. The Draft EIR concludes on page 5.5-22 that the expected increase in demand for electricity does not exceed available supply or distribution infrastructure capabilities that could result in the construction of new energy facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. West Basin assumes that upgrades to the SCE delivery infrastructure would be relatively minor, involving the construction of a few additional poles or modifying conductoring that would result in less than significant impacts. Large scale infrastructure implementation such as construction of a large off-site substation, power generating facility, or long-range conveyance installation is not anticipated. Regarding the comment that SCE may not have adequate storage for natural gas due to the reduced capacity and use of the Alisa Canyon facility, the EIR assumes that SCE will provide energy to Southern California, and the Project's increased demand is within SCE's projected future supply capabilities. See response to comment MBCH3-45.

Response EOGB-6

While the comment's statement that the proposed Project would result in a greater contribution of GHG emissions than importing water through the State Water Project is correct, Mitigation Measure GHG-1 would offset the increased GHG emissions to net carbon neutral, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

The CO₂e emissions values quoted by the comment from the referenced Powers report (44,702 MT CO₂e per year for the 20 MGD plant and 146,879 MT CO₂e per year for the 60 MGD plant) appear to be over-estimates. They are based on higher energy values than those presented in the SPI report prepared for West Basin (SPI 2017), while the 2014 electricity emission factor used by the Powers report (729 lb/MWh) is much higher than SCE's publicly reported 2014 value (570 lb/MWh), as well as the more recently reported value for 2016 (529 lbs/MWh) that is used as the basis for analysis in the Draft EIR.

Response EOGB-7

Regarding the comment's assertion that the Draft EIR lacks substantial evidence to show the Project's GHG contribution could be reduced to "net zero," and thus the proposed Mitigation Measure GHG-1 is inadequate, see response to comment CCC-18 and *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response EOGB-8

Regarding the comment's statement that the Draft EIR should have analyzed the proposed Project's energy and GHG impacts in comparison to alternatives that have lower impacts than ocean desalination, including conservation, stormwater capture, recycling, and remediating brackish groundwater, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response EOGB-9

See response to comment CCC-31 regarding the Project's potential to conflict with the LCP's Power Plant (PP) land use designation.

Response EOGB-10

While West Basin appreciates the comment, it expresses an opinion and does not speak to the adequacy of the Draft EIR. As a result, this comment has been noted for the record and no further response is necessary.

Response EOGB-11

The Draft EIR used the appropriate baseline to evaluate the potential impacts of the Project on marine biological resources. See *Master Response: Marine Biological Resources Study Area*.

Response EOGB-12

As the CEQA lead agency, West Basin will use this EIR to review the potential environmental impacts of the Project and to determine whether to approve the Project and pursue permitting, which will include a request to the Los Angeles Regional Water Quality Control Board (LARWQCB) for California Water Code (CWC) Section 13142.5(b) determination (the “Water Code determination”). The LARWQCB must find that the applicant has complied with the Ocean Plan Amendments in order to make the Water Code determination. More specifically, pursuant to Ocean Plan Chapter III.M.2.a.(2), LARWQCB (not the applicant) must independently analyze a range of feasible alternatives for the best available site, best available design, best available technology, and best available mitigation measures and then must consider all four factors collectively to determine the best combination of feasible alternatives to minimize intake and mortality of all forms of marine life. See *Master Response: CEQA and Ocean Plan Compliance*.

Response EOGB-13

Using the existing ESGS once-through cooling (OTC) infrastructure for the desalination Project will not produce environmental impacts on marine biological resources comparable to impacts produced from the operation of coastal power plants. As described in the Draft EIR Section 3, *Project Description*, the utilization of existing infrastructure for ocean water intake by the Project is deliberate and intended to reduce potential impacts to subtidal and intertidal soft sediment habitats and marine communities by avoiding the installation of a new set of pipelines. The Project solely uses the existing ESGS concrete intake pipelines as conduits to install smaller HDPE pipes that will be used to provide ocean water to the onshore desalination plant. As further presented in the Project Description, and the impact discussion for Marine Biological Resources, the intake flow rate of <0.5 fps at the screens (which translates to an approach velocity 0.141 fps) and the volume of intake water (approximately 40 MGD for the Local Project) is a fraction (about 1/10th) of what was typically employed by coastal power plant OTC systems (approximately 400 MGD at El Segundo Generating Station Units 3 and 4). Therefore, desalination ocean water intakes are not similar to power plant intakes.

Response EOGB-14

The Draft EIR analyzes the potential effects of the Project on marine habitats and associated biota for both proposed construction and operational activities as described in the Draft EIR on pages 5.11-36 through 5.11-76, in accordance with the significance thresholds and criteria presented in the Draft EIR. The potential Project effects on marine ecosystems that were assessed included

larval entrainment and impingement, from both the ocean water intake and the brine ocean discharge as well as brine toxicity. In the specific case of these two sources of potential impacts to the marine ecosystem, the Draft EIR concluded that despite the reduced potential for entrainment provided by the use of a wedgewire intake screen, the impact on marine productivity remained potentially significant without mitigation. Mitigation Measure BIO-M2 was developed specifically to clarify the impact of the Project's ocean intake and discharge on marine productivity and to provide commensurate ecological enhancement and improvement to offset any effects of the Project on marine productivity, as required by CEQA, and therein reducing the potential effects of Project related entrainment to less than significant. It should also be noted that the cited reference (Cooley et al. 2013) was prepared as a very broad guidance paper that could be used by project proponents and regulators to direct more project-specific analyses of potential impacts of a desalination project on marine habitats and biological communities, as was done in this Draft EIR.

Response EOGB-15

There are certainly locations in the world where the discharge of concentrated brine into marine waters has occurred with acute impacts, although ecological impacts of brine discharge vary widely and are a function of several factors as noted by the 2013 Pacific Institute publication cited in the comment, including the characteristics of the brine, the discharge method, the rate of dilution and dispersal, and the sensitivity of organisms (Fernandez-Torquemedas et al. 2005, Gacia et al. 2007, Sanchez-Lizaso et al. 2008, Ruso et al. 2007, 2008 cited within Cooley et al. 2013). However, the Project does not propose to simply discharge brine into the ocean environment. As noted on page 14 in the 2013 Pacific Institute report, the addition of diffusers can promote mixing and improve dilution of the brine and notes there is general consensus among modeling studies that optimal mixing is achieved by discharging the brine in sub-tidal, off-shore environments with persistent turbulent flow, and cites Roberts et al. 2010. The Project proposes to utilize the best available linear diffuser design to minimize the mortality of all forms of marine; see *Master Response: Supplemental Studies* and Final EIR Appendix 14A prepared by Roberts (2019). The impacts of brine discharge have been evaluated in the Draft EIR consistent with the 2015 OPA, and consistent with Roberts, 2018; see response to comment LARWQCB-30.

As discussed in response to comment EOGB-14, the analysis of potential Project-related effects on marine ecosystems included an analysis of potential brine discharge toxicity (Draft EIR pages 5.11-56 through 5.11-58). As presented in the Draft EIR, after reviewing available scientific studies of salinity toxicity on marine taxa, it was determined that the salinity concentrations estimated to occur within the brine mixing zone (BMZ) for the Project did not exceed any documented or known concentrations at which toxic effects on marine taxa or ecosystems would be expected to occur.

Response EOGB-16

Regarding reference populations, demographics, and environmental justice analysis included in the Draft EIR, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EOGB-17

While the City of Carson and the City of Inglewood's population is included in West Basin's service area, no aboveground or belowground Project facilities are proposed and no environmental impacts have been identified in the Draft EIR that would specifically affect either municipality. Therefore, individual census tracts within those cities are not included for analysis of potential environmental justice effects of site-specific physical environmental impacts. See *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EOGB-18

Regarding reference populations and demographics for the City of Hawthorne, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EOGB-19

Regarding impacts related to the Project's GHG emissions the commenter is referred to *Master Response: Environmental Justice*. As stated on page 5.7-26 and 5.7-36 of the Draft EIR, any carbon emissions as result of the Project would be 100 percent offset through a combination of Project design features and mitigation measures resulting in a net carbon neutral greenhouse gas emissions project when compared to an equivalent volume of MWD imported water. Additionally, the Project would not increase GHG emissions over the no project scenario (Draft EIR page 5.7-26). The commenter is also referred to *Master Response: Greenhouse Gas Emissions and Energy Use* for a more robust discussion of the Greenhouse Gas Emissions and Energy Use not strictly relating to environmental justice.

Response EOGB-20

Regarding energy and air quality impacts as result of the Project impacting low-income and minority communities, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response EOGB-21

Regarding water rates and cost as result of the proposed Project the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18) as well as *Master Response: Cost and Rates*.

Response EOGB-22

Regarding water rates and cost as result of the proposed Project the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18) as well as *Master Response: Cost and Rates*.

Response EOGB-23

As explained in the Draft EIR on page 4-2 to 4-3, "[b]oth the list and summary of projections approaches are used in this EIR to determine the Project's cumulative impacts, depending upon which approach is appropriate/relevant for each environmental issue area. Additionally, the

geographic area considered for the cumulative analysis varies according to environmental issue area and was determined based upon the Project's scope and anticipated area in which the Project could contribute to an incremental increase in cumulatively considerable impacts..." The approach to each cumulative analysis is explained for each environmental issue area at the end of each section of Section 5 of the EIR. While true that compliance with regulations is not a panacea for all impacts, for some impacts regulations are so stringent that compliance does ensure that impacts will be less than significant. Examples of regulations that reduce impacts to less than significance include the California Ocean Plan requirements with respect to impacts on marine life and NPDES requirements that regulate discharges and water quality so thoroughly that compliance results in less than significant impacts.

Response EOGB-24

The Draft EIR Subsection 7.2.1 considered 11 alternatives, including increased conservation, stormwater capture, increased non-potable recycling, indirect potable reuse, and direct potable reuse (see Draft EIR Table 7-1). See also *Master Response: Water Supply Alternatives*.

Response EOGB-25

The goals of the proposed Project include reducing reliance on imported water and improving water reliability and security in an environmentally responsible manner. The Local Project identifies 21,500 AFY as a target amount that could be increased to 60,000 AFY in a Regional Project in the future. Since West Basin's future water demands are projected to be generally similar to existing demands as described in West Basin's 2015 Urban Water Management Plan (see UWMP Table 3-6), the amount of water provided by ocean water desalination would directly reduce the need for imported water. Contrary to the assertion in the comment, however, the need for 21,500 AFY equates directly to the difference between total supplies and total demands during a multi-dry year event similar to the 2012 – 2015 drought conditions (20,342 acre-feet), as shown in UWMP Table 5-5. This is not a "shadow objective" but rather a clearly stated proposal for water supply diversification. The 20,342 acre-feet shortfall assumes the District continues to manage water supplies and reduce demand for water through the continued implementation of conservation savings, recycled water production, and the expansion of groundwater supplies by the retail agencies, to the maximum extent practicable. Draft EIR Table 2-1 displays the expected increases in these supplies between 2015-2040 (see also West Basin 2010 and 2015 UWMP Table ES-3). As noted in Section 4.5 of the 2015 and the 2010 UWMP, West Basin is actively diversifying its water supply portfolio beyond traditional imported water and groundwater supplies, and both the 2015 and 2010 UWMPs dedicate entire sections to discussing alternative supply programs such as recycled water (Section 9), desalinated ocean water and brackish groundwater (Section 10), and increased water use efficiency programs (Section 7). West Basin is pursuing these alternative supplies as part of its water reliability initiative.

Even with the maximum practicable conservation savings, increases in recycled water production, and expansion of groundwater supplies by retail agencies, West Basin's service area could experience a shortage of 20,342 acre-feet by 2020 and 21,500 acre-feet by 2025 and beyond. In other words, the proposed Local Project is sized at 20 MGD (or approximately 21,500 AFY), to directly respond to the multi-dry year event shortfall. Thus, the proposed Project would provide

the quantity of water necessary to make up the expected shortfall in imported water supplies for what are expected to be more frequent and severe future droughts.

Response EOGB-26

CEQA Guidelines Section 15126.6 requires that an EIR consider alternatives that can avoid or substantially lessen significant impacts of a project. Draft EIR Subsection 7.1.3 explains the proposed Project would result in very few significant and unavoidable impacts. The Draft EIR found that impacts on GHG emissions, the marine environment, water quality and environmental justice would be less than significant, or less than significant with mitigation (see Draft EIR Sections 5.7, 5.11, 5.9 and 6.3, respectively). See also *Master Response: Water Supply Alternatives*.

Response EOGB-27

As explained in Section 7, expanding recycled water use in the region will not completely offset the need for imported water. Even expanding the recycled water production from Hyperion Water Reclamation Plant to its full capacity would not eliminate imported water demands in Southern Los Angeles County. Nor would it eliminate the need for additional water supply diversification afforded by ocean water desalination. As described in Section 7, West Basin as a responsible water supply manager is considering the addition of ocean water desalination to augment water supply reliability in addition to other local water supply development efforts. See also response to comment HTB-37.

Response EOGB-28

The comment requests that the Draft EIR be recirculated. Per CEQA Guidelines Section 15088.5, “New information added to an EIR is not ‘significant’ unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project’s proponents have declined to implement.” Furthermore, “Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.” In response to comments, some changes have been made to the EIR to clarify various issues. Also, in response to comments, additional studies were undertaken that merely amplify or clarify the data in the EIR and confirm its impact analyses; those studies also support future regulatory decisions to be made by other agencies. However, neither the methodologies employed nor the conclusions reached have changed in any way that implicates a significant environmental impact not identified in the Draft EIR, a substantially more severe significant environmental effect than indicated, or a new feasible alternative or mitigation measure. The Draft EIR is comprehensive and robust, compiled by scientists and experts in their respective environmental fields. West Basin as the lead agency under CEQA believes it complies with the requirements of CEQA and is supported with substantial evidence. For these reasons, recirculation of the Draft EIR is not required.

See also *Master Response: Water Supply Alternatives*.

Response to Letter GSW: Golden State Water Company

Response GSW-1

West Basin recognizes the importance of coordinating with Golden State Water Company regarding installation of pipelines and/or pump stations within its service area. In response to this comment, the Draft EIR text in Table 3-11 on page 3-42 is modified as follows:

**TABLE 3-11
PERMITS, APPROVALS, AND REGULATORY REQUIREMENTS***

Agency/Department	Permit/Approval	Required for
Other		
<u>Golden State Water Company</u>	<u>Utility Right-of-Way Access</u>	<u>Installation of pipelines and pump station within service areas</u>

Response GSW-2

West Basin will coordinate with Golden State Water Company when the Project is designed to ensure construction does not interfere with existing or planned water infrastructure.

Response GSW-3

CEQA does not consider the cost of a project to be an environmental impact. However, prohibitive costs can be used to determine that a project alternative is infeasible. The proposed Project has been developed to support a balanced water supply portfolio in part to responsibly manage costs of water to West Basin customers. See also *Master Response: Cost and Rates*. Produced water would comply with safe drinking water standards. West Basin will continue to work with its retailers to address cost and water quality concerns.

