

# **Appendix C**

## **Source Water Rights White Paper**

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TO: Bob Holden, MRWPCA

FROM: Barbara Schussman, Laura Zagar and Anne Beaumont

RE: *Pure Water Monterey Groundwater Replenishment Project: Water Rights Analysis*

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## **Introduction**

The Proposed Groundwater Replenishment Project (the Proposed Project) consists of two components: the Pure Water Monterey Groundwater Replenishment improvements and operations that will develop high-quality replacement water for existing urban supplies, and an enhanced agricultural irrigation component.

The Proposed Project would recycle and reuse water from a number of sources, including:

- A. Municipal wastewater,
- B. Industrial wastewater (agricultural wash water),
- C. Urban stormwater runoff, and
- D. Surface water diversions.

Below is an analysis of each water source, including the legal framework and current status of water rights for each source. A summary chart is included at the end.

### **A. Municipal Wastewater Collection and Treatment System**

#### **1. Brief Description of Project Use**

The Monterey Regional Water Pollution Control Agency (MRWPCA) collects municipal wastewater from communities in northern Monterey County and treats it at its Regional Wastewater Treatment Plant (Regional Treatment Plant). Most of the wastewater is recycled for crop irrigation at an onsite tertiary treatment plant called the Salinas Valley Reclamation Plant. The tertiary-treated wastewater is delivered to growers through a conveyance and irrigation system called the Castroville Seawater Intrusion Project. The treated wastewater that is not recycled for crop irrigation is discharged to the ocean through MRWPCA's existing ocean outfall. The Proposed Project would include improvements that would enable more of the municipal wastewater to be recycled than is possible today; thus, less municipal wastewater would be discharged through the ocean outfall.

## 2. *Legal Framework*

Unless otherwise provided by agreement, the owner of a wastewater treatment plant has the exclusive right to the treated wastewater it produces as against anyone who has supplied the water discharged into the wastewater collection and treatment system, including a person using water under a service contract.<sup>1</sup> MRWPCA therefore has the exclusive right to use municipal wastewater that is discharged into its collection system, except as that right has been varied by contractual arrangements.

Here, MRWPCA has entered into a number of such contracts, including contracts that assigned rights to Marina Coast Water District and Monterey County Water Resources Agency (Water Resources Agency). We understand MRWPCA has entered into the following:

- The 1989 Annexation Agreement between MRWPCA and the Marina Coast Water District provides the Marina Coast Water District with the right to obtain treated wastewater from MRWPCA. The Marina Coast Water District has not exercised its recycled water rights, but may do so in the future.
- The 1992 agreement between MRWPCA and Water Resources Agency (including amendments) provides for the construction and operation of the Salinas Valley Reclamation Plant by MRWPCA to provide water treated to a level adequate for agricultural irrigation for use by the Castroville Seawater Intrusion Project. In particular, Section 3.03 of the 1992 Agreement (Amendment 3) provides that MRWPCA commits all of its incoming wastewater flows to the treatment plant from sources within the 2001 MRWPCA service area, up to 29.6 million gallons per day, except for flows taken by the Marina Coast Water District under the Annexation Agreements, losses, flows not needed to meet the Water Resource Agency's authorized demand, and flows to which MRWPCA is otherwise entitled under the agreement.
- In 1996, pursuant to another Annexation Agreement, the Marina Coast Water District received the right to tertiary-treated water from the Salinas Valley Reclamation Plant, in satisfaction of the 1989 agreement rights.

To address these and other water rights, the stakeholder agencies entered into a Memorandum of Understanding (MOU). The MOU reaffirmed the Marina Coast Water District's and Water Resources Agency's recycled water entitlements, and presented a proposal for collection of additional source waters to meet the Proposed Project objectives.

Importantly, the MOU is intended to provide a framework for negotiation of a Definitive Agreement and does not create a binding contractual obligation. The Definitive Agreement would establish the contractual rights and obligations of the parties. To date, the Definitive

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<sup>1</sup> Cal. Water Code § 1210.

Agreement has not yet been completed. If a Definitive Agreement is reached, it would be approved after the EIR is certified.

### **3. *Status of Water Rights***

Because the MOU is not binding, it is not sufficient to secure the water rights at this time. These water rights would need to be addressed and resolved in the forthcoming Definitive Agreement. Until then, the existing agreements with the Marina Coast Water District and the Water Resources Agency could impact the source water for the Proposed Project. Although the Definitive Agreement is needed to secure these water rights, the MOU demonstrates a reasonable likelihood that this source of water can be obtained.

