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## State Water Resources Control Board

### **POST-HEARING ORDER AND NOTICE OF ADDITIONAL HEARING DATES**

The State Water Resources Control Board  
Administrative Hearings Office  
held hearing days on October 26-29 and 31,  
November 1 and 3, and December 7-9, 12 and 14-15, 2022  
and January 31 and February 2, 2023  
in the AHO proceeding  
on the issues the court has referred  
to the Board pursuant to Water Code section 2000 in

***City of Marina v. RMC Lonestar,***  
**Monterey County Superior Court No. 20CV001387.**

The AHO is scheduling additional hearing days for  
**March 1 and 16,**  
**and May 9-12 and 15-19, 2023.**

If necessary, the Administrative Hearings Office will schedule additional hearing days.  
The additional hearing days will be held by Zoom teleconference.

Any interested party may participate in the Zoom teleconference by using this link:  
<https://waterboards.zoom.us/j/95899889673?pwd=R2lwclZjS2xwdWVRaXg4ZlhtWXg4UT09>  
with Meeting ID: 958 9988 9673 and Passcode: 561435  
or by calling in at: +16699009128,,95899889673#,,,,\*561435# US (San Jose)

Any interested member of the public who would like to watch this hearing without  
participating may access the Administrative Hearings Office YouTube channel at:

<https://www.youtube.com/@swrcbadministrativehearing728/streams>

### **BACKGROUND**

The purpose of this proceeding, background, hearing issues and pre-hearing and hearing processes are described in the May 6, 2022 Notice of Public Hearing and Pre-Hearing Conference issued by the State Water Resources Control Board (“State Water Board”) Administrative Hearings Office (“AHO”).

This order follows the AHO hearing days listed above. Except as expressly stated in this order and notice, all provisions of the May 6, 2022 hearing notice and subsequent AHO orders and notices remain in effect.

### **ORDER AND NOTICE**

#### **Feb. 17, 2023 Joint Status Report:**

The parties' technical experts shall continue to proceed as described in their January 24, 2023 joint status report.

The parties' technical experts shall prepare the supplemental joint status report described in their January 24, 2023 joint status report and file this supplemental report with the AHO on or before **February 17, 2023, at 1:00 pm**. This filing shall be made to the AHO's e-mail address, with cc's to everyone on the service list for this proceeding.

This supplemental report shall describe the areas of agreement and the areas of disagreement regarding:

- model layers
- southern boundary of model domain
- extents and thicknesses of hydrogeologic units and related model layer characteristics
- delineation of hydraulic conductivity zones (K zones)
- delineation of recharge zones
- modeled hydraulic conductivities for each hydrogeologic unit (K values)
- modeled areal distributions and rates of recharge
- model calibration: calibration wells, calibration period, groundwater level data, additional calibration work using data obtained during Cal-Am test slant well pumping
- modeling scenarios: (a) without MPWSP, with MPWSP at pumping for 4.8 mgd production, with MPWSP at pumping for 6.4 mgd production; and (b) with present levels of groundwater pumping, with assumptions based on potential SGMA implementation actions (please prepare a table of proposed model scenarios, with a name for each proposed scenario)
- types of model results for each modeled scenario to be submitted to AHO with exhibits and written proposed testimony to be submitted on April 10, 2023
- any other topic relevant to the technical experts' modeling work for this proceeding

For each area of agreement, the supplemental report shall briefly describe the agreement. For each area of disagreement, the supplemental report shall briefly describe the issue and each side's position.

## California-American Water Company Offer of Proof

If California-American Water Company (“Cal-Am”) wants to offer evidence rebutting the written proposed sur-rebuttal testimony and related exhibits filed by Marina Coast Water District (“MCWD”) and City of Marina on November 14, 2022 and their witnesses’ subsequent oral hearing testimony about this written proposed testimony and these exhibits, the Cal-Am shall file an offer of proof on or before **February 24, 2023, at 1:00 pm**. This offer of proof shall list the specific exhibits and specific oral testimony topics that Cal-Am seeks to rebut, which Cal-Am witnesses would provide the rebuttal, and the topics that they would testify about.

MCWD and City of Marina shall file their opposition to this offer of proof (preferably one joint filing by both parties) on or before **March 13, 2023, at 1:00 pm**.

The parties shall make these filings by e-mail to the AHO’s e-mail address, with cc’s to everyone on the service list for this proceeding.

