



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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In the Matter of the Application of California-American Water Company (U 210 W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates.

A.12-04-019  
(Filed April 23, 2012)

**MOTION FOR RECIRCULATION OF THE NOTICE OF  
AVAILABILITY OF THE COMMISSION'S DRAFT  
ENVIRONMENTAL IMPACT REPORT  
(PUB. RESOURCES CODE § 21092, subd. (b))**

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Attorneys for Marina Coast Water District

Date: June 19, 2015

Pursuant to Rule 11.1 of the Commission's Rules of Practice and Procedure, Marina Coast Water District ("MCWD") moves the Commission and the Presiding Officer, Assigned Administrative Law Judge ("ALJ") Gary Weatherford, for an order or ruling requiring the Commission's Energy Division to recirculate its Notice of Availability ("NOA") of the Commission's Draft Environmental Impact Report ("DEIR") for the Applicant's Monterey Peninsula Water Supply Project ("MPWSP"), due to the Commission's clear failure to comply with the requirements of the California Environmental Quality Act ("CEQA"). Specifically, the April 30, 2015 NOA violated the requirement that it include "the address where copies of . . . all documents referenced in the draft environmental impact report or negative declaration, are available for review . . ." by the public during normal business hours. (Pub. Resources Code § 21092, subd. (b).) In addition, at the time of the issuance of the NOA and thereafter, to and including the present day, the Commission has failed to make "all documents referenced in the environmental impact report" available for review and "readily accessible" to the public during normal business hours. (*Ibid*; Cal. Code Regs., tit. 14, § 15087(c)(5).) These statutory violations materially impede and undermine the ability of parties and the public to comment on the DEIR. This motion is supported by the following memorandum and the concurrently-filed Declaration of Ruth Stoner Muzzin ("Muzzin Decl.") and the exhibits thereto.

Written public comments on the DEIR are presently due on July 1, 2015. (April 30, 2015 NOA; Email Ruling of June 16, 2015 (ALJ Burton L. Mattson for the Assigned ALJ).) Therefore, time is of the essence in the Commission's consideration of this motion. Because the violation of CEQA is clear and because "[n]othing in [Rule 11.1] prevents the Commission or the Administrative Law Judge from ruling on a motion before responses or replies are filed"

(Rule 11.1(g)), MCWD respectfully requests resolution of this motion within the next five (5) calendar days, *i.e.*, on or before June 24, 2015.

DATED: June 19, 2015

Respectfully submitted,

FRIEDMAN & SPRINGWATER LLP

By:     /s/ Mark Fogelman      
Mark Fogelman  
Ruth Stoner Muzzin  
Attorneys for  
MARINA COAST WATER DISTRICT

MEMORANDUM OF POINTS AND AUTHORITIES

Section 21092, subdivision (b)(1) of the Public Resources Code as well as the CEQA Guidelines (Cal. Code Regs., tit. 14), section 15087(c)(5), require that “all documents referenced in the environmental impact report” be available for review and “readily accessible” to the public. The location where copies of all documents referenced in a DEIR are available for public review must be disclosed in a public agency’s NOA. (Pub. Resources Code ¶ 20192, subd. (b)(1).) The Commission has not made the documents referenced in the DEIR “readily accessible” to the public, and the NOA released by the Commission’s Energy Division did not comply with NOA requirements in form or in substance.

The location where copies of all documents referenced in the DEIR for the MPWSP was not mentioned in the Commission’s April 30, 2015 NOA. Therefore the Commission’s notice did not comply with CEQA. (Pub. Resources Code § 21092, subd. (b)(1); *Ultramar v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 702-703; *see also* CEQA Guidelines § 15087(c)(5).) Nonetheless, on June 11, 2015 MCWD attempted to access and review the documents referenced in the Commission’s DEIR and Appendices for the MPWSP by contacting and visiting the Commission. (Muzzin Decl., ¶¶ 5-7; p. 3 of Ex. A thereto.) Late in the afternoon of June 12, 2015 MCWD gained access to many, but not all, of those documents by signing for a CD provided to it at that time by the Commission’s Energy Division after MCWD had requested access to the documents. (Muzzin Decl., ¶¶ 8-10; p. 1 of Ex. A; Ex. B; pp. 1-2 of Ex. C; Ex. D.) On June 17, 2015, MCWD requested copies of the documents referenced in the DEIR and Appendices that were missing from the CD, which it has not yet received. (Muzzin Decl. ¶¶ 14-16; Ex. D at pp. 1, 3-5.)