## **B. *Salinas Agricultural Wash Water System***

### **1. *Brief Description of Project Use***

Water from the City of Salinas agricultural industries, 80% to 90% of which is water used for washing produce, is currently conveyed to ponds at the Salinas Industrial Wastewater Treatment Facility for treatment (aeration) and disposal by evaporation and percolation. The Proposed Project would include improvements that would enable the agricultural wash water to be conveyed to the Regional Treatment Plant to be recycled. The Proposed Project also includes improvements at the Salinas Industrial Wastewater Treatment Facility to allow storage of agricultural wash water and south Salinas stormwater in the winter and recovery of that water for recycling and reuse in the spring, summer and fall.

### **2. *Legal Framework***

The City of Salinas has the exclusive right to the treated wastewater it collects in its system and treats at the Salinas Treatment Facility, unless modified in a contractual agreement.<sup>2</sup> The City of Salinas thus has an exclusive right to the agricultural wash water discharged to its system, except as it has been varied by contractual arrangements.

### **3. *Status of Water Rights***

Since the City of Salinas currently has the exclusive right to its treated wastewater, a contract would be needed between MRWPCA and the City of Salinas for the diversion and use of agricultural wash water. Although no agreement for the use of agricultural wash water is yet in effect, we understand that the City of Salinas has been working cooperatively with MRWPCA, demonstrating a reasonable likelihood that this source of water can be obtained.

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<sup>2</sup> Cal. Water Code § 1210.

## **C. Salinas Stormwater Collection System and Lake El Estero**

### **1. *Brief Description of Project Use***

Stormwater from urban areas in southern portions of the City of Salinas is currently collected and released to the Salinas River through an outfall near Davis Road. The Proposed Project would include improvements that would enable Salinas Stormwater to be conveyed to the Regional Treatment Plant to be recycled.

In addition, the City of Monterey actively manages the water level in Lake El Estero so that there is storage capacity for large storm events. Prior to a storm event, the lake level is lowered by pumping or gravity flow for discharge to Del Monte Beach. The Proposed Project would include improvements that would enable water that would otherwise be discharged to the beach to instead be conveyed to the Regional Treatment Plant to be recycled.

### **2. *Legal Framework***

To divert stormwater and dry weather flow from urban areas, agreements are needed between MRWPCA and the local agencies that currently collect and convey the flows in man-made facilities for discharge to surface waters. These local agencies include the City of Salinas for urban runoff/stormwater source water from the Salinas River and the City of Monterey for the Lake El Estero source water that otherwise would be discharged into the Monterey Bay. Stormwater runoff from urban areas through storm drain infrastructure (i.e., in the City of Salinas or Monterey) does not become water of the state until it is discharged into a river or channel.

### **3. *Status of Water Rights***

MRWPCA would need to obtain water rights from the applicable local agencies, including the City of Salinas and the City of Monterey. We understand that there are currently no contractual arrangements or permits for diversion of stormwater or urban/agricultural runoff to the MRWPCA wastewater collection and conveyance system. However, such agreements are being pursued by MRWPCA. MRWPCA is also in the process of adjusting its connection fees and rates for discharges of stormwater and urban runoff to the wastewater collection system. We understand that the City of Salinas and the City of Monterey have been working cooperatively with MRWPCA, and agreement is reasonably likely. This demonstrates a reasonable likelihood that this source of water can be obtained.

## **D. Reclamation Ditch / Tembladero Slough and Blanco Drain Diversions**

### **1. *Brief Description of Project Use***

The Reclamation Ditch is a network of excavated earthen channels used to drain natural, urban, and agricultural runoff and agricultural tile drainage. The Proposed Project would include improvements that would enable water from the Reclamation Ditch watershed to be diverted in

two locations—from the Reclamation Ditch at Davis Road and from Tembladero Slough (to which the Reclamation Ditch is a tributary) near Castroville—to be conveyed to the Regional Treatment Plant to be recycled.

The Blanco Drain collects water from approximately 6,400 acres of agricultural lands near Salinas. The Proposed Project would include improvements that would enable water in the Blanco Drain to be diverted and conveyed to the Regional Treatment Plant to be recycled.