Response GSW-4

While West Basin appreciates the comment, it does not specify any deficiencies in the analysis included in the Draft EIR. As a result, this comment has been noted for the record and no further response is necessary; see *Master Response: Non-CEQA Issues*.

Response GSW-5

West Basin notes Golden State Water Company's contact information for any future correspondence regarding this comment letter.

Response to Letter HTB: Heal the Bay

Response HTB-1

The comment's statement that desalination should only be used as a last resort is noted for the record. As explained in Draft EIR Sections 1.2, *Executive Summary*, and 3.3, *Project Objectives*, West Basin's goal is to guarantee future water supply reliability for service area customers by adding a locally produced, drought-proof potable water source to the West Basin supply portfolio, consistent with goals for desalinated ocean water supplies identified in West Basin's 2015 Urban Water Management Plan (UWMP). The 2015 UWMP details how West Basin proposes to manage its water supplies and demands under all hydrology conditions and demonstrates how West Basin proposes to meet its service area's retail demands and provide long-term water reliability over the next 25 years (see Draft EIR Subsection 2.3.2). Draft EIR Table 2-1 outlines West Basin's service area projected water supply to meet that demand, according to supply source, from 2020 through 2040. As shown, West Basin's water supply includes increasing levels of conservation and recycled water, and a reduction in imported water. Desalination as a component of West Basin's future water supply portfolio would offset up to 22,500 AFY¹ of imported water in order to "diversify West Basin's water source portfolio" and would allow West Basin to "increase reliability . . . while reducing reliance on imported water." See also *Master Response: Water Supply Alternatives*.

Response HTB-2

This comment expresses an opinion about the need and appropriateness of the proposed Project, provides a summary of the six major themes of concern the comment has on the Draft EIR, and offers a technical review of those areas of concern. Responses to comments HTB-3 through HTB-43 respond to the specific concerns.

Response HTB-3

Draft EIR Section 5.6 addresses Geology, Soils and Seismicity, and Subsection 5.6.4 discusses the potential for the proposed Project to exacerbate Seismic Hazards, Soil Erosion, Unstable Geologic Units or Soil, Expansive Soils, and impacts on septic Systems, consistent with CEQA Guidelines Appendix G. The Draft EIR concludes that the Project, an essential public utility in an urbanized area subject to seismic activity, would not exacerbate the existing risks for people or existing structures, would not expose people and structures to potential adverse effects involving seismic hazards or unstable geologic units, and expansive soils would not be increased by implementation of the Project. Therefore, the Project impacts related to geology, soils, and seismicity would be no impact, or less than significant.

The Draft EIR addresses the Chevron Groin at page 5.6-9 and explains the instability in the beach sediment is indicated by approximately 250 feet of offset in the position of the coastal margin north and south of the jetty or rock groin adjacent to the ESGS facility (much wider beach north of the jetty; see Figure 3-3). Offset of the beach width and surf zone position on opposite sides of the groin is evidence of substantial southward long-shore erosion and transport of sand and beach

¹ Including 1000 AFY of brackish groundwater desalination that could come from West Basin's existing C. Marvin Brewer Desalter facility.

instability. While the groin does not have any effect on sea level rise, it contributes to the baseline condition considered in the Draft EIR Appendix 5, as well as the supplemental Coastal Hazards Analysis prepared as Final EIR Appendix 15. See *Master Response: Supplemental Studies*. Nothing in this comment or response requires that the Draft EIR be recirculated.

Response HTB-4

As explained in the Draft EIR Subsection 5.6.3, in 2015, the California Supreme Court held that CEQA generally does not require a lead agency to consider the impacts of the existing environment on the future residents or users of a project (*California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal. 4th 369). However, if a project exacerbates a condition in the existing environment, the lead agency is required to analyze the impact of that exacerbated condition on the environment, which may include future occupants of the project. As stated in *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 473: “[T]he purpose of an EIR is to identify the significant effects of a project on the environment, not the significant effects of the environment on the project.” While the potential for increased exposure of people or structures to risks associated with seismic occurrences and location of people or structures on unstable geologic units as a result of the location of the proposed Project are discussed in this section for informational purposes, the effects of the preexisting hazards on users of the proposed Project and structures are not environmental impacts under CEQA. See response to comment MBCH 3-50.

In addition, compliance with existing regulations is assumed and regulatory agencies are expected to enforce existing regulations to the extent they do now. For example, the preparation of a final geotechnical investigation in accordance with CBC requirements is a required condition of the construction permits. In other words, if West Basin does not submit a final geotechnical investigation with recommendations to address geotechnical issues, the permitting agencies will not issue construction permits and the Project would not proceed.

Response HTB-5

This comment summarizes the ocean water quality setting information from Draft EIR Section 5.9, *Hydrology and Water Quality*, that is relevant to Project area. No further response is warranted.

Response HTB-6

Direct and indirect impacts to water quality as a result of offshore construction activities occurring over a 12-month period are assessed in detail in the Draft EIR under Impact 5.9-1 (Subsection 5.9.4, page 5.9-43 *et seq.*). The assessment of impacts to water quality from offshore construction activities related to the ocean intake and discharge structures comprehensively applied and considered the applicable regulations presented in the Draft EIR Subsection 5.9.1. The detailed analysis of impacts included assessment of increased turbidity resulting in reduced water clarity and light transmittance; increased dissolved or particulate contaminants that were previously bound to sediments becoming mobilized; reduced dissolved oxygen; water quality degradation from dredge material stockpiling, transport, and disposal; and, the accidental release of hazardous materials associated with standard construction activities. The potential water

quality impact from in-water construction activities for each of the issues assessed (summarized above) would be less than significant. Additionally, as discussed under Impact 5.9-1 (Draft EIR Subsection 5.9.4, page 5.9-44), prior to implementing the Project, West Basin would be required to obtain a Section 10 permit from the USACE, a Section 401 water quality certification from the LARWQCB for the in-water construction, as well as a Section 404 permit from USACE for disposal of dredge material. A Section 401 water quality certification requires that any discharges (such as sediment from dredge operations) comply with all applicable provisions of the Clean Water Act, including Section 303 relating to water quality standards and implementation plans. See also Response LARWQCB-28 for a discussion of discharges within 303(d) listed waters. The biological effects on marine biota from potential water quality impacts are assessed in detail under Impact BIO-M 5.11-1 (Subsection 5.11.4, page 5.11-38 *et seq.*). As discussed in detail in the analyses presented in the Draft EIR, impacts to water quality and marine biological resources from in-water construction, including from reduced light availability, reduced dissolved oxygen concentrations, increased turbidity, and the mobilization of pollutants, would be less than significant.

Response HTB-7

See response to comment HTB-6.

Response HTB-8

The Draft EIR Section 5.8, *Hazards and Hazardous Materials*, discusses the potential for an accidental release of hazardous construction related materials. As discussed in Subsection 5.8.1, there are numerous existing federal, state, and local regulations for the transportation, storage, handling, and disposal of hazardous materials. The existing regulations are designed to handle hazardous materials in a safe and legal manner, and to have established spill response procedures in the event of spills. In addition, the Draft EIR Subsection 5.8.4 includes six mitigation measures (Mitigation Measures HAZ-1 through HAZ-6) that provide additional site-specific plans and procedures to ensure hazardous materials are handled in a safe and legal manner.

Response HTB-9

As explained in the Project Objectives of the Draft EIR within Sections 1.2, *Executive Summary* and 3.3, *Project Description*, West Basin's goal is to ensure future water supply reliability for service area customers by adding a locally produced, drought-proof potable water source to the West Basin supply portfolio, consistent with goals for desalinated ocean water supplies identified in West Basin's 2015 Urban Water Management Plan (UWMP). Draft EIR Section 7.2 explains that not all the alternatives are new, since some of them are already part of West Basin's ongoing commitment to conservation, recycling and a diversified portfolio. Draft EIR Subsection 7.2.1 considered eleven (11) alternatives, including increased conservation, stormwater capture, increased non-potable recycling, indirect potable reuse, and direct potable reuse. See *Master Response: Water Supply Alternatives*. Cumulative impacts are assessed in detail in all environmental resources sections within the Draft EIR. Specifically, a comprehensive analysis of cumulative construction and operational water quality impacts from implementation of the Project is presented in the Draft EIR Subsection 5.9.5 on page 5.9-78. Similarly, an assessment of

cumulative impacts on marine biological resources is presented in the Draft EIR Subsection 5.11.5 on page 5.11-74.

Response HTB-10

As discussed in the Draft EIR, Santa Monica Bay dissolved oxygen concentrations are generally around 8 mg/l (page 5.9-33). Impacts relating to reduced dissolved oxygen concentrations from the discharge of brine are assessed in the Draft EIR Subsection 5.9.4 under Impact 5.9-2 (pages 5.9-53 and 5.9-54). Based on the receiving water dissolved oxygen content at the proposed diffuser location and the dynamics of brine discharges via a multiport diffuser (Final EIR Appendix 14A), the amount of dissolved oxygen supplied to a discharged dense brine plume by entrained ambient seawater would ensure that dissolved oxygen levels would not be substantially reduced in receiving waters as compared to baseline conditions. Furthermore, the treatment process would involve concentrating source ocean water and hence would not alter the mass loading of organics or oxygen demands. As a result, hypoxia would not occur and impacts relating to decreased dissolved oxygen in Santa Monica Bay would be less than significant.

As discussed in the Draft EIR Subsection 5.9.4, consistent with the requirements of the 2015 California Ocean Plan Amendment, the Project specific dilution analyses assume zero ocean current velocity, representing the worst-case condition in terms of brine dilution with receiving waters. Overall, the effect of ocean currents is to increase dilution compared to the zero current results. Resulting salinities at the Brine Mixing Zone (BMZ) boundary would be substantially lower than those reported in the Draft EIR since greater dilution would be achieved through additional dynamic mixing from waves or ocean currents. Neglecting the effect of currents (assuming zero current), consistent with the required methodology prescribed in the Ocean Plan for assessing salinity impacts from brine discharges, represents the most conservative (i.e., the “worst-case”) scenario, and therefore, the Ocean Plan regulations related to salinity would continue to be met for all anticipated ocean currents occurring in Santa Monica Bay.

See also response to comment LARWQCB-11.

Response HTB-11

The water quality impact analysis relating to copper incorporates the findings of a quantified analysis of copper dissolution rates from the proposed copper/nickel wedgewire screens (Draft EIR Appendix 4B). The Project-specific copper dissolution assessment was conducted for the proposed intake structures to determine the potential implications for water quality impacts during operation of the Local and Regional Projects in the context of numeric water quality standards defined in the California Ocean Plan. The analysis of copper dissolution, presented in detail in the Draft EIR Appendix 4B and incorporated into the analysis of impacts under Impact 5.9-2 (Draft EIR Subsection 5.9.4), determined that the dissolution of copper into seawater would not result in exceedances of the California Ocean Plan water quality objectives for copper. Specifically, the mean concentrations of copper-nickel alloy loss were calculated to be 0.03 micrograms per liter ($\mu\text{g/L}$) for the 90:10 and 0.05 $\mu\text{g/L}$ for the 70:30 copper-nickel alloy wedgewire screens (Draft EIR Section 5.11, Table 5.11-10). Based on these estimates, the use of wedgewire screens composed of copper-nickel alloy would result in some chemical leaching into

the water column, but the impacts would be expected to be orders of magnitude below the California Ocean Plan objectives for copper (6-month median of 3 micrograms per liter ($\mu\text{g/L}$), daily maximum of 12 $\mu\text{g/L}$, and instantaneous maximum of 30 $\mu\text{g/L}$ identified as the California Ocean Plan Water Quality Objectives for Protection of Marine Life; see Draft EIR Subsection 5.9.1), which is based on established toxic concentrations to marine biota. Therefore, the potential introduction of copper into ocean waters from the wedgewire screens is considered less than significant. See also response to comment MBCH3-67.

Response HTB-12

See response to comment HTB-11.

Response HTB-13

A coastal power plant once-through cooling (OTC) water intake system, and the proposed Project's screened ocean water intake system, would not have the same impacts on marine ecosystems. The operation of an ocean water intake system equipped with a 1 mm wedgewire screen and operated at a flow rate of <0.5 fps is considered current Best Available Technology for ocean water intakes, as assessed and determined by the SWRCB (Ocean Plan Amendment 2015). The potential entrainment of larval fish and other planktonic organisms is significantly reduced and the occurrence of impingement considered non-existent. Also, the comment's statement that the ESGS power plant and its operation of the OTC intake system was decommissioned due to its "devastating environmental effects" is misleading. Although it is clear that the magnitude of impinged and entrained marine organisms from a coastal power plant OTC system is significant, the cost of mitigating these impacts for an aging facility is what ultimately resulted in the shut-down of Units 3 and 4. The Draft EIR assessed the potential effects that the proposed Project's state-of-the-art screened ocean water intake system would pose to marine taxa (Draft EIR pages 5.11-49 through 5.11-54), and concluded that implementation of Mitigation Measure BIO-M2 will compensate for potential entrainment impacts to marine ecosystems in Santa Monica Bay.

Finally, the commenter misunderstood the Draft EIR statements concerning the effectiveness of 1-mm wedgewire screens in reducing entrainment impacts. Those Draft EIR statements were made to clarify that scientific data do not substantiate the Ocean Plan Amendment position that wedgewire screens only reduce entrainment by approximately 1 percent over an unscreened intake. As part of the technical support for Ocean Plan Amendment the SWRCB cited a study at the Diablo Canyon Nuclear power plant where use of wedgewire screens reduced larval entrainment 4.6 to 15.8 percent over the open intake. However, this study did not employ reduced flow in its assessment of entrainment reductions; with reduced intake flow, entrainment of larval fish could be even less (Ocean Plan Amendment 2015). Other studies cited by the SWRCB demonstrated reductions in entrainment as high as 66 percent. It should be noted that the majority of these studies focused on larval fish body length and not head diameter in assessing percentages of potential reductions occurring when using wedgewire screens. It was because of this uncertainty in the effectiveness of wedgewire screens that the SWRCB concluded that, *"Additionally, even though wedgewire screens can reduce entrainment mortality of juvenile and adult fish and essentially eliminate impingement mortality, intake-related mortality will be site and species-specific. Empirical studies on wedgewire screen efficacy may be required to test the*

models that have been designed to estimate entrainment. There also may be a need to empirically measure entrainment at individual desalination facilities.” Consequently, the calculation of APF for an unscreened ocean intake located offshore of the ESGS (Draft EIR Appendix 4D) potentially overestimates the loss of productivity to the marine ecosystem from entrainment, since most of the entrainment would be restricted to larvae < 1 mm in diameter of fish larval head size (Draft EIR Appendix 4A; Tenera 2014).