## March 1 and March 16 Hearing Dates

The AHO hearing officer will hold hearings on **March 1 and March 16, 2023, beginning each day at 9:00 am**. The purpose of the March 1 hearing will be to give the hearing officer an opportunity to ask the technical experts questions about their February 17 joint status report and their plans for additional modeling work and presentations of modeling results. The purpose of the March 16 hearing, if necessary, will be to give the hearing officer an opportunity to ask the technical experts any follow-up questions about their modeling work. The hearing days previously scheduled for March 13-15 and 17, 2023 are vacated.

## Post-Hearing Order and Supplemental Notice for May 9-12 and 15-19, 2023 Hearing Dates

After the March 1, 2023 hearing, the AHO hearing officer will issue a supplemental notice for the May 9-12 and 15-19, 2023 hearing dates specified in the December 21, 2022 Post-Hearing Order and Notice of Additional Hearing Dates. This supplemental notice will specify any amendments to Issues 1-10 on pages 4-5 of the December 21, 2022 Post-Hearing Order and Notice of Additional Hearing Dates that the hearing officer concludes are necessary or appropriate after considering the technical experts’ February 17, 2023 joint status report and their answers to the hearing officer’s questions during the March 1, 2023 hearing, and to change the proposed nomenclature for the 2023 models. The filing deadlines and dates of the additional hearing days listed on pages 5-6 of the December 21, 2022 notice will not change.

This post-hearing order will direct the parties to have their technical expert witnesses include in their April 10 submittals exhibits and testimony that provide the following

types of exhibits: (a) a figure or figures that depict the modeled annual recharge rates for each area within the model domain, with depictions of each model layer that is modeled to receive recharge from each such area; (b) figures that depict polygons of the modeled hydraulic conductivities for each model layer; (c) geologic cross-sections and related information that explain the modeled extents of the relevant aquitards and other model layers and justifications for these model assumptions; (d) maps showing the locations of the wells used for model calibration, tables of the coordinates of these wells, the average well head used for each well in each calibration scenario (without Cal-Am test slant well pumping and with Cal-Am test slant well pumping), differences between observed and modeled heads and related root-mean-square (RMS) errors.

This order also will specify the model scenarios the AHO hearing officer is directing the parties' technical experts to run, and the model outputs these technical experts should prepare and file with the AHO.

This order also will direct the parties to have their technical experts to submit proposed testimony in their April 24 submissions that compare their model assumptions with the other parties' model assumptions, and to explain the differences, which model assumptions they believe are most appropriate for the modeling work for this proceeding, and why.

#### Proposed Text for Draft Referee's Report

The AHO hearing officer has prepared the attached draft outline for the draft referee's report the AHO will be preparing in this proceeding. The AHO hearing officer will consider any new comments on this outline (but not comments made on or before February 2, 2023) during the March 1, 2023 hearing.

The parties' attorneys shall prepare proposed text for: (a) sections 2.1 through 2.11 and sections 3.1 and 3.2 of the attached draft outline; (b) first answer to Court's Question 1 listed in this draft outline; (c) answer to Court's Question 3 listed in this draft outline; and (d) answer to Court's Question 6 listed in this draft outline. This proposed text shall include a citation or citations to the administrative record in this proceeding for each factual statement in the proposed text. Please refer to State Water Board Orders WR 2021-0061, WR 2022-0154 and WR 2022-0164 for examples of the citation and writing styles to be used in this proposed text. Anyone may download files of these orders from the State Water Board's website at:

[https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/SWB\\_orders.html](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/SWB_orders.html).

The AHO hearing officer requests that the proposed text for sections 2.1 through 2.11 and 3.1 and 3.2, and the first answer to the Court's Question 1 and the answer to the Court's Question 6 of the draft proposed order be stated in an objective, non-

argumentative format. Please refer to parts 2 and 3 of Order WR 2021-0061, part 2 of Order WR 2022-0154 and part 2 of Order WR 2022-0164 for examples of the appropriate writing style for this proposed text. The AHO hearing requests that the proposed text for the answer to the Court's Question 3 be organized into sections that: (a) describe each side's argument; and (b) describe the appropriate conclusions.

The parties' attorneys shall exchange initial drafts of their proposed text for each of these sections and answers with each other on or before **March 20, 2023, at 1:00 pm**. The parties' attorneys shall not file these drafts with the AHO.

After exchanging these drafts, the parties' attorneys shall confer and try to develop consensus text for as many of these sections and answers as possible. On or before **March 27, 2023, at 1:00 pm**, the parties shall file Word files of their final drafts with the AHO. Attorneys for California-American Water Company and RMC Pacific Materials shall file one file, and attorneys for Marina Coast Water District and the City of Marina shall file one file. Each file shall specify the sections and answers for which the parties' attorneys have developed consensus proposed text, and the sections and answers for which the parties' attorneys are filing different proposed text. The parties' attorneys shall make these filings to the AHO's e-mail address, with cc's to everyone on the service list for this proceeding.

