
State Water Resources Control Board

POST-HEARING ORDER

The State Water Resources Control Board
Administrative Hearings Office
held hearing days on July 17, 19-21, 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.

BACKGROUND

On May 6, 2022, the State Water Resources Control Board (“State Water Board”) Administrative Hearings Office (“AHO”) issued its Notice of Public Hearing and Pre-Hearing Conference in this proceeding. The purpose of this proceeding, background, hearing issues and related information are discussed in that notice.

On July 17, 19-21, 2023, the AHO held hearing days in this proceeding. This order follows those hearing days. Except as expressly stated in this order, all provisions of all prior AHO notices and orders in this proceeding remain in effect.

POST-HEARING ORDER

Phase 3 Hearing Issues

Phase 3 of the hearings in this proceeding is scheduled for September 11-15, 2023. As discussed in the June 30, 2023 Status Conference Order and Notice of Hearing, Phase 3 of the hearings will address the following issues:

- (1) solute transport model description, analyses and modeling results; and
- (2) dual-density model (sometimes referred to as the “variable density model”) description, analyses and modeling results.

In addition to these issues, we designate the following additional issues for Phase 3 of the hearings:

- (3) (a) What will happen to the additional seawater that both sides’ modeling outputs predict will be induced by the Cal-Am slant well pumping to flow from Monterey

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Bay into groundwater aquifers at locations outside the projected Cal-Am slant wells' capture zones?

(b) What effects will these induced seawater inflows have on these aquifers and beneficial uses of water from them?

(4) Will the projected Cal-Am slant well pumping result in losses in groundwater storage or sustainable yield in the Monterey Subbasin due to increased flows from the Monterey Subbasin into the 180/400 Foot Aquifer Subbasin?

(5) Do any of the results from the parties' groundwater models show the flows of fresh water from the Dune Sand Aquifer to the Upper 180-Foot Aquifer depicted in exhibit MCWD-160, slide 9, or the changes in these flows depicted in exhibit MCWD-160, slide 10? If so, please show these flows in cross-sections from the modeling results, with velocity vectors.

(6) (a) Is the "Spring 2021 Real World" groundwater level map shown in exhibit MCWD 161, slides 50-51, and particularly the groundwater mounding along the coast shown in that map, accurate? (For MCWD) please provide the data, including all groundwater well ID's and groundwater elevations, that were used to prepare this map.

(b) Are the "After Predicted Drawdown" maps in exhibit MCWD 161, slides 50-51, particularly the groundwater mounding along the coast shown in those maps, accurate? (For MCWD) please provide or identify (if previously produced) the data and model output files that were used to prepare these maps.

(c) Can the potential risks of additional seawater intrusion from projected Cal-Am slant well pumping shown in the "After Predicted Drawdown" figures in these two slides be reduced or eliminated with injections of fresh water into the Dune Sand Aquifer or the upper 180-Foot Aquifer in this area?

(d) If such injections could reduce these risks, is there a feasible plan to obtain and use fresh water for such injections?

(e) If there is such a feasible plan, what are its estimated capital and annual operation and maintenance costs?

The following deadlines and hearing dates, which were stated in my June 30, 2023 order, shall continue to apply. After the deadline for each submittal to the AHO, AHO staff will transfer the uploaded files to the AHO-FTP folder for this proceeding and advise everyone on the service list that AHO staff have done this.

(a) deadline for submittal to AHO and service on other side's attorneys for all model files for solute transport modeling and dual-density (or variable density) modeling: August 7, 2023, 1:00 pm.