Response HTB-14

As described in the Draft EIR on page 2-22 *et seq.*, the proposed Project is the outcome of a planning process spanning more than a decade. West Basin has conducted extensive pilot testing, siting studies, demonstration testing of full-scale processes, and a comprehensive Program Master Plan (PMP) that have each addressed potential water quality effects. Each of these efforts has concluded that a desalination facility can be operated in conformance with Ocean Plan Amendment water quality objectives. (Draft EIR Subsection 2.10.1, page 2-30). A Demonstration Project was conducted to test implementation of full-scale components for long-term evaluation, integrating the results of a previous Pilot Project (discussed in the Draft EIR Subsection 2.10.2, page 2-30). The Demonstration Project included detailed study of the effects of brine discharge on local marine life from salinity and toxicity to support permitting, design, construction, and operation of West Basin’s proposed full-scale desalination facility. The Draft EIR Subsections 2.10.6 and 2.10.8 describe comprehensive Project-specific evaluations (Jenkins 2013; Weston Solutions Inc. 2013) conducted to assess potential short- and long-term exposure effects of high-salinity discharges from the Demonstration Facility on nearshore marine organisms, to support a brine diffuser discharge design, and to minimize the effects of turbulence shear stress and brine toxicity.

The research and evaluations summarized above (incorporated into the Draft EIR by reference, available as part of the Project Administrative Record, and available online at <http://westbasindesal.com/research-and-planning.html>), were peer-reviewed for accuracy and verification that methodologies and assumptions employed were defensible and appropriate and that the results were valid. Where applicable, the results and findings of the research and evaluations were incorporated into the assessment of water quality impacts. As discussed in the Draft EIR Subsection 5.9.4, *et seq.*, the assessment of impacts to water quality comprehensively applied and considered the applicable regulations discussed in the regulatory setting section, such as the Water Quality Objectives of the California Ocean Plan. Additionally, the water quality analysis incorporated a project-specific dilution analyses completed in support of the impact assessment (Final EIR Appendix 14A). A comprehensive analysis of cumulative construction and operation related water quality impacts from implementation of the Project is presented in the Draft EIR Subsection 5.9.5 starting on page 5.9-78. See responses LARWQCB-11 and HBCH-7 for additional details.

Response HTB-15

The evidence presented in the Draft EIR demonstrates the proposed Project would be in compliance with NPDES permit requirements. See response to comments HTB-14, LARWQCB-11, MBCH-66, and HBCH-7. CEQA Guidelines Section 15126.6 requires that an EIR consider alternatives that can avoid or substantially lessen significant impacts of a project. As described on page 7-35, West Basin evaluated other brine discharge locations and determined that co-mingling of brine at Hyperion Water Reclamation Plant would not be feasible. The Draft EIR concludes that the proposed Project would not result in an impact requiring the EIR to evaluate alternative brine discharge locations or options. No change has been made to the EIR as a result of this comment.

Response HTB-16

See response to comment HTB-15 and HBCH-18.

Response HTB-17

Since rising sea levels will increase the potential coastal flooding and flood hazards in the future, West Basin conducted a site-specific Coastal Hazards Analysis for the proposed desalination facility at the ESGS North and South Sites, provided as Draft EIR Appendix 5. In response to this and other comments, however, West Basin also prepared a supplemental Coastal Hazards Analysis which is included as Final EIR Appendix 15; see also *Master Response: Supplemental Studies*. The results of the supplemental study confirmed the inland extent of coastal flooding identified in the Draft EIR, and inform and support strategies to minimize and mitigate exposure to these hazards. *Master Response: Supplemental Studies* provides a description of the results of this study.

Response HTB-18

The comment, at Footnote 13, cites a 2013 Pacific Institute Report as a source for the conclusion that brine discharges result in physical and chemical effects on larvae and phytoplankton. However, that document addresses Energy and Greenhouse Gas Emissions as they relate to desalination in California, and is silent on the issue of larvae and phytoplankton, and on physical and chemical effects. Regardless, the Draft EIR explains in Section 5.9, *Hydrology and Water Quality*, that the brine discharge would contain some antifouling agents and concentrated pollutants; the potential effects of the brine discharge on marine taxa was analyzed and discussed in the Draft EIR Section 5.11, *Marine Biological Resources*, (pages 5.11-49, 5.11-56, and 5.11-58) and concluded that the concentrations of these potential contaminants were not at levels scientifically documented to cause any toxicity in marine organisms, which would include recruitment of fish and commercially important taxa.

Response HTB-19

The Draft EIR Subsection 5.11.4 explains the exact magnitude of Project-related entrainment is currently less than certain since new scientific studies are being conducted to specifically address that question. The Draft EIR acknowledges that entrainment of marine plankton does have an effect on marine productivity and should be mitigated in a way that would offset any such losses;

for example, by the application of a marine enhancement or restoration Project. This approach to mitigating ecological effects is an established and accepted approach identified under CEQA and the OPA. Because of regulatory and political considerations, quite often the implementation of habitat and ecosystem enhancement is delayed or the enhancement Project requires more funding than a single Project may provide. Under these circumstances, the practice of providing the requisite mitigation compensation into an identified fund for future use is an accepted and court-approved approach to meeting the mitigation requirement identified in the CEQA analysis of the Project. See also response to comment LARWQCB-13.

Response HTB-20

There is no suitable habitat for black abalone or giant seabass near or within the Project marine study area. The comment's statement that, "while the habitat for the species may not be found in the study area, the larvae may . . ." is unsupported by scientific studies that have been conducted in Santa Monica Bay (SMB). In fact, the Draft EIR specifically addressed the presence of these species at El Segundo and Scattergood Generating stations by reviewing decades of plankton studies conducted in the vicinity of their intakes (Draft EIR page 5.11-52). In addition, the life histories of both these species were reviewed (Butler et al. 2009; Baldwin 2008), in order to examine the potential for transport of viable larvae based on the current and hydrologic regime of SMB, from Point Dume and Palos Verdes Marine Protected Areas to the Project site (Draft EIR pages 5.11-53 and 54). It was concluded that any black abalone or giant seabass larvae introduced into the water column at either MPA would not be viable when, and if, they reached the Project marine study area.

Response HTB-21

Noise impacts in the marine environment, including impacts to marine mammals and turtles are discussed in the Draft EIR on pages 5.11-44 through 5.11-48. As discussed on pages 5.11-47 to 5.11-48, the most severe construction noise impacts would occur with pile driving. As indicated on page 5.11-39, "[i]nstallation of the buried pipeline extension, the risers, and the wedgewire screens atop the risers would require the driving of six to twelve 12- to 16-inch steel or fiberglass anchor piles. The driving of the anchor piles would primarily be accomplished using a vibratory hammer, although an impact hammer may be required to achieve required burial depth, depending on the underlying geology, such as the compaction and composition of the seafloor sediments." As indicated on page 5.11-45, "[p]ile-driving and the associated generation of underwater noise would be an intermittent activity. On days when piles are installed, activities would occur for only a few hours per day, taking approximately 15 to 60 minutes for a typical 12- to 16-inch-diameter piling, plus time between to set up the next pile. Therefore, the total time of underwater noise would be approximately 10 hours spread over several days."

Noise would also be associated with dredging operations and operation of various tugboats and barges transporting materials to and from the Project area, primarily from the Ports of Los Angeles/ Long Beach (POLA/POLB) 20 miles to the south. Such activities do not require noise mitigation since they are temporary and do not pose health impact risks to marine wildlife. Although Project construction would add temporary noise impacts in the vicinity of the

construction activities, the Project would not be expected to result in a cumulatively considerable contribution to the marine noise environment.

Mitigation Measure BIO-M1 requires pile driving noise reduction measures if calculated noise levels are > 183 dB at ≤ 10 meters or 120 dB at a distance of ≤ 500 meters. As indicated on page 5.11-75, “[o]ther construction activities in the ocean are not anticipated to occur nearby at the same time; therefore, effects from the current Project are not considered to have a cumulatively considerable effect on biological marine resources.” The comment references the U.S. Navy 5-Year Military Readiness Training and Testing Program, more specifically the Hawaii-Southern California Training and Testing Project, for which the CCC issued a staff recommendation on June 8, 2019. This U.S. Navy testing program involves an offshore area from Dana Point to the north to San Diego to the south; therefore, the study area does not overlap with the proposed Project’s area of impact for noise or vibration. As a result, there is no potential for the U.S. Navy testing program impacts to contribute a cumulatively considerable impact to the Project’s construction or operational noise impacts.

Noise impacts during operation would be confined to brief periods of maintenance of the wedgewire screens, involving use of small boats and divers changing the screens. Such activities would be brief and involve limited amounts of noise that would not be cumulatively considerable. Intake/discharge operations would generate negligible noise that would not be cumulatively considerable. As indicated in the Draft EIR on page 5.11-76, “[t]hrough regulatory permitting compliance, including OPA, the Project’s geographic scope of marine resource effects would be limited to the immediate area of the Project’s intake and discharge facilities, and adverse effects would be fully offset through OPA compliance. For these reasons, Project impacts to marine biological resources are not considered significant nor would they be cumulatively considerable.”

Response HTB-22

The Draft EIR evaluates GHG emissions in Section 5.7, concluding that GHG emissions greater than the baseline would result in a significant impact. As a result, Mitigation Measures GHG-1 and GHG-2 are imposed to offset the Project’s GHG emissions compared to baseline and to verify the reduction through a third-party auditor. The Draft EIR acknowledges that GHG emissions may have global effects. As described on page 5.7-4 of the Draft EIR, the state of California has initiated several policies aimed at reducing carbon emissions. The proposed project would be consistent with these policies through the application of carbon offsets. See *Master Response: Greenhouse Gas Emissions and Energy Use*.

The Pacific Institute’s study cited in the comment concludes that ocean desalination process is energy intensive compared with other water supplies and would as a result increase GHG emissions globally that would affect marine environments around the world. The EIR acknowledges that ocean water desalination requires more energy than importing water in Section 5.5 Energy. However, as the 2017 Scoping Plan recognizes, the right to “safe, clean, affordable, and accessible water . . .” should take precedence over GHG reductions, and providing a portfolio based approach to water supply increases West Basin’s overall resiliency as a public utility. See pages 5.7-19 – 5.7-20 of the Draft EIR. Southern California utilities are actively pursuing different types of local water supply augmentation including conservation, water recycling, and

stormwater capture. The project objectives are to diversify water sources in a manner that is economically viable and environmentally responsible. The EIR describes that a diverse water supply portfolio may include sources with varying power requirements and does not preclude any source solely on its energy requirements. The most reliable water source may also have the highest energy demand. This may limit the percentage produced from a particular source, but does not eliminate its value within a diverse and resilient supply portfolio.

Response HTB-23

Impacts relating to tsunamis, coastal flooding, wave run-up, and storm tides, including potential future risks from sea level rise, are assessed in detail in the Draft EIR Subsection 5.9.4 under Impact 5.9-6 (page 5.9-72 *et seq.*). The analysis evaluates potential impacts associated with constructing and operating each of the three primary elements of the Project, including offshore, coastal, and inland Project components for both the Local and Regional Projects. As described in the assessment, because sea level rise represents an existing environmental condition, and because the Project will not exacerbate this condition, impacts are not considered potentially significant under CEQA; the analysis presented was provided for informational purposes and West Basin will implement design measures to protect the Project from potential effects of sea level rise. In response to this and other comments, however, West Basin also prepared a supplemental Coastal Hazards study (see *Master Response: Supplemental Studies*) that considered high-risk sea level rise projections and the “extreme risk aversion” scenario known as the “H++” scenario. The results of the study confirmed the Draft EIR flooding and coastal erosion impacts analysis, and inform and support strategies to minimize and mitigate exposure to these hazards. *Master Response: Supplemental Studies* provides a description of the results of this study.

As described in detail under Impact 5.9-6, impacts relating to coastal flooding would be less than significant during Project construction and would be reduced to less than significant during Project operation with implementation of Mitigation Measure HYDRO-1, which requires West Basin to complete a Project-specific Coastal Hazards Resiliency Plan for the final Local and Regional Project design. Incorporation of the recommendations of the study would ensure that the Local Project (and Regional Project) substantially avoid coastal erosion and flooding that could result from future sea-level rise and that proposed Project structures in the coastal zone would not be subject to structural failure caused by future flooding or flood hazards as a result of wave or tsunami run-up and would not cause or increase erosion off-site due to impeding or redirecting flood flows. Mitigation Measure HYDRO-1 would further ensure that the Project would not exacerbate existing flooding and/or flood hazards. As such, there would be no flooding related secondary impacts that could potentially significantly impact marine biological resources.

Response HTB-24

The Draft EIR imposes Mitigation Measures GHG-1 and GHG-2 that offset GHG emissions to net neutral compared with baseline conditions. Eliminating any increase in GHG emissions effectively minimizes the proposed Project’s contribution to the cumulative effects of climate change.

Response HTB-25

Regarding the comment's statement that there are alternative water supply projects that do not emit as much (if any) carbon, including many that actually increase carbon sequestration, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response HTB-26

As lead agency, West Basin has evaluated a proposed Project located at the ESGS site that would produce 21,500 AFY. As part of the CEQA Alternatives analysis, the Draft EIR evaluates other site locations and technologies that could avoid significant impacts of the Project while meeting most of the Project's basic objectives. The analysis complies with CEQA Alternatives assessment requirements. If the RWQCB or other permitting agency requires additional analysis of alternative locations to site the treatment plant and intakes, or hybrid intake alternatives, West Basin will work with the regulators to provide the information. As described in Appendix 2A, subsurface intakes were found to be infeasible for several reasons including low yield and therefore not substantially meeting Project objectives. If a regulator during the permitting process requires installation of a hybrid intake system that includes a subsurface contribution in order to fulfill a hybrid intake system requirement, additional analysis may be required. See *Master Response: Supplemental Studies*.

Response HTB-27

The demonstration facility was used to assess the potential reduction in entrainment and impingement effects from the use of a wedgewire intake screen but was not directly used to assess entrainment resulting from operation of the proposed Project. As demonstrated in the *Intake Effects Assessment Report* (Draft EIR Appendix 4A; Tenera 2014), the key factors affecting entrainment are: 1) the size of the intake screen, and 2) the flow rate of the intake water. In the case of the demonstration facility, a 1-mm wedgewire screen was evaluated at an intake flow rate <0.5 fps, as is proposed for the Project. The study concluded that no detectable impingement occurred and that entrainment with the wedgewire screen was less than entrainment at an intake with no screen (Draft EIR Appendix 4A; Tenera 2014). The conclusion in the Draft EIR that the potential ecological impact to the marine ecosystem could be significant was not based on this study. This conclusion was based on a detailed analysis of potential entrainment resulting from the Project based on recent entrainment studies for ESGS that were scaled to the Project's operational parameters. However, these potential significant effects would be rendered less than significant following implementation of Mitigation Measure BIO-M2. Finally, the Draft EIR Subsection 5.11.5 addresses cumulative impacts to marine biological resources; it is unclear what "combined stressors" the commenter believes pose a cumulative threat to marine habitats and associated biological communities.

Response HTB-28

While West Basin will secure all necessary permits prior to Project implementation, West Basin cannot speak to the enforcement capabilities of the agencies with regulatory/permit authority over the Project. The comment's recommendation for a third party entity to address mitigation or

compliance is outside the scope of the environmental analysis contained in the Draft EIR; no further response is warranted.