Notice of Planned Deadline for Closing Briefs and Proposed Text for Other Sections and Answers

The AHO hearing officer plans to set **June 12, 2023, at 1:00 pm**, as the deadline for the parties' attorneys to file their closing briefs and proposed text for the other sections and answers in the attached draft outline. The AHO hearing officer does not plan to grant any requests for extensions of this deadline.

Feb. 6, 2023  
Date

/s/ ALAN B. LILLY  
Alan B. Lilly  
Senior Hearing Officer

Enclosures:

- 2023-02-06 draft outline of draft referee's report
- service list (copies of notice sent by e-mail only, to all listed e-mail addresses)

**Draft outline of draft referee’s report to court in court’s reference to State Water Resources Control Board in *City of Marina v. RMC Lonestar*, Monterey County Superior Court No. 20CV001387**

1.0 INTRODUCTION

2.0 BACKGROUND

- 2.1 DWR Bulletin 118 Groundwater Subbasins in Salinas Valley (see DWR, California’s Groundwater Update 2020, Bulletin 118, pp. 7-23 – 7-30 (pdf. pp. 403-412))
  - Salinas Valley groundwater subbasins and SGMA groundwater management status of each (refer to text, maps and table at *id.*, pp. 7-26, 7-32 – 7-33, pdf. pp. 405, 411-412)
  - 180-400 Foot Aquifer Subbasin: basin boundaries and general hydrogeology (refer to DWR Bull. 118, 180-400 Foot Subbasin)
  - Monterey Subbasin: basin boundaries and general hydrogeology (refer to DWR Bull. 118 Corral de Tierra Subbasin)
- 2.2 Parties
  - California-American Water Company (include brief description of its Monterey Division service area and facilities)
  - Marina Coast Water District (include brief description of its service area and facilities)
  - City of Marina (include brief description of City’s boundaries and fact that MCWD provides water service)
  - RMC Pacific Materials (provide descriptions of predecessor names, explanation of CEMEX name, property and operations)
- 2.3 SWRCB Orders to Cal-Am Regarding Cal-Am’s groundwater pumping in Carmel Valley
  - Order WR 95-10
  - Order WR 2009-0060
  - Order WR 2016-0016
  - Status of Cal-Am’s actions to comply with these orders
- 2.4 CEMEX Property and Agreements
  - Sand mining history
  - 1996 annexation agreement and groundwater mitigation framework for Marina area lands
  - 2014 CEMEX/Cal-Am option agreement
  - 2017 CEMEX sand mining settlement agreements
  - 2018 CEMEX grant of easement to Cal-Am
- 2.5 Cal-Am’s Proposed Coastal Water Project with Regional Desalination Project (“RDP”) alternative (2004-2012)
  - project description: proposed wells and proposed pumping scenarios and rates (with citations to Cal-Am’s CPUC Application No. 04-09-019 and CPUC Decision 10-12-016 and Decision 12-07-008, and appropriate

figures)

- regulatory actions (CPUC 2010 certificate of convenience and necessity; any other regulatory actions regarding RDP)
- brief description of reasons RDP was not constructed, with citations to evidence and relevant reported Court of Appeal decisions

## 2.6 Cal-Am's Proposed Monterey Peninsula Water Supply Project ("MPWSP")

- project description: proposed wells and proposed pumping scenario and rate for 6.4 mgd project in Cal-Am application to CPUC (with citations to appropriate documents and figures)
- Cal-Am's CPUC Application 12-04-019
- SWRCB 2013 staff investigation and report: 2012 CPUC request to SWRCB and 2013 final staff report
- Cal-Am's Amended CPUC Application 12-04-019 (March 14, 2016)
- Cal-Am test slant well construction and pumping (only a brief description here; more detail in report section 3.1)
- CPUC/MBNMS EIR/EIS
- CPUC Decision 18-09-017 and Decision 19-01-051 (on petition for re-hearing); brief descriptions of MMRP and RWSA; Cal. Supreme Ct. decision on MCWD and City of Marina petitions for writs of review
- Marina Planning Commission decision on Cal-Am's application for coastal development permit
- Cal-Am appeal to Coastal Commission; Coastal Commission decision on Cal-Am's Coastal Development Permit application and appeal of Marina Planning Commission decision
- litigation challenging Coastal Commission decision, *City of Marina v. California Coastal Comm.*, Monterey County Superior Court No. 22CV004063.
- Monterey County approval of MPWSP desalination plant development permit application
- litigation challenging that approval (*Marina Coast Water Dist. v. County of Monterey*, Monterey County Superior Court No. 19CV003305, Court of Appeal Nos. H049146 and H049170 (6th Dist.))