## **2. *Legal Framework***

Water that enters surface streams and rivers is considered water of the state. A water rights permit is required to impound or divert waters of the state, except for certain riparian uses. Transfer of surface water flows out of known and defined channels for recycling would be a consumptive use that may come under the jurisdiction and regulation of the State Board.

Water rights permits from the State Board would be required for surface water diversions from the Reclamation Ditch, Blanco Drain, and Tembladero Slough. These source waters include agricultural return flow (overland flow and tile drainage), stormwater flow, and urban runoff. The State Board will require a completed CEQA document before issuing a permit.

In considering an application to appropriate water, the State Board considers a number of factors.<sup>3</sup> Specifically, the State Board considers “the relative benefit to be derived from (1) all beneficial uses of the water concerned including, but not limited to, use for domestic, irrigation, municipal, industrial, preservation and enhancement of fish and wildlife, recreational, mining and power purposes, and any uses specified to be protected in any relevant water quality control plan, and (2) the reuse or reclamation of the water sought to be appropriated, as proposed by the applicant. The board may subject such appropriations to such terms and conditions as in its judgment will best develop, conserve, and utilize in the public interest, the water sought to be appropriated.”<sup>4</sup> The State Board is guided by the policy that domestic use is the highest use and irrigation is the next highest use of water.<sup>5</sup> The Proposed Project is consistent with these factors and it does not appear that any of the factors considered would reduce the likelihood of obtaining the necessary permits.

The Water Resources Agency submitted an application in April 2014 to the State Board to appropriate waters of the Blanco Drain, the Reclamation Ditch, and Tembladero Slough. Specifically, it applied to divert up to 25,000 acre-feet per year from each of the two water bodies at a combined rate of diversion of up to 100 cfs. The application is undergoing amendment to reflect the quantities of water that would be needed for the Proposed Project.

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<sup>3</sup> Cal. Water Code §§ 1250 et seq.

<sup>4</sup> Cal. Water Code § 1257.

<sup>5</sup> Cal. Water Code § 1254.

The MOU specifies that these water rights would be retained exclusively by the Water Resources Agency under the permit, but that all parties would pay pro rata costs associated with the procurement and retention of these water rights. The parties also agreed to work jointly on obtaining the needed water rights through amendments to the permit application.

On November 10, 2014, the State Water Resources Control Board sent a letter stating that staff had found the application was incomplete for several reasons:

1. The nature and amount of the proposed use is not clearly stated (Water Code section 1260(c));
2. No information is provided regarding potential effects on fish and wildlife (Water Code section 1260(j));
3. No information is provided to demonstrate a reasonable likelihood that unappropriated water is available for appropriation (Water Code section 1260(k));
4. Proper maps were not included (23 CCR 715 et seq.).

The parties are currently working together to provide responses to the application deficiencies that are needed to perfect the application.

### 3. *Status of Water Rights*

Several steps need to be taken to secure these water rights. As a preliminary matter, the identified deficiencies in the Water Resources Agency’s application are being corrected, so that the necessary permits can be obtained from the State Board. Second, the MOU indicates that the Water Resources Agency would hold all of the rights to these waters under the Definitive Agreement, once drafted. A separate agreement would therefore be necessary between the Water Resources Agency and MRWPCA to ensure that the Proposed Project has sufficient water rights to this source. Therefore, these water rights are not secured yet. However, because the Water Resources Agency has submitted an application for water rights, and given the terms of the MOU, there is a reasonable likelihood that this source of water can be obtained.

### E. **Summary Chart**

<b>Source of Water</b>	<b>Status of Water Rights</b>
Municipal Wastewater Collection and Treatment System	The MOU is not binding; the forthcoming Definitive Agreement would address and resolve competing water rights of Marina Coast Water District and Monterey County Water Resources Agency.
Salinas Agricultural Wash Water System	A contract is needed between MRWPCA and the City of Salinas for diversion and use of the



	agricultural wash water.
Salinas Stormwater Collection System and Lake El Estero water	Contracts are needed between MRWPCA and the applicable local agencies, including the City of Salinas and the City of Monterey.
Reclamation Ditch / Tembladero Slough, and Blanco Drain Diversions	The deficiencies in the State Board permit would be corrected. In addition, because the MOU is not binding, the forthcoming Definitive Agreement would further address these water rights. Finally, the MOU suggests that the Water Resources Agency will exclusively retain the water rights under the permit, in which case a separate agreement would be needed between the Water Resources Agency and MRWPCA.