Response HTB-29

In regards to the environmental justice analysis, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18). Regarding water rates and cost as result of the proposed Project the commenter is referred to *Master Response: Environmental Justice* as well as *Master Response: Cost and Rates*.

Response HTB-30

The cumulative analysis for each issue area is dependent on the potential impacts of the Project as described and analyzed throughout the Draft EIR. The cumulative analysis includes a list of reasonably foreseeable projects as well as planned growth included in the most recent SCAG RTP (see page 4-10). The focus of each cumulative analysis is the contribution that the Project would make to each issue area. See also response to comments MBCH3-9 and EOGB-23. The commenter does not identify what cumulative impacts of the ocean intake and discharge are lacking, and therefore further response is not possible.

Response HTB-31

As explained in the Draft EIR Section 5, *Approach to Analysis*, impacts associated with the Local Project are assessed at a project-level, whereas impacts associated with the Regional Project are assessed at a project-level for those components that are known (such as the physical size of the facility) and a programmatic-level for those aspects of the Project that are not well-defined (such as regional partners). Every topical section in Section 5 (*Environmental Analysis*) distinguishes between the Local Project and the Regional Project when discussing and analyzing the potential impacts of each Project component (Ocean Water Desalination Facility, Screened Ocean Intake and Concentrate Discharge, Desalinated Water Conveyance Components). The assessment of impacts resulting from the Regional Project are assessed in terms of the incremental increase against baseline potentially resulting from the additional build out and operation of the Regional Project in addition to the impacts described for the Local Project facilities. As discussed in Subsection 2.2, *Project-level and Program-level Analyses in This Draft EIR* and Section 5, *Approach to Analysis*, if or when West Basin considers moving forward with a larger (up to 60 MGD) facility and the specific designs of the Regional Project are developed, West Basin will undertake project-level environmental review of the Regional Project. To streamline the review, this EIR would provide the basis for the incremental addition of the Regional Project (CEQA Guidelines Section 15168(d)).

Response HTB-32

West Basin has been considering the addition of ocean water desalination to its water supply portfolio since the 2000 UWMP. West Basin's water supply forecasts for the West Basin service area have remained consistent, actually decreasing slightly since the 2005 UWMP. Water demands within the West Basin have stabilized since the area is largely built-out. As a result, the proposed new water supplied through ocean water desalination would indeed reduce the amount

of water to be purchased annually from MWD. In contrast to the County of San Diego that is receiving water from the ocean desalination facility in Carlsbad noted in the comment, West Basin's service area is projecting very modest growth and water supply increases to 2040. The purpose of the Project is not to support population growth, but rather to diversify water supplies to enhance the District's resiliency. See *Master Response: Water Supply Alternatives*.

Response HTB-33

The Draft EIR Subsection 7.2.1 considered 11 alternatives, including increased conservation, stormwater capture, increased non-potable recycling, indirect potable reuse, and direct potable reuse. See Draft EIR Tables 7-1 and 7-2, and *Master Response: Water Supply Alternatives*. But the need for 21,500 AFY equates directly to the difference between total supplies and total demands (20,342 acre-feet) during a multi-dry year event similar to the 2012-2015 drought conditions, as shown in UWMP Table 5-5 and the shortfall assumes the District continues to manage water supplies and reduce demand for water through the continued implementation of conservation savings, recycled water production, and the expansion of groundwater supplies by the retail agencies, to the maximum extent practicable. Draft EIR Table 2-1 displays the expected increases in these supplies between 2015-2040 (see also West Basin 2015 and 2010 UWMP Table ES-3). As noted in Section 4.5 of the 2015 and the 2010 UWMP, West Basin is actively diversifying its water supply portfolio beyond traditional imported water and groundwater supplies, and both the 2015 and 2010 UWMPs dedicate entire sections to discussing alternative supply programs such as recycled water (Section 9), desalinated ocean water and brackish groundwater (Section 10), and increased water use efficiency programs (Section 7). West Basin is pursuing these alternative supplies as part of its Water Reliability initiative.

Even with the maximum practicable conservation savings, increases in recycled water production, and expansion of groundwater supplies by retail agencies, West Basin's service area could experience a shortage of 20,342 acre-feet. In other words, the proposed Local Project is sized at 20 MGD (or approximately 21,500 AFY), to directly respond to the multi-dry year event shortfall. Thus, the proposed Project would provide the quantity of water necessary to make up the expected shortfall in imported water supplies for what are expected to be more frequent and severe future droughts.

Response HTB-34

As explained in the Draft EIR Section 3.3, West Basin's goal for the proposed Project is to guarantee future water supply reliability for service area customers by adding a locally produced, drought-proof potable water source to the West Basin supply portfolio. The hydrology and water quality analysis in Draft EIR Subsection 5.9.4 concluded water quality would not be compromised; the proposed Project's impacts on water quality would be less than significant with mitigation. See also response to comment HTB-33.

Response HTB-35

The Draft EIR Subsection 7.2.1 considered 11 alternatives, including stormwater capture. See response to comment HTB-33.

Response HTB-36

The Draft EIR Section 7.2 presents the *Initial Screening of Alternatives*. The initial screening process used nine criteria (not seven) to determine which alternatives would be carried forward into the CEQA alternatives analysis. Table 7-2 presents the results of the initial screening. As explained in Draft EIR Section 7.2, if an alternative failed one or more of the screening criteria, then further evaluation was not pursued.

The 2015 Urban Water Management Plan (UWMP) details how West Basin proposes to manage its water supplies and demands under all hydrology conditions, and demonstrates how West Basin proposes to meet its service area's retail demands and provide long-term water reliability over the next 25 years (see Draft EIR Subsection 2.3.2). Draft EIR Table 2-1 outlines West Basin's service area projected water supply to meet that demand, according to supply source, from 2020 through 2040. As shown, West Basin's water supply includes increasing levels of conservation and recycled water, and a reduction in imported water. Desalination as a component of West Basin's future water supply portfolio would offset up to 22,500 AFY² of imported water in order to "diversify West Basin's water source portfolio" and would allow West Basin to "increase reliability . . . while reducing reliance on imported water."

Response HTB-37

Draft EIR Section 7.2.1 provides an in-depth analysis on West Basin's current planning efforts to increase recycled water throughput by using West Basin's existing infrastructure coupled with upgrades at Hyperion Water Reclamation Plant using membrane bioreactor treatment processes. As noted in the analysis, the amount of secondary effluent water from Hyperion to be provided to West Basin is limited to 54 MGD with the remainder (16 MGD) going into the City of Los Angeles' Harbor Area under the current agreement to upgrade Hyperion (70 MGD in total) (City of Los Angeles 2018). With the City of Los Angeles's current partnership with Water Replenishment District to evaluate the potential to use the rest of the Hyperion wastewater effluent to produce recycled water for groundwater replenishment purposes, the likelihood for West Basin to receive secondary effluent beyond 54 MGD is unlikely and speculative. West Basin currently recycles approximately 40 MGD of secondary effluent from Hyperion that makes up for the total existing customer demand within West Basin's service area. However, West Basin is committed to expanding its effort to improve water quality that would attract more recycled water customers and increase future demand to 54 MGD. West Basin is also committed to working with other regional partners, such as Metropolitan Water District, to develop ways to maximize the utilization of West Basin's recycled water distribution and treatment systems to further increase recycled water use in the region.

With respect to the reference provided in the comment about the 100 MGD treatment capacity at Edward C. Little Water Recycling Facility (ECLWRF), CH2M (currently known as Jacobs Engineering), the engineer who worked on the project at the time, Brock McEwen, confirmed that the "*Flyer was produced in early 1990's and phase one of this recycling project was put online in 1994. The original West Basin client envisioned 100 MGD ultimate capacity and asked us to conceptually layout a plant that would reserve sufficient space to support such*" (Personal

² Including 1,000 AFY of brackish groundwater desalination that could come from West Basin's existing C. Marvin Brewer Desalter facility.

Communication 2019). ECLWRF was commissioned in around 1994 and has gone through multiple expansions based on the growth of its customers in the last 25 years. Currently, ECLWRF has 40 MGD of filtration capacity to produce Title 22 tertiary disinfected water and 30 MGD of advanced treatment capacity to produce three grades of advanced treated recycled water for low pressure and high-pressure boilers as well as for replenishment of the seawater barrier and West Coast Groundwater Basin, respectively. However, based on the current recycled water demand, ECLWRF currently produces approximately 40 MGD of recycled water daily.

As explained in Draft EIR Section 7, expanding recycled water use in the region will not completely offset the need for imported water. Nor would it eliminate the need for additional water supply diversification afforded by ocean water desalination. As described in Section 7, West Basin as a responsible water supply manager is considering the addition of ocean water desalination to augment water supply reliability in addition to other local water supply development efforts.

Response HTB-38

The Draft EIR Table 7-2 presents the results of the initial screening of supply alternatives. The control of water and control of pricing are Project objectives, not screening criteria. In fact, Increased Non-Potable Recycling, and Indirect Potable Reuse were found to meet Screening Criteria 7, Economic Feasibility. Furthermore, none of the alternatives were excluded during the screening process because of cost. *See Master Response: Water Supply Alternatives.*

Response HTB-39

As noted throughout the Draft EIR, West Basin continues to include conservation as an integral component of its water supply portfolio, will continue to provide its service area residents with free rain barrels, and West Basin's recycled water sales are anticipated to increase in the future. West Basin will continue to seek opportunities to diversify its water supply portfolio and as such, the proposed Project represents a combination of alternative components, including desalination. Nothing in this comment or response necessitates recirculation of the Draft EIR. *See Master Response: Water Supply Alternatives.*

Response HTB-40

The cumulative projects listed in Table 4-1 use information available to West Basin at the time the Draft EIR analysis was conducted. The proposed Project information is as concrete and current as the information made available by local agencies and municipalities. Table 4-1 has been modified to reflect comments received by local cities. The revisions do not change the conclusions of the impact analysis, but provide a more accurate summary of local development included in the cumulative impacts analysis.

Response HTB-41

In response to the commenter's concern over consistency in Table 4-2 and the subsequent text, the Draft EIR text in Table 4-2 on page 4-11 is revised as follows:

2	Los Angeles Department of Sanitation Hyperion Water Reclamation Plant	Los Angeles County	<u>230 Design capacity 450: peak weather flow 800</u>	N/A	Wastewater Discharge	Existing, Active
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Response HTB-42

Table 4-2 states that the column includes information on "Ultimate Yield/Capacity (MGD)," which is what the column is intended to show. Other than the correction identified in response to comment HTB-41, the commenter has not provided other revisions needed to the table. Additionally, the detailed descriptions of the projects following the table provide more information or describe average yield and ultimate capacity.

Response HTB-43

The comment is correct; the text in Draft EIR Appendix 5 (Coastal Hazards Analysis of the West Basin Municipal Water District Ocean Water Desalination Project for Sea Levels at Year 2100, 2017) is missing a decimal point. In response to this and other comments, however, West Basin prepared a supplemental Coastal Hazards Analysis which is included as Final EIR Appendix 15; see also *Master Response: Supplemental Studies*.

Response HTB-44

The commenter summarizes comments made in the letter and expresses opinion on the Project's suitability. The commenter is referred to responses to comment HTB-1 to HTB-43. The commenter also is referred to *Master Response: Non-CEQA Issues*.

Response HTB-45

The commenter requests that the Draft EIR be recirculated. Per CEQA Guidelines Section 15088.5, "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect that the project's proponents have declined to implement." Furthermore, "Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." In response to comments, some changes have been made to the EIR to clarify various issues. Also, in response to comments, additional studies were undertaken that merely amplify or clarify the data in the EIR and confirm its impact analyses; those studies also support future regulatory decisions to be made by other agencies. However, neither the methodologies employed nor the conclusions reached have changed in any way that implicates a significant environmental impact not identified in the Draft EIR, a substantially more severe significant environmental effect than indicated, or a new feasible alternative or mitigation measure. The Draft EIR is comprehensive and robust, compiled by scientists and experts in their

respective environmental fields. West Basin as the lead agency under CEQA believes it complies with the requirements of CEQA and is supported with substantial evidence. For these reasons, recirculation of the Draft EIR is not required.

See also *Master Response: Water Supply Alternatives*.

Response to Letter LAW: Los Angeles Waterkeeper

Response LAW-1

West Basin initially provided a Draft EIR review and comment period of 60 days, from March 27, 2018, through May 25, 2018. Based on comments requesting an extension, West Basin granted a 31-day extension for review and comment on the Draft EIR, as requested by the commenter. The public review period ended at 5 p.m. on Monday, June 25, 2018, providing a 91-day public review period.

Response to Letter LAW2: Los Angeles Waterkeeper

Response LAW2-1

The commenter is referred to: *Master Response: Water Supply Alternatives*, *Master Response: Cost and Rates*, *Master Response: Greenhouse Gas Emissions and Energy*. The commenter is also referred to Section 5.11, *Marine Biological Resources*, for a discussion of environmental impacts related to marine biological resources, which were found to be less than significant with implementation of mitigation measures.

Response LAW2-2

CEQA Guidelines Section 15126.6 requires that an EIR consider alternatives that can avoid or substantially lessen significant impacts of a project. Draft EIR Subsection 7.1.3 explains the proposed Project would result in very few significant and unavoidable impacts, and as the comment correctly notes, these are identified as air quality and noise during construction. The Draft EIR analyzes, evaluates, provides substantial evidence and found that impacts on GHG emissions, energy, land use, the marine environment, water quality, environmental justice, and climate change (GHG) would be less than significant or less than significant with mitigation (see Draft EIR Sections 5.7, 5.5, 5.10, 5.11, 5.9, and 6.3 respectively). Contrary to the comment's assertion that the Draft EIR "fails to analyze" the significant environmental impacts associated with these topics, the Draft EIR included a comprehensive evaluation that found no significant and unavoidable impacts would occur to these resource areas. See also *Master Response: Water Supply Alternatives*.

Response LAW2-3

With regards to the statement in the comment that the proposed Project would result in the inefficient, wasteful, and unnecessary consumption of energy, see response to comment MBCH3-44.

Regarding the statement in the comment that there are less energy intensive alternatives than ocean desalination for increasing local water supplies, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-4

The Draft EIR provides an assessment on wasteful use of energy in Section 5.5, *Energy*. The Draft EIR concludes that the increase energy requirements needed to enhance the reliability of the District's water supply is not wasteful, but rather it is a responsible water management option for a Southern California coastal water district to consider. With regards to the commenter's statement that the proposed Project would result in the inefficient, wasteful, and unnecessary consumption of energy, see response to comment MBCH3-44, MBCH3-45, and EOGB-6.

Regarding the statement in the comment that there are less energy intensive alternatives than ocean desalination for increasing local water supplies, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-5

With regards to the statement in the comment that the analysis does not evaluate the potential significant impacts from the SCE electrical power grid upgrades, see response to comment MBCH3-45.

Response LAW2-6

With regards to the statement in the comment that the analysis does not evaluate the potential significant impacts from the SCE electrical power grid upgrades, see response to comment MBCH3-45.