## 2.7 SGMA GSPs

- Salinas Valley Groundwater Basin 180/400-Foot Aquifer Subbasin, SVBGSA (2022 update)
- Monterey Subbasin Groundwater Sustainability Plan, MCWD SVBGSA (2022)

## 2.8 Groundwater Modeling

- Text briefly describing what groundwater models do and are used for, what transient models, steady-state models and superposition models are, and what "model domain" means
- Brief descriptions of each of the following models:
  - 2008 Salinas Valley Groundwater Basin Regional Model transient model (SVIGSM) (revising original modeling of Montgomery Watson, 1994 and 1997)

- 2008 North Marina Groundwater Model (NMGWM), transient flow and solute transport Model (Geoscience)
  - 2015 Salinas Valley Groundwater Basin Regional Model (SVIGSM), transient model (LSCE)
  - 2015 Modeling: NMGWM<sup>2015</sup> Transient Flow and Solute Transport Mode (Geoscience)
  - 2015 CEMEX Model, transient and variable density model (Geoscience)
  - 2016 Modeling: NMGWM<sup>2016</sup> transient and steady-state superposition models (Hydrofocus)
  - 2017 CEMEX Model, calibration to observed test slant well drawdowns (HWG)
  - 2019-2020 Modeling: NMGWM<sup>2016</sup>, steady-state superposition model (Weiss Associates)
  - 2022 Modeling: NMGWM<sup>2016</sup>, steady-state superposition model (Geoscience)
  - 2022 Modeling: Salinas Valley Groundwater Basin Regional Model (SVSM), transient model (Durbin)
  - 2022 Modeling: NMGWM<sup>2022</sup> transient model (Geoscience)
  - 2022 Modeling: NMGWM<sup>2022</sup> Steady State Model (Kincaid)
  - 2022 Monterey Subbasin Groundwater Sustainability Plan groundwater model (EKI), transient model
  - 2023 Modeling: 2022-12-21 AHO Post-Hearing Order and additional modeling work (only a summary description here, with cross-references to report sections 3.3 and 3.4), SWBSSM<sup>2023</sup> (Cal-Am and MCWD versions)
- 2.9 Aerial Electromagnetic (“AEM”) work: brief descriptions of work, published papers and results
- Stanford/AGF 2018 AEM report
  - AGF 2019 AEM report
- 2.10 *City of Marina v. RMC Lonestar*, Monterey County Superior Court No. 20CV001387
- brief descriptions of initial and amended complaints and cross-complaints and current operative pleadings; brief descriptions of causes of action relevant to court’s reference order
  - Cal-Am motion for reference to SWRCB: brief descriptions of motion and oppositions
  - Court’s reference order (note reference issues are listed in later section of this report (also refer to copy of court’s order, which will be attached to report))
- 2.11 AHO Proceedings
- Office of Chief Counsel memo to Executive Director; Executive Director’s memorandum assigning reference to AHO
  - AHO May 6, 2022 hearing notice
  - Parties’ submissions of exhibits and proposed testimony; AHO administrative record



- AHO hearing days
  - parties' presentations of witnesses (Oct.-Dec. 2022)
  - site visit (Nov. 2, 2022)
- AHO Hearing Officer's orders requesting:
  - calculations of increased pumping costs for lower heads at MCWD wells,
  - updated Kincaid spreadsheet of seawater intrusion amounts
  - additional modeling work
- additional modeling work
- AHO hearings on additional modeling work
- parties' post-hearing briefs and draft report text
- AHO draft report
- parties' comments on AHO draft report
- AHO preparation of proposed final report for consideration by State Water Board

### 3.0 DISCUSSION

- 3.1 Field data (borehole and well logs, water level data, etc.)
- 3.2 Analytical calculations and other technical work that was not modeling (see Dec. 21, 2022 AHO order, p. 5, issue 10)
- 3.3 Parties' modeling work: differences in assumptions, differences in calibration results (see Dec. 21, 2022 AHO order, p. 4, issues 1-4), and differences in modeled scenario results (see Dec. 21, 2022 AHO order, pp. 4-5, issues 5-9)
- 3.4 Modeling work used by AHO for this report: modeling assumptions and modeling results for with-MPWSP and without-MPWSP scenarios

### 4.0 ANSWERS TO COURT'S QUESTIONS

Court's Question 1: Where are the subsurface drawing source points (including capture zones) for each of the currently proposed California-American Water Company ("Cal-Am") wells located in relation to:

- a. seawater in the ocean itself;
- b. drawing source points for the Marina Coast Water District ("MCWD") production wells;
- c. the Subbasin Interface Zone;
- d. the 180/400 foot Aquifer Subbasin;
- e. the Monterey Subbasin;
- f. the RMC Pacific Materials, LLC ("Cemex") property;
- g. the MCWD wells.