(b) deadline for submittal to AHO of written proposed direct testimony and related exhibits for Phase 3 of the hearings: August 14, 2023, 1:00 pm;

- (c) deadline for submittal to AHO of proposed text for section 3.1 and answers to the court's questions 2 and 5 in the February 6, 2023 draft outline of draft referee's report: August 28, 2023, 5:00 pm.
- (d) deadline for submittal to AHO of written proposed rebuttal testimony and related exhibits for Phase 3 of the hearings: August 30, 2023, 1:00 pm;
- (e) deadline for submittal to AHO of summary slides for Phase 3 of the hearings: September 5, 2023, 1:00 pm;
- (f) Phase 3 hearings, September 11-15, 2023, starting each day at 9:00 am and finishing each day at 5:00 pm; and
- (g) deadline for submittal to AHO of closing briefs and proposed text for all sections and questions in February 6, 2023 draft outline of draft referee's report for which proposed text has not already been submitted: October 16, 2023, 1:00 pm.

In addition to the other issues stated above and in previous orders, the parties' closing briefs and proposed text described in paragraph (g) above shall address the question of whether a physical solution under the rules stated in *City of Lodi v. East Bay Mun. Util. Dist.* (1936) 7 Cal.2d 316, 339-341 and subsequent reported court decisions is appropriate here.

Designations and Submittals of Exhibits

The March 7, 2023 Post-Hearing Order and Notice, on pages 5-6, directed the parties to submit various exhibits, which were listed in paragraphs (a) through (h) of that order and notice.

We now direct the parties to designate the exhibits that they already have filed that satisfy the requirements of paragraphs (a) through (d) on page 5 of that notice and order, and, to the extent that they have not filed exhibits that satisfy any of these requirements, to file and designate new exhibits that satisfy these requirements.

We also direct the parties to file the following exhibits to supplement their previous filings and meet the following requirements: (a) comparisons of scenarios 1C and 1D to scenario 1B; (b) comparisons of scenarios 2B and 3B to scenario 1B; (c) comparisons of scenarios 2C and 3C to scenario 1C; and (d) comparisons of scenarios 2D and 3D to scenario 1D. Please label each comparison of the results of two scenarios with a label like "1C-1B," "2B-1B", etc. If a party already has submitted an exhibit or set of exhibits that completely addresses one of these requirements, then the party may designate the exhibit or set of exhibits in lieu of re-filing the exhibit or set of exhibits.

- (a) figures showing estimated drawdowns and head changes, by aquifer, particularly at and in the vicinity of the MCWD wells, including contours showing changes of 0.5 and 0.2 foot, and contours showing larger changes when appropriate;
- (b) tables listing the estimated amounts of water, by aquifer and sources, that will be pumped by Cal-Am's proposed slant wells each year (not applicable for comparisons of scenarios 1C and 1D to scenario 1B);

(c) tables listing the estimated annual amounts of additional seawater intrusion, by model layer, within the Reaches 1 through 5 described in exhibit MCWD-118, slides 20; and

(d) tables listing the estimated changes in groundwater storage, by aquifer.

For figures and tables showing the results of the solute transport and dual-density (or variable density) modeling, please use either amounts of chloride ion (Cl⁻) concentrations or the amounts of total dissolved solid (TDS) concentrations, and please do not use both types of concentrations. The parties shall meet and confer and decide whether to use Cl⁻ concentrations or TDS concentrations for these figures and tables. All parties' submissions shall use either Cl⁻ concentrations or TDS concentrations, and all parties' submissions shall use the same types of concentrations.

The parties shall report by e-mail to the AHO, with copies to everyone on the service list for this proceeding, on or before **August 1, 2023, at 1:00 pm**, on whether or not they have reached agreement on which type of concentrations to use in these figures and tables, and, if they have not reached agreement on this issue, why each party contends that its proposal is appropriate. If necessary, the AHO will issue a ruling on this issue.

If the parties' figures show changes in Cl⁻ concentrations between the compared scenarios, then the figures shall use contours of 250 and 500 milligrams per liter of Cl⁻, in addition to any other contour intervals the parties believe are appropriate. If the parties' figures show changes in TDS concentrations between the compared scenarios, then the figures shall use contours of 500 and 1,000 milligrams per liter of TDS concentrations, in addition to any other contour intervals the parties believe are appropriate.