Response LAW2-7

Regarding the statement in the comment that the Draft EIR erroneously applies a “net zero” threshold of significance for evaluating GHG impacts, pointing to a particular MWD agreement in place through 2035, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-8

Regarding the commenter’s concern over the Draft EIR’s “net zero” scenario, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-9

Regarding the statement in the comment that the Draft EIR should have compared the GHG impacts of the Project to a baseline that does not include currently imported water that will be displaced by the Project, see *Master Response: Greenhouse Gas Emissions and Energy Use*. The CEQA baseline is required to represent existing conditions. As a result, the Draft EIR baseline includes GHG emissions associated with water imported to West Basin. The Draft EIR concludes that West Basin’s GHG emissions inventory would include the new emissions associated with the proposed Project but would not include the replaced imported water inventory.

Response LAW2-10

As stated in Section 5.7.5 of the Draft EIR, it is generally the case that an individual project of this size and nature is of insufficient magnitude by itself to influence climate change or result in a substantial contribution to the global GHG inventory. GHG impacts are recognized as exclusively cumulative impacts; there are no non-cumulative GHG emission impacts from a climate change perspective (CAPCOA 2008). The State has implemented a vast array of regulations, policies, and programs to reduce the state’s contribution to global GHG emissions. The Project, on both a Local and a Regional level, would ensure that there would be no net increase in GHG emissions compared to existing conditions associated with water supplied by MWD, and thus would not represent a cumulatively considerable contribution toward global GHG emissions.

Response LAW2-11

The comment states that because the proposed Project would create a new, more energy-intensive water supply, it would compromise the State's GHG reduction goals and the State's 2017 Scoping Plan.

The Draft EIR includes full disclosure of the energy needs of the proposed Project as presented in Subsection 5.5.4. As discussed in Section 5.2, the Project is consistent with the 2017 Scoping Plan Update, as it incorporates feasible design features to minimize GHG emissions and, through Mitigation Measures GHG-1 and GHG-2, reduces Project GHG emissions to below a threshold of net carbon neutral compared to existing conditions. As noted in the Draft EIR on page 5.7-20, the 2017 Scoping Plan Update does not specify GHG reductions needed from the water sector to meet the goals of AB 32 and SB 32, recognizing that the energy intensity of water varies greatly depending on the geography, water source, and end use, and that "(a)s the energy sector is decarbonized through measures such as increased renewable energy and improved efficiency, energy intensities will also be reduced." Additionally, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-12

The comment states that the proposed Project will result in greater GHG emissions related to water supply and disincentivize local water conservation efforts, and thus be potentially inconsistent with local regulations and policies, including climate action plans.

The local climate action plans for LA County and El Segundo include measures for water conservation that are intended to reduce the energy use and GHG emissions associated with the conveyance and consumption of potable water. The 2015 El Segundo Energy Efficiency and Climate Action Plan (EECAP) indicates that community-wide GHG emissions associated with the conveyance and consumption of water constituted less than 0.005 percent of the city's total emissions in 2012. Nonetheless, the EECAP includes a community measure to promote water efficiency actions to enable exceedance of the SB X7-7 standard (reduce water consumption 20 percent by 2020), and municipal measures to implement a water leak detection program and to upgrade or incorporate water-conserving landscapes. Similarly, the 2020 Los Angeles County Climate Action Plan (CAP) includes a measure to reduce per-capita water use, consistent with SB X7-7, through strategies that the County, in conjunction with local urban water agencies, will implement to promote water conservation throughout unincorporated areas.

The Project proposes to replace imported MWD water with desalinated water. With desalinated water having a relatively high cost and GHG footprint, there should be additional incentive for conservation, not less. In any case, with mitigation the GHG footprint of the proposed Project's water will have net carbon neutral emissions compared to imported water. There would be no net change in GHG emissions associated with a variation in consumption, and the proposed Project should not disincentivize local water conservation efforts or compromise the GHG emissions goals of local climate action plans. See *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-13

Regarding the assertion that the Draft EIR's GHG mitigation measures are inadequate, see *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response LAW2-14

See responses to comment CCC-31 regarding the Project's potential to conflict with the LCP generally and the scope of the CEQA analysis; response to comment CCC-32, regarding the scope of the LCP's policy prescriptions and the Draft EIR's analysis of potential Coastal Act policy conflicts; and response to comment CCC-33, regarding the Project's potential to conflict with Coastal Act policies and CCC guidance regarding shoreline protection and sea-level rise. As explained in the comment responses identified, the Draft EIR discloses the potential conflict with the El Segundo Local Coastal Program, acknowledges that compliance with the LCP, and by extension the Coastal Act, is mandatory, and explains how adherence to the corresponding procedural requirements for LCP amendment would resolve the potential conflict.

The impact discussion referenced by the commenter concerns the proposed Project's potential to conflict with plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect (Impact LU 5.10-2; pages 5.10-15 through 5.10-26). Consistent with other impact discussions within the Draft EIR, the analysis of potential effects related to the construction phase and operations phase are addressed in separate subsections. Accordingly, for the Impact LU 5.10-2 analysis of potential effects related to construction, the discussion focuses on potential conflicts with provisions of the subject regulation related to the construction phase. The El Segundo LCP contains no policies governing construction activities. Therefore, the discussion in Impact LU 5.10-2 related to potential conflicts with LCP policies concerning construction accurately states, "... there are no El Segundo LCP policies or regulations adopted for the purpose of avoiding or mitigating a construction-related impact" (page 5.10-21). For these reasons, and especially those explained in response to comment CCC-32, the Draft EIR's impact discussion related to conflicts with the LCP's construction-related policies or regulations is sound and the conclusions remain unchanged.

Response LAW2-15

See response to comment CCC-31 regarding the Project's potential to conflict with the LCP's Power Plant (PP) land use designation, and the purview of CEQA with respect to plan and policy conflicts. Also refer to response to comment CCC-34 regarding the Project's conformity with Coastal Act policies and guidelines related to coastal hazards and shoreline protection.

Response LAW2-16

Contrary to the commenter's assertion, the Draft EIR does not "...brush off the significance of the incompatibility with the ESLCP" and instead rely upon a future amendment to assure LCP consistency. As explained in responses to comments CCC-31 and CCC-32, the Draft EIR acknowledges the potential conflict with the LCP's land use designation, and addresses the full range of potential physical adverse environmental effects that could result from Project implementation. While the Draft EIR does acknowledge that an LCP amendment would be

required, and outlines the bases for the expectation that one could be obtained (including evaluating potential conflicts with applicable Coastal Act policies), it does not defer analysis or conclusions regarding whether the Project could have a significant adverse physical environmental effect.

Response LAW2-17

The comment's reference to the *Banning Ranch* case is misplaced. As the comment notes, in that case, "the City ignored its obligation to integrate CEQA review with the requirements of the Coastal Act, and gave little consideration to the Coastal Commission's needs." However, in the present case, as explained in response to comment CCC-31, the Draft EIR identifies the Project's potential conflict with the LCP's Power Plan land use designation and acknowledges an amendment may be required, which would require approval from the CCC (pages 5.10-22 and 5.10-23).

As explained further in response to comment CCC-32, the LCP does not include any obvious resources protection policies or other provisions designed to protect coastal resources, and against which the Project could be further evaluated. Moreover, per Coastal Act Section 30514, the standard of review for an LCP amendment is the Coastal Act, not the LCP. Accordingly, the Draft EIR's Impact LU 5.10-2 identifies related Coastal Act policies with which the Project (and any LCP amendment) would be required to comply in order for the Project to proceed (see Table 5.10-3 on pages 5.10-17 through 5.10-20). Moreover, the table's Footnote No. 5 (page 5.10-21) identifies six other sections of the Draft EIR where additional analysis of Project conformity with relevant Coastal Act policies is presented. And so contrary to the comment's assertion, the Draft EIR does not ignore the City or Coastal Commission's needs; rather, it discloses the potential conflict with the LCP's Power Plant land use designation; acknowledges an amendment may be required, subject to CCC certification; and evaluates Project conformity with the policies of the Coastal Act that comprise the standard of CCC review for any such certification.

As explained further in response to comment CCC-31, a Project's potential conflict with an applicable regulatory requirement does not necessarily equate to a significant impact, unless the conflict indicates the Project would have a "...substantial, adverse change in any of the physical conditions within the area affected by the project..." (CEQA Guidelines Section 15382). At issue in the *Banning Ranch* case was the City's failure to address the Project's potential effects on Environmentally Sensitive Habitat Areas (or ESHAs). ESHAs are defined in the Coastal Act as areas "in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments" (Coastal Act Section 30107.5). Accordingly, a conflict with a policy concerning ESHA may signify the Project would have a substantial *physical* adverse effect on an environmental resource subject to special protections under the Coastal Act. In the *Banning Ranch* case, the City deferred the ESHA analysis. The comment has identified no resource area subject to LCP or Coastal Act policy where the Draft EIR has deferred analysis or otherwise relied upon future LCP amendment in order to avoid drawing a conclusion as to impact significance.

In sum, the *Banning Ranch* EIR deferred disclosure or determination of a potential physical adverse environmental effect. However, as explained in response to comment CCC-31 and CCC-32, the Project's Draft EIR both evaluates Project conformity with the applicable LCP land use designation and Coastal Act policies relevant to an LCP amendment, and evaluates the potential physical adverse environmental effects on the resources subject to Coastal Act regulation. The comment has identified no specific physical effect or resource area that is not disclosed or whose analysis of effects has been deferred. Therefore, the Draft EIR's Land Use impact analysis is not revised in response to this comment.

Response LAW2-18

With respect to adequacy of the Draft EIR's Land Use impact discussion and coastal hazards analysis, please refer to responses to comments CCC-32 and CCC-33.

Response LAW2-19

The Draft EIR uses the appropriate baseline to evaluate the potential impacts of the Project on marine biological resources. See *Master Response: Marine Biological Resources Study Area*.

Response LAW2-20

As the CEQA lead agency, West Basin will use this EIR to review the potential environmental impacts of the Project and to determine whether to approve the Project and pursue permitting, which will include a request to the Los Angeles Regional Water Quality Control Board (LARWQCB) for California Water Code (CWC) Section 13142.5(b) determination (the "Water Code determination"). The LARWQCB must find that the applicant has complied with the Ocean Plan Amendments in order to make the Water Code determination. More specifically, pursuant to Ocean Plan Chapter III.M.2.a.(2), LARWQCB (not the applicant) must independently analyze a range of feasible alternatives for the best available site, best available design, best available technology, and best available mitigation measures and then must consider all four factors collectively to determine the best combination of feasible alternatives to minimize intake and mortality of all forms of marine life. See *Master Response: CEQA and Ocean Plan Compliance*.

Response LAW2-21

As described in the Draft EIR Section 3, *Project Description*, the utilization of existing infrastructure for ocean water intake by the Project is deliberate and intended to reduce potential impacts to subtidal and intertidal soft sediment habitats and marine communities by avoiding the installation of a new set of pipelines. The Project solely uses the existing ESGS concrete intake pipelines as conduits to install smaller HDPE pipes that will be used to provide ocean water to the onshore desalinization plant. This approach reduces the potential impacts to subtidal soft sediment habitat and associated marine biota. As further presented in Section 3, *Project Description*, and the impact discussion for Marine Biological Resources in Subsection 5.11.4, the intake flow rate of <0.5 fps at the wedgewire screens (which translates to an approach velocity of 0.141 fps) and the volume of Project intake water (approximately 40 MGD for the Local Project) is a fraction (about 1/10th) of what is typically employed by unscreened coastal power plant once-through cooling (OTC) systems (approximately 400 MGD for the El Segundo Generating Station Units 3 and 4). Therefore, desalination ocean water intakes are not similar to power plant intakes.

Regardless, even with reduced intake flow rates, reduced intake volumes and the utilization of 1 mm slot-width wedgewire intake screens, some planktonic organisms will be entrained which will result in some loss of biological productivity. The potential effects of entrainment and impingement of both the intake and discharge water was thoroughly analyzed and discussed in Subsection 5.11.4 on pages 5.11-49 through 5.11-56 of the Draft EIR. This section concluded that the loss of biological productivity from the Project's ocean intake ranged between 14 and 47 acres (Table 5.11-9), not thousands of acres as postulated by the commenter. Finally, this loss in biological productivity, also known as APF, is mitigated to a less than significant level by implementation of Mitigation Measure BIO-M2.

Response LAW2-22

The Draft EIR did not decline to analyze the temporary impacts to the soft-bottom and hard-bottom habitats. The comment references pages in the Draft EIR Section 5.10 which address Land Use and Planning. Specifically, Impact LU 5.10-6 evaluates whether the Project would conflict with any applicable Habitat Conservation Plan (HCP) or natural community conservation plan. The potential for impact and recovery to seafloor habitat and associated marine flora and fauna from construction of the modified offshore intake and discharge pipeline infrastructure is discussed in detail in Draft EIR Section 5.11, *Marine Biological Resources*. As noted on Draft EIR pages 5.11-40 to 5.11-41, dredging activities could be expected to result in the temporary loss of soft sediment benthic habitat, associated marine infauna and epifauna, and habitat used as foraging area for marine invertebrates and fish inhabiting the Project marine study area. The Draft EIR further determines that the benthic community inhabiting those sediments would be expected to recover to pre-dredging composition and abundances within a few months to less than 2 years, depending on when dredging occurs and other ecological factors affecting recolonization (Newel et al. 1998; Blake et al. 1996).

Response LAW2-23

Regarding low-income community populations included in the Draft EIR and environmental justice analysis, see *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-24

The comment includes a figure that is intended to contextualize the information presented in comment LAW2-23 by showing the CalEnviroScreen 3.0 scores. Since the graph itself does not address any inadequacy in the Draft EIR, the comment is noted for the record and no further response is warranted.

Response LAW2-25

Regarding the commenter's concern that the Draft EIR only analyzes impacts from aboveground structures, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-26

Regarding construction-related impacts as result of the proposed Project on environmental justice, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-27

Regarding reference populations and demographics, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-28

Regarding reference populations and demographics, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-29

Regarding the scope of the environmental justice impacts included in the Draft EIR, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-30

Regarding energy and air quality impacts of the Project impacting low-income and minority communities, the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18).

Response LAW2-31

Regarding the commenter's concern of exacerbated climate change impacts from the Project's greenhouse gas emissions as related to environmental justice, the commenter is referred to *Master Response: Environmental Justice*. The commenter is also referred to *Master Response: Greenhouse Gas Emissions and Energy Use* for further information regarding the proposed Project's greenhouse gas emissions.

Response LAW2-32

Regarding water rates and cost as a result of the proposed Project the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18) as well as *Master Response: Cost and Rates*. The Draft EIR is not responsible for discussing cumulative impacts on water rates.

Response LAW2-33

Regarding water rates and cost as a result of the proposed Project the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18) as well as *Master Response: Cost and Rates*.