Graphic depictions, if available, would be helpful.

#### Answers:

- Descriptions of drawing source points, with references to appropriate figures
- Descriptions of capture zones, with references to appropriate figures and modeling results

Court's Question 2: Would water drawn by any of the currently proposed Cal-Am wells come from any source other than seawater from directly beneath the Ocean?

- a. If so, from which sources? And which if any of these sources lie in whole or in part beneath the Cemex property?
- b. If so, can one approximate with reasonable certainty in what quantities the water would be drawn from each source? Can this be expressed in percentages?
- c. If so, do the relative amounts drawn from each source vary depending upon amounts drawn by the slant wells?
- d. If so, can it be said with reasonable certainty that the amount drawn by the Cal-Am wells will not exceed 500 acre-feet per year ("afy") from any water source beneath the Cemex property?

Answers:

- sources of proposed Cal-Am wells; relationships of sources to CEMEX property
- estimated quantities of water that proposed Cal-Am slant wells would draw from each source (with references to modeling results)
- variations in relative amounts proposed Cal-Am slant wells would draw from each source, depending on Cal-Am slant well production (with references to modeling results for scenarios with Cal-Am slant well pumping for 6.4 mgd and 4.8 mgd of water production)
- estimated amounts that would be drawn by proposed Cal-Am wells from any source beneath CEMEX property (with references to modeling results); relationships to 500 afy

Court's Question 3: What is the hydrogeological connectivity, if any, between the areas from which Cal-Am proposes to draw water and the areas from which MCWD extracts water?

Answer:

- hydrogeological connectivity between these areas

Court's Question 4: Is it likely that any of the proposed draw for the Cal-Am wells would: (a) result in or (b) increase any seawater intrusion into the Subbasin Interface Zone, the 180/400 foot Aquifer or the Monterey Aquifer, or any source for the MCWD production wells?

- a. If so, what is the likely extent of the intrusion?

Answers:

- estimated changes in seawater intrusion, by sub-basin and aquifer, due to proposed Cal-Am slant well pumping (with references to modeling results)
- estimated changes in seawater intrusion to sources for MCWD wells, due to proposed Cal-Am slant well pumping (with references to modeling results)

Court's Question 5: Is it likely that any of the proposed draw will: (a) lower the groundwater table or (b) reduce the storage space in any source other than seawater, and if so, can the extent be approximated?

Answers:

- estimated changes in groundwater table (in unconfined aquifers) and changes in hydraulic heads (in confined aquifers) due to proposed Cal-Am slant well pumping (with references to modeling results)
- estimated changes in storage space due to proposed Cal-Am slant well pumping, by aquifer (with references to modeling results)

Court's Question 6: Has MCWD been pumping water from the Subbasin Interface Zone and, if so, for approximately what period of time?

Answer:

- table of historical MCWD well pumping, by well and year, with listings of the subbasin in which each well is located and the aquifer or aquifers in which each well is screened

Court's Question 7: What effect, if any, would the proposed draw by Cal-Am slant wells have upon any primary or paramount water right of the City of Marina or MCWD?

- a. What impact on quantity and quality of the water sources by MCWD wells is likely?

Answers:

- estimated effects of proposed Cal-Am slant well pumping on quantity and quality of MCWD well sources (with references to evidence, including modeling results); estimated effects on MCWD pumping costs due to lowered groundwater heads
- estimated effects of proposed Cal-Am slant well pumping on MCWD water rights (with references to evidence, including modeling results)

Court's Question 8: Does SWRCB have an opinion as to whether: (a) there is any legal theory upon which Cal-Am may rely to extract the proposed draw; and (b) the proposed Cal-Am extraction would infringe upon MCWD's appropriative rights to groundwater?

Answers:

- Cal-Am's ability to obtain water rights for its proposed slant well pumping
- would Cal-Am's proposed slant well pumping infringe on any MCWD groundwater appropriative rights?

## 5.0 CONCLUSION

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