Assignment of New AHO Hearing Officer

Effective August 1, 2023, Nicole Kuenzi, Presiding Hearing Officer of the State Water Board's Administrative Hearings Office, will be the assigned hearing officer for this proceeding. On and after that date, please direct all communications to the AHO regarding this proceeding to her at adminhrgoffice@waterboards.ca.gov.

July 26, 2023
Date

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

July 26, 2023
Date

/s/ NICOLE KUENZI
Nicole Kuenzi
Presiding Hearing Officer

Attachment:

Service List (copies of notice sent by e-mail only, to all listed e-mail addresses)

Service List
City of Marina v. RMC Lonestar Court Reference

Marina Pantchenko
Salinas Valley Basin Groundwater
Sustainability Agency
Office of County Counsel
168 West Alisal
3rd Floor
Salinas, CA 93901
Pantchenkoms@co.monterey.ca.us

Howard F. Wilkins III (Chip)
Christina L. Berglund
Kathryn A. Ramirez
Bridget K. McDonald
Remy, Moose, Manley LLP
555 Capitol Mall
Suite 800
Sacramento, Ca 95814
cwilkins@rmmenvirolaw.com
cberglund@rmmenvirolaw.com
kramirez@rmmenvirolaw.com
bmcdonald@rmmenvirolaw.com
*Attorneys for Marina Coast Water
District*

David L. Osias, Robert R. Moore,
Michael J. Betz, Kathryn Horning,
Alexander J. Doherty
Allen Matkins Leck Gamble Mallory
& Natsis LLP
Three Embarcadero Center
12th Floor
San Francisco, CA 94111
dosias@allenmatkins.com
rmoore@allenmatkins.com
mbetz@allenmatkins.com
Kathryn.Horning@amwater.com
adoherty@allenmatkins.com
*Attorneys for California-American Water
Company*

Robert E. Donlan
Ellison Schneider Harris & Donlan
2600 Capitol Avenue
Suite 400
Sacramento, CA 95816
red@eslawfirm.com
*Attorney for California-American Water
Company*

B. Tilden Kim
Richards, Watson & Gershon
350 South Grand Avenue
37th Floor
Los Angeles, CA 90071
tkim@rwglaw.com
Attorney for Marina Coast Water District

James L. Markman
Richards, Watson & Gershon
1 Civic Center Circle
P.O. Box 1059
Brea, CA 92822-1059
jmarkman@rwglaw.com
Attorney for Marina Coast Water District

Kyle H. Brochard
Richards, Watson & Gershon
350 South Grand Avenue
37th Floor
Los Angeles, CA 90071
kbrochard@rwglaw.com
Attorney for Marina Coast Water District

Ruth Stoner Muzzin
Friedman & Springwater LLP
350 Sansome Street
Suite 800
San Francisco, CA 94104
rmuzzin@friedmanspring.com
Attorney for Marina Coast Water District

James Neudecker
Jeffer, Mangels Butler & Mitchell LLP
Two Embarcadero Center
5th Floor
San Francisco, CA 94111
jneudecker@jmbm.com
*Attorney for RMC Pacific Materials LLC
d/b/a CEMEX*

Paul P. Spaulding, III, Larisa A.
Meisenheimer, Joseph V. Mauch,
Suzanne S. Orza, Chris Berggren
Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111-3598
sspaulding@sflaw.com
lmeisenheimer@sflaw.com
jmauch@sflaw.com
sorza@sflaw.com
cberggren@sflaw.com
Attorneys for City of Marina

Andrew Sawyer
Tina Leahy
David Rose
1001 I Street 22nd Floor
Sacramento CA 95814
andy.sawyer@waterboards.ca.gov
Tina.Leahy@Waterboards.ca.gov
david.rose@waterboards.ca.gov
*Attorneys for State Water Resources
Control Board*

Tom Luster
Tom.Luster@coastal.ca.gov

Administrative Hearings Office
adminhrgoffice@waterboards.ca.gov