Response LAW2-34

The District has been supportive of responsible ocean water desalination, but has not made a decision to build an ocean water desalination plant; the proposed Project described in the Draft EIR has not been approved by the District Board of Directors, conditionally or otherwise. The District's former General Manager and a few of the Board members have over the years asked their member agencies for support for "responsible desalination," and that support is conditioned upon: meeting and or surpassing the most environmentally protective requirements established by the State; being carbon neutral compared to imported water, and renewable sources of energy, and; being cost competitive with West Basin's current water recycling program (City of Palos Verdes 2017). Service on the CalDesal Executive Committee is one of many civic volunteer opportunities that members of the Board of Directors typically engage in. One Board member was appointed by his colleagues to serve as one of two West Basin representatives on the Metropolitan Water District of Southern California (MWD) board of directors and he is also a board member of the National Water Research Institute (NWRI), "a 501c3 non-profit that sponsors projects and programs focused on ensuring safe, reliable sources of water now and for future generations," including the reuse of recycled water for potable as well as non-potable uses. The District is indeed "committed to *environmentally responsible and innovative technology for* ocean-water desalination" (emphasis added), as noted on its website; see the comment's Attachment E.

Unlike the City of Hollywood in the *Save Tara* case, the District has not committed itself to a "definite course of action regarding the project." The District has not approved an agreement of any kind, conditionally or otherwise, that commits West Basin to moving forward with the proposed Project. Rather, the District has spent funds exploring proposed Project feasibility and conceptual design, the products of which are publicly available at: <http://westbasindesal.com/research-and-planning.html>.

CEQA Guidelines Section 15126.6 explains that the lead agency, in this case the District, is responsible for selecting a range of Project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives (see Draft EIR Subsection 7.1.4). There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376).

The Draft EIR alternative analysis presented in Section 7 is consistent with the CEQA guidelines and recirculation is not required.

Response LAW2-35

See response to comment HBCH-29 through -32, and *Master Response: Water Supply Alternatives*.

Response LAW2-36

Although a lead agency may not give a project’s purpose an artificially narrow definition, a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need, and not study alternatives that cannot achieve that basic goal. For example, if the purpose of the project is to build an oceanfront resort hotel (*Goleta, supra*, 52 Cal.3d at p. 561) or a waterfront aquarium (*Save San Francisco Bay Assn. v. San Francisco Bay Conservation etc. Com.* (1992) 10 Cal.App.4th 908, 924-925), a lead agency need not consider inland locations. As explained in Draft EIR Subsections 1.2, *Executive Summary*, and 3.3, *Project Objectives*, “West Basin’s goal is to guarantee future water supply reliability for service area customers by adding a locally produced, drought-proof potable water source to the West Basin supply portfolio, consistent with goals for desalinated water supplies identified in West Basin’s 2015 Urban Water Management Plan.”

See also response to comment HBCH-29 through -32, and *Master Response: Water Supply Alternatives*.

Response LAW2-37

While several alternatives were eliminated from further consideration, including increased conservation, stormwater capture, and Indirect Potable Reuse and Direct Potable Reuse, each of these eliminated alternatives will continue to be components of West Basin’s current, and future, water supply portfolio; they cannot therefore, contribute to the goal to “diversify West Basin’s water source portfolio” because they are more of the same. They just don’t meet the goal, or the objectives of the proposed Project.

A goal of the proposed Project is to reduce reliance on imported water and improve water reliability and security in an environmentally responsible manner. Since West Basin’s future potable and raw water demands are projected to be generally similar to existing demands as described in West Basin’s 2015 Urban Water Management Plan³ (see UWMP Table 3-6), the amount of water provided by ocean water desalination would directly reduce the need for imported water.

Contrary to the assertion in the comment, the need for 21,500 AFY equates directly to the difference between total supplies and total demands (20,342 acre-feet) during a multi-dry year event similar to the 2012-2015 drought conditions, as shown in UWMP Table 5-5. This is not a “shadow objective” but rather a clearly stated proposal for water supply diversification. The 20,342 AF multi-dry year event shortfall assumes the District continues to manage water supplies and reduce demand for water through the continued implementation of conservation savings, recycled water production, and the expansion of groundwater supplies by the retail agencies, to the maximum extent practicable. Draft EIR Table 2-1 displays the expected increases in these supplies between 2015-2040 (see also West Basin 2015 and 2010 UWMP Table ES-3). As noted in Section 4.5 of the 2015 and the 2010 UWMP, West Basin is actively diversifying its water supply portfolio beyond traditional imported water and groundwater supplies, and both the 2015

³ The 2015 UWMP and other West Basin research and planning documents continue to be publicly available online at: <http://westbasindesal.com/research-and-planning.html>

and 2010 UWMPs dedicate entire sections to discussing alternative supply programs such as recycled water (Section 9), desalinated ocean water and brackish groundwater (Section 10), and increased water use efficiency programs (Section 7). West Basin is pursuing these alternative supplies as part of its Water Reliability initiative.

Even with the maximum practicable conservation savings, increases in recycled water production, and expansion of groundwater supplies by retail agencies, West Basin's service area could experience a shortage of 20,342 acre-feet by 2020 and 21,500 AF by 2025 and beyond. In other words, the proposed Local Project is sized at 20 MGD (or approximately 21,500 AFY), to directly respond to the multi-dry year event shortfall. Thus, the proposed Project would provide the quantity of water necessary to make up the expected shortfall in imported water supplies for what are expected to be more frequent and severe future droughts.

Draft EIR Subsection 7.3.3 did evaluate a Reduced Capacity Alternative; while the Draft EIR concluded that a 10 MGD facility would reduce operational power demands, a smaller desalination facility would not eliminate the Local Project's significant and unavoidable impacts related to temporary construction noise or air emissions since most of the physical improvements would still be required and as such, construction-related impacts would remain largely the same as the proposed Project. See also response to comment HBCH-29 through -32, and *Master Response: Water Supply Alternatives*.

Response LAW2-38

A goal of the proposed Project is to reduce reliance on imported water and improve water reliability and security in an environmentally responsible manner. Phase 1 of the proposed Project identifies 21,500 AFY as a target amount that could be increased to 60,000 AFY in a Regional Project in the future. See response to comment LAW2-37; the need for 21,500 AFY equates directly to the difference between total supplies and total demands (20,342 acre-feet) during a multi-dry year event, as shown in UWMP Table 5-5. As noted in Section 4.5 of the 2015 and the 2010 UWMP, West Basin is actively diversifying its water supply portfolio beyond traditional imported water and groundwater supplies, and both the 2015 and 2010 UWMPs dedicate entire sections to discussing alternative supply programs such as recycled water (Section 9), desalinated ocean water and brackish groundwater (Section 10), and increased water use efficiency programs (Section 7). West Basin is pursuing these alternative supplies as part of its water reliability initiative.

As lead agency, West Basin has evaluated a proposed Project located at the ESGS site that would produce 21,500 AFY. As part of the CEQA Alternatives analysis, the Draft EIR evaluates other site locations and technologies that could avoid significant impacts of the proposed Project while meeting most of the Project objectives. The analysis complies with CEQA Alternatives assessment requirements. If the RWQCB or other permitting agency requires additional analysis of alternative locations to site the treatment plant and intakes, or hybrid intake alternatives, West Basin will work with the regulators to provide the information. As described in Draft EIR Appendix 2A, subsurface intakes were found to be infeasible for several reasons including low yield and therefore not substantially meeting Project objectives. If a regulator during the permitting process requires installation of a hybrid intake system that includes a subsurface

contribution in order to fulfill a hybrid intake system requirement, additional analysis may be required. See *Master Response: Supplemental Studies*. The MWD 2015 IRP, and the West Basin 2015 UWMP are presented in Draft EIR Subsection 2.3.2, and are not buried in an appendix; the UWMP is available online at: <http://westbasindesal.com/research-and-planning.html>.

Response LAW2-39

West Basin’s vision statement from the 2017 to 2022 Strategic Business Plan states the District goal is “sustainable and drought-proof water services enhancing the quality of life and economy of our communities.” The water supply alternatives that were discussed in the Draft EIR (including increased conservation, stormwater capture, and IPR and DPR) contribute to the goal of ensuring future water supply reliability, consistent with goals identified in West Basin’s 2015 Urban Water Management Plan. The proposed Project would add a locally produced, drought-proof potable water source to diversify the existing West Basin supply portfolio in addition to West Basin’s ongoing and continuing conservation and water use efficiency programs, including recycling, water reuse (IPR and DPR), and stormwater capture. See Draft EIR Table 2-1. Therefore, the water supply portfolio inclusive of ocean water desalination (and as analyzed in this EIR) is in fact a hybrid solution.

See also response to comment HBCH-30 through -32, and *Master Response: Water Supply Alternatives*.

Response LAW2-40

West Basin is committed to continued water use efficiency programs and will continue to pursue conservation as a component of the water supply portfolio. But the expansion of an existing conservation program does not meet the objective of diversification and it puts West Basin at greater risk of relying on customer responses to a rationing program during a drought. For example, in order to achieve the reduction in gallons per capita per day (GPCPD) that has been previously experienced in a drought, it is unlikely that consumer lifestyle/behavioral changes that result from rationing would be sustainable over the long term.

Response LAW2-41

The Draft EIR Subsection 7.2.1 did indeed evaluate a stormwater capture alternative. As described in detail in Section 7 of the Draft EIR and in *Master Response: Water Supply Alternatives*, stormwater capture is problematic within the West Basin service area since percolation is not effective in conveying stormwater from the surface through the clay layers and into the potable aquifer. Stormwater injection would be required. But because West Basin does not possess storage or production rights within the groundwater basin, extraction of any storage would only occur at the discretion of West Basin’s groundwater rights-holding retail customer agencies. By its nature, storm water capture would not be available during a multi-dry year events. But West Basin is pursuing stormwater capture opportunities including providing rain barrels as described in *Master Response: Water Supply Alternatives*.

All studies used throughout Section 7 are listed in EIR Section 7.5.

Contrary to the assertion in the comment, the need for 21,500 AFY equates directly to the difference between total supplies and total demands (20,342 acre-feet) during a multi-dry year event similar to the 2012-2015 drought conditions, as shown in UWMP Table 5-5. The 20,342 AF multi-dry year event shortfall assumes the District continues to manage water supplies and reduce demand for water through the continued implementation of conservation savings, recycled water production, and the expansion of groundwater supplies by the retail agencies, to the maximum extent practicable. Draft EIR Table 2-1 displays the expected increases in these supplies between 2015-2040 (see also West Basin 2015 and 2010 UWMP Table ES-3). The 2015 UWMP and other West Basin research and planning documents continue to be publicly available online at: <http://westbasindesal.com/research-and-planning.html>.

Response LAW2-42

Draft EIR Subsection 7.2.1 did indeed evaluate a recycling alternative and provided an in-depth analysis on West Basin's current planning efforts to increase recycled water. As noted in the analysis, the expansion of West Basin's Recycled Water Program would increase capacity from 40 MGD (current capacity) to 70 MGD of secondary effluent. The amount of secondary effluent water from Hyperion to be provided to West Basin would be limited to 54 MGD with the remainder (16 MGD) going into the City of Los Angeles' Harbor Area under the current agreement to upgrade Hyperion (70 MGD in total) (City of Los Angeles 2018). With the City of Los Angeles's current partnership with Water Replenishment District to evaluate the potential use of the rest of the Hyperion wastewater effluent to produce recycled water for groundwater replenishment purposes, the likelihood for West Basin to receive secondary effluent beyond 54 MGD is unlikely and speculative. West Basin currently recycles approximately 40 MGD of secondary effluent from Hyperion that makes up for the total existing customer demand within West Basin's service area. However, West Basin is committed to expand its effort to improve water quality that would attract more recycled water customers and increase future demand to 54 MGD. West Basin is also committed to work with other regional partners, such as Metropolitan Water District, to develop ways to maximize the utilization of West Basin's recycled water distribution and treatment systems to further increase recycled water use in the region.

As explained in Section 7, expanding recycled water use in the region will not completely offset the need for imported water. Nor would it eliminate the need for additional water supply diversification afforded by ocean water desalination. As described in Section 7, West Basin as a responsible water supply manager is considering the addition of ocean water desalination to augment water supply reliability in addition to other local water supply development efforts.

The 100 MGD "ultimate expansion" that the comment referenced was West Basin's vision in 1990. The Edward C. Little Water Recycling Facility (ECLWRF) was commissioned in around 1994 and has gone through multiple expansions based on the growth of its customers in the last 25 years. The current treatment capacity at ECLWRF is 40 MGD. See response to comment *HTB-37* and *Master Response: Water Supply Alternatives*.

Response LAW2-43

The Draft EIR Subsection 7.2.1 did indeed evaluate an IPR alternative. As explained in Section 7, expanding indirect potable reuse use in the region will not completely offset the need for imported water. Even expanding the recycled water production from Hyperion Water Reclamation Plant to its full capacity would not eliminate imported water demands in Southern Los Angeles County. Nor would it eliminate the need for additional water supply diversification afforded by ocean water desalination. As described in Section 7, West Basin as a responsible water supply manager is considering the addition of ocean water desalination to augment water supply reliability in addition to other local water supply development efforts. See *Master Response: Water Supply Alternatives*.

Response LAW2-44

The Draft EIR Subsection 7.2.1 did indeed evaluate a DPR alternative. As explained in Section 7, regulations do not currently exist that would allow for Direct Potable Reuse (DPR) within the West Basin service area. However, as currently envisioned, future DPR regulations may specify a blending requirement, where highly treated water would be blended with potable water for treatment prior to distribution. Interestingly, the implementation of the proposed Project may position West Basin to support future DPR through use of the desalinated ocean water as a raw water source for blending when such regulations are in place. West Basin supports development of DPR as a part of a diversified water supply portfolio for the region. Development of the ocean water desalination would strengthen West Basin's ability to implement DPR in the future via raw water augmentation. See *Master Response: Water Supply Alternatives*.

Response LAW2-45

As explained in Section 7, expanding other water sources, including brackish desalination, will not completely offset the need for imported water (West Basin currently desalinates brackish groundwater; see Draft EIR Table 7-4). Nor would it eliminate the need for additional water supply diversification afforded by ocean water desalination. As described in Section 7, West Basin as a responsible water supply manager is considering the addition of ocean water desalination to augment water supply reliability in addition to other local water supply development efforts. *Master Response: Water Supply Alternatives*.

Response LAW2-46

Draft EIR Appendix 2 presents the Feasibility Assessment of Subsurface Seawater Intakes that includes two separate evidence-based studies. In response to this and other similar comments, a supplemental study has been conducted that expands upon the Subsurface Intake (SSI) Feasibility Study provided in the Draft EIR. The findings of this supplemental study (provided as Final EIR Appendix 13) present further evidence that confirms West Basin's conclusions in the Draft EIR, and provide support for future regulatory decisions. See also *Master Response Supplemental Studies*.