However, MCWD's limited success in accessing some of the documents referenced in the DEIR and Appendices does not serve to provide it or the public with the ready accessibility that is required during the full comment period. As noted by leading CEQA commentators, Remy and Thomas:

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

Remy, Thomas and Moose, *Guide to the California Environmental Quality Act*, p. 342-43 (Solano Press, 2007). California courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process. (*Ultramar v. South Coast Air Quality Management Dist.*, *supra*, 17 Cal.App.4th at 702-703.) Here, the violation is much more serious. Because the Commission has not complied with the requirement to disclose the location where copies of all documents referenced in a DEIR are available for public review, or the requirement to make those documents readily accessible to the public for the full comment period, the public as well as MCWD has been deprived of the ability to access and review all documents referenced in the DEIR. Therefore, the Commission is not in compliance with CEQA and its NOA for the MPWSP DEIR must be re-circulated.

MCWD alerted the Commission to its failure to comply with CEQA and requested re-circulation beginning on June 15, 2015. (Muzzin Decl., ¶¶ 11-20; Exs. C, D and E.) The Energy Division acknowledged MCWD's request on the afternoon of June 18, 2015. (Muzzin Decl. ¶¶ 19-20; Ex. E.) Yet, as of the date of this motion, four days after its initial request, MCWD has not received an indication that the Commission intends to cure this obvious, material violation of

CEQA, either prior to the expiration of the current deadline for DEIR comments or at any time. (Muzzin Decl., ¶ 21.) Therefore, MCWD brings this motion to alert the ALJ to the deficiency of the Commission's NOA and to obtain the Commission's compliance with CEQA by making the documents referenced in the DEIR for the MPWSP and the Appendices thereto readily available to the public, re-circulating the NOA with a clear statement of the location(s) where such documents are available, and restarting the public comment period.

Re-circulation of the NOA and restarting the public comment period should prejudice no-one and should not negatively impact the Commission's schedule to release a final environmental impact report and proposed decision on A.12-04-019 by the end of 2015. To the contrary, it is in the interests of the parties to A.12-04-019 and the public, as well as the Commission, to have the Commission's CEQA process conducted in a fully accessible, transparent and lawful manner, and in compliance with CEQA's express statutory requirements. All parties will benefit by the grant of this motion, because the Commission's CEQA process and the ability of parties and the public to rest their comments on full information would then not be impaired by a defective NOA and the failure to make all documents referenced in the DEIR readily accessible for public review during the comment period.

EXPEDITED CONSIDERATION IS APPROPRIATE

Because written public comments on the DEIR are presently due on July 1, 2015 (April 30, 2015 NOA; Email Ruling of June 16, 2015 (ALJ Burton Mattson, for the Assigned ALJ)), time is of the essence in the Commission's consideration of this motion. Due to the clear nature of the violation of CEQA, it would be appropriate for a ruling or order requiring compliance to issue promptly, without need for comment by the Applicant or other parties. "Nothing in [Rule 11.1] prevents the Commission or the Administrative Law Judge from ruling on a motion before

responses or replies are filed.” (Rule 11.1(g).) Therefore, and in view of the July 1, 2015 comment due date, MCWD respectfully requests resolution of this motion within the next five (5) calendar days, *i.e.*, on or before June 24, 2015.

CONCLUSION

MCWD requests that an order or ruling issue promptly, requiring that:

- 1) All of the documents referenced in the DEIR for the MPWSP and the Appendices thereto be made readily accessible to the public for review;
- 2) The NOA of the DEIR for the MPWSP be re-circulated;
- 3) The re-circulated NOA include a clear statement of the location(s) where the documents referenced in the DEIR for the MPWSP and the Appendices thereto are available for public review; and
- 4) The re-circulated NOA restart the public comment period for the DEIR.

DATED: June 19, 2015

Respectfully submitted,

FRIEDMAN & SPRINGWATER LLP

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