As explained in the Draft EIR Sections 1.2, *Executive Summary* and 3.3, *Project Description*, West Basin's goal is to ensure future water supply reliability for service area customers by adding

a locally produced, drought-proof potable water source to the West Basin supply portfolio, consistent with goals for desalinated ocean water supplies identified in West Basin’s 2015 Urban Water Management Plan (UWMP). Desalination as a component of West Basin’s future water supply portfolio would offset up to 22,500 AFY⁴ of imported water in order to “diversify West Basin’s water source portfolio” and would allow West Basin to “increase reliability . . . while reducing reliance on imported water.” The EIR is an informational document that is intended to provide public agencies and the public with detailed information about the effect that a proposed project is likely to have on the environment. Comments on the appropriateness of the proposed Project size are not within the scope of CEQA. Nevertheless, these comments are included within the Administrative Record and will contribute to the information that will be considered by the decision-makers in the context of the entire record. See also response to comments LAW2-38, SCLA-3 and EOGB-23 and *Master Response: Water Supply Alternatives*.

Response LAW2-47

CEQA Guidelines Section 15126.6 explains that the lead agency, in this case the District, is responsible for selecting a range of Project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives (see Draft EIR Subsection 7.1.4). There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376). The Draft EIR appropriately analyzed the water supply alternatives as initial screening alternatives and dismissed each of the alternatives due to inability to meet Project goals and/or infeasibility. Although a lead agency may not give a project’s purpose an artificially narrow definition, a lead agency may structure its EIR alternative analysis around a reasonable definition of underlying purpose and need, and not study alternatives that cannot achieve that basic goal. The CEQA alternatives (including the No Project Alternative, AES Redondo Beach Generating Station Alternative, Reduced Capacity Alternative, and Reduced Elevation Alternative) were all analyzed in greater detail and meet the range of reasonable alternatives required by CEQA. The water supply portfolio inclusive of ocean water desalination (and as analyzed in this EIR), is in fact, a hybrid solution. See *Master Response: Water Supply Alternatives*.

⁴ Including 1,000 AFY of brackish groundwater desalination that could come from West Basin’s existing C. Marvin Brewer Desalter facility.

Response to Letter NRG: NRG Energy, Inc.

Response NRG-1

West Basin notes NRG Energy, Inc.'s (NRG) perspective of not providing a formal position on the proposed Project.

In response to comments, some changes have been made to the EIR to clarify various issues. Also, in response to comments, additional studies were undertaken that merely amplify or clarify the data in the EIR and confirm its impact analyses; those studies also support future regulatory decisions to be made by other agencies. However, neither the methodologies employed nor the conclusions reached have changed in any way that implicates a significant environmental impact not identified in the Draft EIR, a substantially more severe significant environmental effect than indicated, or a new feasible alternative or mitigation measure (CEQA Guidelines Section 15088.5). The questions raised by the comment, and any revisions that have been made to the Draft EIR in response, are not significant in a way that would require recirculation of, or supplement to, the Draft EIR because they provide additional clarifications, and do not change any of the impact determinations, previously discussed in the Draft EIR. In addition, the Draft EIR was comprehensive and robust, compiled by scientists and experts in their respective environmental fields. West Basin as the lead agency under CEQA believes it complies with the requirements of CEQA and is supported with substantial evidence. . For these reasons, recirculation of the Draft EIR is not required.

Response NRG-2

West Basin acknowledges NRG's comment about the South Site. The EIR appropriately evaluates the South Site as an equal option to the North Site, and no change has been made to the Final EIR in response to this comment. As stated in the Draft EIR on page 7-59, "...West Basin has concluded that the ESGS North Site is environmentally superior to the ESGS South Site." West Basin's Board of Directors will ultimately decide if either site is appropriate for the ocean water desalination facility, if and when the Project is considered for approval.

Response NRG-3

The Draft EIR Subsection 3.5.1 describes the demolition and removal of existing NRG Units 3 and 4 at the ESGS North Site, and includes a discussion of initial excavation, construction, backfilling, grading and paving. The comment does not specify what additional information is required. As noted in the Draft EIR Table 3-11, West Basin would be required to complete an Application for Certification (AFC) Consistency Determination with the California Energy Commission (CEC) prior to construction, to determine if demolition would be consistent with the already approved AFC for the existing ESGS power plant. West Basin would also be required to receive a permit from the CEC to modify the existing energy facility, to accommodate the Project. Furthermore, Mitigation Measure HAZ-1 would require implementation of a Waste Management Plan for all hazardous and nonhazardous waste generated during facility construction and demolition activities.

Response NRG-4

Section 15124(d) of the CEQA Guidelines requires that an EIR describe the intended uses of the EIR, including by providing “A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies.” As required, the Draft EIR’s Section 3, *Project Description*, Table 3-11 (pages 3-38 through 3-42) provides a summary of the various environmental review and consultation requirements that could be required for the Project.

With respect to the California Energy Commission (CEC), Table 3-11 (page 3-39) acknowledges an action by the CEC may be required in order for the Project to proceed. The table notes that an AFC Consistency Determination may be required, along with a permit modification, as needed. The table goes on to explain the former would be required to determine whether demolition of existing facilities at the ESGS site would be consistent with the ESGS power plant’s existing CEC authorization (00-AFC-14C). The table notes the latter would be required for modification of the existing facilities to accommodate Project development.

With respect to the State Lands Commission (CSLC), the table (page 3-38) acknowledges that a General Surface Lease would be required for construction on CSLC lands. In addition, the table explains CSLC approval would be required to modify the existing CSLC lease for the ESGS, for Project use of the existing open-ocean intake system and to allow the change in use/concentrate discharge.

With respect to NRG, the table explains that a real estate lease or purchase agreement would be required. Specifically, the table notes that such agreement would be required for the desalination facility construction and operation on ESGS property.

The CEQA Guidelines Section 15125 instructs that “The EIR shall discuss any inconsistencies between the proposed Project and applicable general plans, specific plans, and regional plans.” The EIR’s Section 5, *Environmental Analysis*, identifies for each environmental topic the corresponding regulatory framework including related policies, plans, and regulatory requirements that would apply to the Project. Similarly, for each topic, the Draft EIR presents a discussion of impacts and mitigation measures, wherein potential conflicts with such requirements are addressed. To the extent the laws, ordinances, regulations and standards that apply to the existing assets on the Project site would also apply to the proposed Project, they are addressed. However, permits, leases, and other agreements to which the asset holder is subject are not general plans, specific plans, and regional plans subject to consistency review under CEQA.

As acknowledged in the Table 3-11 discussions presented above, the Draft EIR acknowledges that consultation and coordination with various state and local entities, as well as with NRG would be required. At present, it remains to be determined which NRG requirements would apply to the Project or be affected by the Project. Moreover, the terms of any agreements or modifications thereto resulting from such discussions are subject to pending negotiations. As a result, a detailed analysis of Project conformity with existing agreements between NRG and other entities would be premature at this time, and in any case is beyond the scope of CEQA.

Response NRG-5

Impacts relating to water quality during Project operations, including consideration of National Pollutant Discharge Elimination System (NPDES) permit requirements, are assessed in detail in the Draft EIR Subsection 5.9.4 under Impacts 5.9-1 (Project construction) and 5.9-2 (Project operation). As described in detail on pages 5.9-49 to 5.9-50, the onshore areas proposed for development, including the proposed sites for the desalination facility at the ESGS sites, are currently developed and/or disturbed, are largely covered with impervious surfaces, are generally flat, and are served by existing stormwater collection and conveyance systems. Development of the desalination facility would not substantially increase impervious surface area as compared to existing conditions. Therefore, implementation of the Project would not substantially alter the volume or rate of stormwater at the proposed ESGS site and would not alter the general character of stormwater quality as compared to existing conditions. Further, the desalination facility at either of the proposed ESGS sites would be designed, as required, with new on-site stormwater drainage collection and conveyance systems as well as stormwater quality Best Management Practices (BMPs) pursuant to applicable regulatory requirements, including compliance with the County's MS4 permit (described in detail in Subsection 5.9.1). West Basin would be required to prepare and implement a Standard Urban Stormwater Mitigation Plan demonstrating compliance with the City's MS4 permit. In accordance with the NPDES Municipal Stormwater Permit for MS4s, the Local Project would be required to implement post-construction stormwater BMPs, such as the use of pervious surfaces (i.e., concrete or pavement), bio-swales, vegetated buffers, and/or retention basins. A post construction Stormwater Pollution Prevention Plan (SWPPP) would be prepared to ensure appropriate maintenance measures for the BMPs. Compliance with the post-construction stormwater requirements would ensure that stormwater does not transport pollutants that impair or degrade the beneficial uses of receiving water bodies. Mandatory compliance with post-construction MS4 permit requirements would ensure the desalination facility site is developed in a manner consistent with regulations, plans, and policies described in Subsection 5.9.1, which include current and future NPDES waste discharge requirements.

Response NRG-6

The Draft EIR Subsection 3.4.1 provides a list of the chemicals that would be used for the proposed Project in Table 3-2 and discussed on pages 3-8 and 3-9. These chemicals would be stored within the desalination facility and would not be stored with or near El Segundo Generating Station chemical storage. As discussed on page 5.8-5, West Basin would be required to prepare a Risk Management Plan describing spill prevention and response procedures. As a part of the preparation of that Plan, West Basin would work with ESGS to integrate procedures, as needed. Upon completion, the Risk Management Plan would be submitted to the local CUPA (the Environmental Safety Division within the City of El Segundo Fire Department) for its review and approval.

Response NRG-7

Please refer to response to comment NRG-4, regarding the scope of CEQA as concerns Project conformity with authorizations and agreements held by others.

Response NRG-8

West Basin notes NRG's contact information for any future correspondence regarding this comment letter.

Response to Letter OFSP: Ocean Front Strand Properties

Response OFSP-1

While West Basin appreciates the comment, it expresses an opinion and does not specify any deficiencies in the analysis included in the Draft EIR. As a result, this comment has been noted for the record and no further response is necessary; see *Master Response: Non-CEQA issues*.

Response to Letter SCLA: Sierra Club – Angeles Chapter

Response SCLA-1

Responses to individual comments by the Sierra Club Angeles Chapter Water Committee are provided in response to comments SCLA-3 through SCLA-15.

Response SCLA-2

Responses to individual comments by the Sierra Club Angeles Chapter Water Committee are provided in response to comments SCLA-3 through SCLA-15.

Response SCLA-3

One of the goals of the proposed Project is to reduce reliance on imported water and improve water reliability and security in an environmentally responsible manner. West Basin's future potable and raw water demands are projected to be generally similar to existing demands as described in West Basin's 2015 Urban Water Management Plan (see UWMP Tables 3-5 and 3-6), due in part to the Regional Alliance formed by some of West Basin's retail agencies to meet the per capita reporting requirements (see West Basin's 2015 UWMP, Section 3.3). The amount of water provided by ocean water desalination (21,500 acre-feet) equates directly to the difference between total supplies and total demands (20,342 acre-feet) during a multi-dry year event similar to the 2012-2015 drought conditions, as shown in UWMP Table 5-5. The 20,342 AF multi-dry year event shortfall assumes the District continues to manage water supplies and reduce demand for water through the continued implementation of conservation savings, recycled water production, and the expansion of groundwater supplies by the retail agencies, to the maximum extent practicable. Draft EIR Table 2-1 displays the expected increases in these supplies between 2015-2040 (see also West Basin 2015 and 2010 UWMP Table ES-3).

But, to be clear, SB 606 and AB 1688 require the Department of Water Resources (DWR), in coordination with the SWRCB, to conduct necessary studies to recommend to the Legislature a standard for indoor residential use. Contrary to the comment, however, the legislation did not include requirements to achieve any specific gallons per capita per day (gpcpd) water use by 2025 or 2030. The legislation did establish 55 gpcpd as the ***standard for indoor residential use*** until January 1, 2025, and beginning January 1, 2025, established the greater of 52.5 gpcpd ***or a standard recommended by the DWR***, and beginning January 1, 2030, established the greater of 50 gpcpd ***or a standard recommended by the DWR*** as a ***standard for indoor residential use*** (emphasis added).

As lead agency, West Basin has evaluated a proposed Project located at the ESGS site that would produce 21,500 AFY. As part of the CEQA Alternatives analysis, the Draft EIR evaluates other site locations and technologies that could avoid significant impacts of the proposed Project while meeting most of the Project objectives. The analysis complies with CEQA Alternatives assessment requirements. If the RWQCB or other permitting agency requires additional analysis of alternative locations to site the treatment plant and intakes, or hybrid intake alternatives, West Basin will work with the regulators to provide the information.

Response SCLA-4

West Basin is committed to continued water use efficiency programs and will continue to pursue conservation as a component of the water supply portfolio. But the expansion of an existing conservation program does not meet the objective of diversification; it's just more of the same, and puts West Basin at greater risk of relying on customer responses to a rationing program during a drought; see response to comment LAW2-40 and CARS-3.

The need for 21,500 AFY equates directly to the difference between total supplies and total demands (20,342 acre-feet) during a multi-dry year event similar to the 2012-2015 drought conditions, as shown in UWMP Table 5-5. This is a clearly stated proposal for water supply diversification. The 20,342 af multi-dry year event shortfall assumes the District continues to manage water supplies and reduce demand for water through the continued implementation of conservation savings, recycled water production, and the expansion of groundwater supplies by the retail agencies, to the maximum extent practicable. Draft EIR Table 2-1 displays the expected increases in these supplies between 2015-2040. As noted in Section 4.5 of the 2015 and the 2010 UWMP, West Basin is actively diversifying its water supply portfolio beyond traditional imported water and groundwater supplies, and both the 2015 and 2010 UWMPs dedicate entire sections to discussing alternative supply programs such as recycled water (Section 9), desalinated ocean water and brackish groundwater (Section 10), and increased water use efficiency programs (Section 7). West Basin is pursuing these alternative supplies as part of its water reliability initiative.

Even with the maximum practicable conservation savings, increases in recycled water production, and expansion of groundwater supplies by retail agencies, West Basin's service area could experience a shortage of 20,342 acre-feet by 2020 and 21,500 AF by 2025 and beyond. In other words, the proposed Local Project is sized at 20 MGD (or approximately 21,500 AFY), to directly respond to the multi-dry year event shortfall. Thus, the proposed Project would provide the quantity of water necessary to make up the expected shortfall in imported water supplies for what are expected to be more frequent and severe future droughts. See also *Master Response: Water Supply Alternatives*.

Response SCLA-5

Regarding water rates and cost as result of the proposed Project the commenter is referred to *Master Response: Environmental Justice* (see also Final EIR Section 18) as well as *Master Response: Cost and Rates*.

Regarding the suggested community-based improvements referenced by the commenter, please refer to Section 7, *Alternatives to the Proposed Project*, which addresses conservation on page 7-6.

Response SCLA-6

In response to this and other comments expressing concern about the siting of the Project and associated intake and discharge structures at the ESGS facility, West Basin reviewed publicly available data for other similar intake and outfall facilities within the Santa Monica Bay. This

analysis compares the existing 316(b) data from the ESGS, the Scattergood Generating Station (SGS), and the Redondo Beach Generating Station (RBGS), and evaluates the differences in planktonic species' variation and densities, and the potential levels of entrainment that could result from a desalination plant at each location. Results of the analysis (see Final EIR Appendix 12) indicate that the preferable location for a project's ocean water intake in coastal California must be as distant as possible from rocky reef/hard substrate habitat, coastal lagoons and estuaries, and marine protected areas (MPAs) in order to minimize the entrainment of larval fish, including special status and managed fish and invertebrate taxa. Based on available data, the evidence indicates the ESGS is the "best available" site in SMB to minimize the intake and mortality of marine life. See *Master Response: Supplemental Studies*.

Response SCLA-7

The Draft EIR Section 4.1 presents the approach to the cumulative analysis. As explained in the Draft EIR on page 4-2 to 4-3, both the list approach and the summary of Projections approach are used to determine the Project's cumulative impacts, depending upon which approach is appropriate/relevant for any one environmental issue area. Potential cumulative impacts on marine resources are presented in Draft EIR Subsection 5.11.5; see also response to comment MBCH3-9.

Response SCLA-8

Regarding the commenter's concern over the Draft EIR's "net zero" scenario, see *Master Response: Greenhouse Gas Emissions and Energy Use*. Regarding the commenter's statement about water supply alternatives, see *Master Response: Water Supply Alternatives* and *Master Response: Greenhouse Gas Emissions and Energy Use*.

Response SCLA-9

The comment's statement that the Draft EIR concludes that direct population growth would not be induced because the Project does not provide new homes only represents a fraction of the analysis presented in Section 6.2. As stated on page 6-8 and 6-9, "While the Project would provide a new water source within West Basin's service area, it would replace imported water distribution through the service area and therefore would not induce future growth. Rather, as a project to support future reliability by creating a new local water source, the Project would accommodate existing demand and a very small (0.4 percent) annual increase in demand such that water infrastructure reliability would not be an impediment to already planned growth. As a water supply agency, West Basin has no authority over the approval of General Plans that forecast population increases. Additionally, the Project would be implemented in phases to ensure the new supply is appropriately keeping up with population growth." The Draft EIR therefore concludes that the Project neither supports nor encourages growth within West Basin's service area to a greater degree than presently estimated by the 2015 UWMP and land use agencies with jurisdiction over the Project area.

The comment summarizes Sierra Club policy that states that seawater desalination plants must not induce growth. As evidenced above and explained on pages 6-2 through 6-9 of the Draft EIR, the proposed Project would not induce growth.

Regarding the comment's statement that the Project's reduction in the use of imported water needs to be "backed up with commitment," and that there needs to be a discussion of the mechanism by which West Basin will work with Metropolitan regarding the water offset, the following description of West Basin's relationship with Metropolitan is provided below.

West Basin purchases imported water from Metropolitan when delivery is taken by a customer water agency (i.e. municipality, water company) at a turnout (meter structure) on a Metropolitan pipeline. If an alternative water supply is made available to the customer water agency for demands that replace or offset imported water, the customer water agency will forgo taking delivery of an equivalent volume of imported water from Metropolitan, and West Basin will not purchase that imported water. This mechanism directly offsets imported water. West Basin's financial commitment to providing replacement water provides an equal offset in imported water use. West Basin's reduction in demand for imported water will also be reflected in Metropolitan's short- and long-term demand forecasts, thus reducing the overall demand for imported water in Metropolitan's service area.⁵

One closely related example is how recycled water produced and sold by West Basin to a customer water agency directly offsets imported water. West Basin financed, constructed and operates its Recycled Water System which similarly required West Basin to sell recycled water to obtain revenue to offset costs. The Recycled Water System has operated for over two decades and has resulted in a consistent offset of what was an equal demand for imported water. When a customer water agency takes delivery of recycled water through a connection to the recycled water system to irrigate a park, for example, the agency forgoes taking delivery of an equivalent volume of imported water for that same end use. Desalinated ocean water effectively offsets imported water demand in a similar fashion as recycled water. As recycled water production increases in the future, the amount of imported water needed to meet local demands will decrease. However, even the combination of maximum recycled water and the proposed Regional Project would not entirely eliminate the need for imported water by Metropolitan to the West Basin service area.

Furthermore, the fact that every acre-foot (approximately 326,000 gallons) of the 37,060 acre-feet of recycled water produced and sold by West Basin (fiscal year 2017-18) offsets imported water is evidenced by West Basin receipt of a monetary incentive from Metropolitan for each unit of recycled water that is contractually only available to West Basin if it replaces the use of imported water⁶. Because of this Metropolitan's short- and long-range demand forecasts do not include the demand associated with West Basin's water recycling service as an imported water demand.

Response SCLA-10

The application of a 1 mm screen slot size on an open ocean water intake, in combination with an intake flow rate of <0.5 fps at the screen (which translates to an approach velocity of 0.141 fps)

⁵ Metropolitan conducts a short-term water sales forecast to set water rates and conduct water operations planning and a long-term demand forecast in its Integrated Resources Plan (IRP) and Regional Urban Water Management Plan (RUWMP).

⁶ Local Resources Program Agreement Between Metropolitan Water District of Southern California and West Basin Municipal Water District, (March 17, 2006).

(GHD 2018), will reduce the magnitude of entrainment over an unscreened intake employing higher intake flow rates, as currently used by most once-through cooling operations along the California coastline as required by the OPA. As stated by the comment, the State Water Board currently does allow a 1 percent reduction in entrainment estimates if a wedgewire screen is employed on an ocean intake, and that is based on the Expert Review Panel’s qualified conclusion, *when all organisms in seawater are considered* (emphasis added). However, as documented in the Draft EIR (Draft EIR pages 5.11-49 through 5.11-54) and specifically in Draft EIR table 5.11-9, many larval fish with head and/or body sizes and diameters > 1 mm would potentially be excluded from entrainment. This exclusion may reduce the potential ecosystem effects of entrainment by *more than* 1 percent⁷ (emphasis added), which calls into question the State’s assignment of that percentage reduction. In addition, as presented in the Draft EIR, the actual magnitude of larval and planktonic entrainment under the application of a 1 mm wedgewire screen and flow rates of <0.5 fps have not been fully studied in California coastal waters. Regardless of the limited availability of actual entrainment data for a Project comparable to the proposed Project, the Draft EIR determined that any entrainment posed a significant impact on marine ecosystems. In fact, the Draft EIR states, “At present, the extent of protection that wedgewire screens could provide to prevent entrainment of larval fish and invertebrates in the Project marine study area is unknown.” (Draft EIR page 5.11-53). The Draft EIR further concluded that the application of Mitigation Measure MM BIO-M2 would reduce this potential impact to less than significant after mitigation.

Response SCLA-11

The Draft EIR addresses the presence of marine protected areas (MPAs) within SMB in Subsection 5.11.2 under Significant Ecological Areas and specifically identifies the MPA locations in Figure 5.11-2. As the comment indicated, in some cases, the source water area could include the MPAs that flank SMB. When this occurs, the potential entrainment of those larval organisms is included in the Empirical Transport Modeling (ETM) estimates of entrainment and the associated Area of Production Foregone (APF) calculations. For several species of special concern, such as black abalone and Giant seabass, additional calculations of survivability and transit time from any MPAs to the Project marine study area were made and presented in the discussion of Impact BIO-M 5.11-1. Finally, see *Master Response: Marine Biological Resources Study Area* for clarification on the rationale used to establish the marine study area.

Response SCLA-12

See response to comment HBCH-18.

Response SCLA-13

The threshold for using subsurface intakes is feasibility. As explained and summarized in the Draft EIR Subsection 2.10.10, West Basin since 2007 has extensively evaluated the technical,

⁷ The Ocean Plan Final Staff Report and Substitute Environmental Documentation (Adopted May 2015), Appendix H, page H-300, summarizes a similar conclusion: if the entrainment study evaluates organisms larger than 10.0 mm, a 1 mm slot size wedgewire screen reduces entrainment by 100 percent; and if the study evaluates organisms larger than 1.0 mm, entrainment is reduced by 9 percent. And when all organisms in seawater are considered, the entrainment is reduced by 1 percent.

economic, social and environmental feasibility of incorporating subsurface seawater intake (SSI) systems into Project design. In 2015, West Basin initiated a site-specific study of SSIs to evaluate their feasibility for providing feedwater to the proposed desalination facility at the ESGS facility; see Draft EIR Appendix 2. As explained in the Draft EIR Subsection 7.2.3, the site-specific study outlined the local geology and proximity to subsurface ocean water and evaluated numerous technologies that could access subsurface ocean water and concluded that due to the local geology, existing coastal development, subsurface water quality, potential for interference with the operation of the West Coast Seawater Barrier Project, and untested expensive technology, subsurface intakes would be infeasible. In response to this and similar comments on the Draft EIR, West Basin prepared a supplemental Subsurface Intake Study; see *Master Response: Supplemental Studies* and Final EIR Appendix 13.

Additionally, the analysis of potential ocean water intake entrainment as well as discharge shear stress impacts on marine plankton is addressed in the Draft EIR on pages 5.11-49 through 5.11-54 and 5.11-58 through 5.11-60, respectively. The Draft EIR acknowledges that regardless of the magnitude of the impact of entrainment, adequate mitigation to restore or enhance marine or coastal habitat must be implemented pursuant to the OPA, which mandates that impacts on all marine life be mitigated. Therefore, the Draft EIR concludes that implementation of Mitigation Measure BIO-M2 would reduce Project related entrainment impacts of all marine taxa to less than significant after implementation of mitigation measures. The Draft EIR also recognizes that based on the absence of suitable habitat in the Project marine study area, the absence of substantial larval densities of special-status species in the Project marine study area, and the natural life history of special-status species of concern present in the Project marine study area, the potential for entrainment of these special-status species is negligible to non-existent and the impact would be less than significant.

Response SCLA-14

As explained in the Draft EIR Section 2.10, West Basin was formed in 1947 as an imported water wholesaler for the southwestern portion of Los Angeles County. West Basin's 185-square-mile service area is composed of 17 cities and several unincorporated areas. As a regional water wholesaler, West Basin purchases water from the MWD as one of its 26 member agencies. West Basin then sells water to its customers, the local retailers, who in turn sell water to their customers through local distribution systems that currently manage diurnal demands. The local systems would continue to operate as they have; only the West Basin portfolio would be different.

For the Local Project, new conveyance infrastructure would convey product water from the ocean water desalination facility to the existing distribution system that delivers potable water to local area and regional supply feeders owned by MWD. The locations of existing MWD facilities are shown in Figure 3-5; see also Draft EIR Subsection 3.4.1. For the Regional Project, a 48-inch- or 54-inch-diameter Regional Pipeline would be extended from the 54-inch Local Project Pipeline within El Segundo Boulevard to a connection on MWD's existing Sepulveda Feeder on Van Ness Boulevard. The alignment for the Regional Pipeline would be one of the variant alignments shown in Figure 3-5. The new conveyance facilities have been evaluated in all the EIR Section 5 topical sections.

Response SCLA-15

The comment's summary of concerns is responded to thoroughly in the responses to comments presented herein. Regarding the expression of opinion, see *Master Response: Non-CEQA Issues*.

Response to Letter UPRR: Union Pacific Railroad Company

Response UPRR-1

West Basin acknowledges Union Pacific's concern. As noted in Draft EIR Section 3.2 (Project Location), land uses surrounding the Project site include Santa Monica Bay to the west, Vista del Mar and the Chevron El Segundo Oil Refinery to the east, the Chevron Marine Terminal to the north, and 45th Street and the city of Manhattan Beach to the south. Other notable nearby land uses include the Los Angeles Department of Water and Power's Scattergood Generating Station located approximately 0.25 miles north, the City of Los Angeles-owned Hyperion Water Reclamation Plant located 0.5 miles north, and LAX located approximately 2.5 miles north. The El Segundo Branch rail spur is the closest identifiable UPRR facility in proximity to the proposed Project site, that isn't within the Chevron Oil Refinery property. The Abandoned Rails website (www.abandonedrails.com/El_Segundo_Branch) reports the spur is approximately 2 miles long, and extended northwest from the still-active Union Pacific (ex-Pacific Electric, ex-Southern Pacific) El Segundo branch at a point called "Wise Transfer," which is located east of Sepulveda Boulevard and the Chevron Oil Refinery. The website explains passenger service ended in 1930 and it is not known when the last freight train ran on this spur, but in December 1975, there was a "line closing ceremony" at the end of the line in El Segundo. The rails were reportedly removed in 1976. Therefore, the Project is unlikely to impact any existing Union Pacific rail line facilities.

Response UPRR-2

Mitigation Measure TRA-1 requires West Basin to prepare a Traffic Control Plan, which will identify measures that minimize the potential for the Project's construction-related traffic to result in traffic delays or impacts on existing circulation patterns and intersections/roadways Level of Service (Draft EIR page 5.15.-20). The Traffic Control Plan will include potential effects to at-grade railroad crossings.

Response UPRR-3

While Union Pacific's rail facilities at the Chevron facility are located near the proposed Project, none of the construction activities associated with the Project would occur within Chevron's facilities. The Project is located west of Vista Del Mar Boulevard which divides the Project site and the Chevron site. No workers associated with Project construction would be walking anywhere near the vicinity of Union Pacific's railway lines on the Chevron site. As a result, risk of trespassing or vandals resulting from the Project are negligible.

Response UPRR-4

While Union Pacific's rail facilities at the Chevron facility are located near the proposed Project, none of the construction activities associated with the Project would occur within Chevron's facilities. No proposed Project-related trucks or vehicles would be in transit near the vicinity of Union Pacific's railway lines on the Chevron site. As a result, increased noise from train horns would not occur as a result of the proposed Project. Additionally, construction of the proposed Project would occur from the hours of 7 a.m. to 7 p.m. (Draft EIR page 5.12-16), therefore ambient nighttime noise levels would not be impacted by any proposed Project-related noise.

Response UPRR-5

Impacts relating to on-site and off-site flooding and erosion from stormwater runoff and/or altered drainage patterns associated with the Project are assessed for both the Local and Regional Project in the Draft EIR Subsection 5.9.4. As described in detail under Impacts 5.9-2 (page 5.9-49), Impact 5.9-4 (page 5.9-65), and Impact 5.9-5 (page 5.9-69), construction and operation of the Project would not substantially alter the existing on-site drainage patterns or the slope/gradient of the ESGS North or South Site. The ESGS site is currently entirely developed or disturbed, and as a result, surface areas are generally impervious or are compacted earth with low permeability. The site's pre-existing drainage patterns would not be altered significantly compared to existing conditions. The site would continue to be serviced by the existing stormwater system, and the rate, volume, and character of stormwater generated on-site would not be substantially different. Compliance with post-construction MS4 permit stormwater requirements would ensure that on-site drainage patterns are not altered; there would be no substantial increase in stormwater runoff compared to existing conditions and flooding related to altered drainage patterns or changes to stormwater runoff rate or volume would not occur on- or off-site. Impacts relating to erosion, siltation, flooding, or increased stormwater runoff on- and off-site due to altered drainage patterns resulting from construction or operation of the Local and Regional Project would be less than significant.

Response UPRR-6

During construction, West Basin and its contractors will coordinate with the railroad as necessary to ensure that railroad safety protocols are followed and that worker and public safety is maintained.

Response UPRR-7

Union Pacific Railroad will be notified of all future hearings and other matters as required by the CEQA Guidelines.