

February 10, 2021

By e-mail

Board of Directors
Monterey County Water Resources Agency
1441 Schilling Place, North Bldg.
Salinas, CA 93901
henaultag@co.monterey.ca.us
OfficeassistantII@co.monterey.ca.us

Re: Draft Engineer's Report for proposed Zone 2D – Dam Maintenance Costs

Dear Members of the Board:

On behalf of LandWatch Monterey County, I write to request that Monterey County Water Resources Agency Assessment District (MCWRA) provide data, modeling or other evidence of the validity of the benefits assessment in the Draft Engineer's Report for the proposed Zone 2D. LandWatch makes this request in anticipation of your February 16, 2021 workshop on the subject.

In summary, MCWRA's Draft Assessment District Formation: Zone 2D Engineer's Report (Draft Engineer's Report) does not justify the determination of the assessment zone boundary and, as a consequence, may include areas that are not in fact benefitted by the proposed dam maintenance. The determination of special benefits, including water supply and flood protection, does not appear to be based on current science, or, for some areas, on *any* past analysis. Thus, the Draft Engineer's Report may not properly reflect the existence and proportionality of benefits to each area. Finally, MCWRA has assumed in the Draft Engineer's Report that the repair project requires the complete replacement of the San Antonio spillway. MCWRA should assess whether a lower cost alternative that simply repairs the spillway is feasible.

It is critical for MCWRA and the Groundwater Sustainability Agencies to begin using the current science to allocate the cost of groundwater management projects. Implementation of MCWRA projects and projects in support of the Groundwater Sustainability Plans may include large projects such as the proposed \$100 million-plus network of coastal pumping station to address seawater intrusion or the proposed Interlake Tunnel Project. These projects will differentially benefit various subbasins, subareas, and land uses, and they will all require a Proposition 218 vote based on an engineer's report. Differentially benefitted landowners may not be willing to accept

benefits determinations that are not based on the best available science. There is no reason not to use the best science to allocate the costs of the dam maintenance projects.

While LandWatch understands that a key focus of the workshop on February 16 will be the discussion of financing options (bonding vs. pay as you go), MCWRA also has a duty to ensure that the benefits assessment is itself valid. In particular, the administrative record must “contain affirmative evidence of the two substantive bases for the assessment”—the existence of a special benefit, and proportionality between the amount of the assessment and the special benefit received by the assessed property.¹ The engineer’s report is the most important element of the administrative record in this regard. Thus, the Engineer’s Report must demonstrate the *existence* of a special benefit throughout the proposed assessment zone; and it must also demonstrate that the different assessments for each area and land use type within the assessment zone is *actually proportional* to the special benefits received, based on current science. The Draft Engineer’s Report lacks an adequate scientific basis.

A. Assessment zone boundary

The Draft Engineer’s Report defines the assessment zone boundary for the proposed Zone 2D as the Zone 2C area, arguing that the basis for inclusion of lands remains the same. (Draft Engineer’s Report at 30.) The Draft Engineer’s Report also argues that

Historic work has further shown that each of the sub-areas within the Salinas Valley Groundwater Basin is hydraulically connected, but due to their varying geology and geography they receive varying levels of benefits from the operation of the two Reservoirs. Since the formation of Zone 2C, the identification of the sub-areas and the geologic research identified still holds true and *is not disputed*.²

There have in fact been disputes over the inclusion of several areas in the Zone 2C benefit assessment zone.

For example, LandWatch has disputed the existence of benefits from the two reservoirs and the Salinas Valley Water project to that portion of the Toro area (Corral de Tierra Subbasin) that is contained within the Pressure Subarea. The 2007 El Toro

¹ *Silicon Valley Taxpayers Ass’n, Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 446, citations and internal quotation omitted; Cal. Const. art. XIII D, § 4, subd. (a).

² Draft Engineer’s Report, p. 31, emphasis added.

Groundwater Study (Geosyntec Report³) documents 47 years of declining groundwater levels in the El Toro Planning Area, including that portion contained in the Pressure Subarea. Groundwater declines averaged 0.6 ft./yr from 1960 to 1999, worsening to 1.8 ft/yr since 1999. This occurred despite the presence of 1957 and 1965 San Antonio and Nacimiento Dams. A primary reason for the lack of benefits is that the groundwater levels in the Toro area are hundreds of feet above the groundwater levels in the Valley. There is no evidence in that these up-gradient areas have benefitted or can benefit from the two reservoirs or the Salinas Valley Water Project because these projects cannot push water hundreds of feet uphill. In particular, there is no evidence of flood control, saltwater intrusion, recharge, water quality, drought, or aquifer storage benefits in the Toro area from these projects.

Prunedale residents have also objected that prior groundwater management projects have not benefitted and cannot benefit the up-gradient aquifers in North County even though Prunedale was included in Zone 2C. The express criteria for inclusion of lands in the assessment zone is that up-gradient areas be excluded “where pumping cannot induce an up-gradient recharge.”⁴ Evidence of the existence of a special benefit is required before Toro and Prunedale are included in the assessment district.

In addition, Zone 2D should not be equated with Zone 2C because the Draft Engineer’s Report is not based on the Zone 2C Engineer’s Report, but on the 1998 Historic Benefits Analysis (HBA). The HBA predates the Salinas Valley Water Project for which the Zone 2C assessment area was defined. As discussed below, the HBA expressly excludes both the Toro and Prunedale areas and therefore provides no evidence of special benefits.

B. Lack of evidence of benefits to Prunedale and Toro areas

The Draft Engineer’s Report’s assessment of special benefits in section 4.2.2 is entirely based on the 1998 Historic Benefits Analysis. But the HBA specifically excludes the Toro/Fort Ord area (Economic Study Area 4) and the Prunedale area (Economic Study Area 11).⁵ Thus, the Draft Engineer’s Report does not and cannot attribute any flood control benefit to the Toro or Prunedale areas, i.e., ESU 4 or 11.⁶ Nor can the Draft

³ Available at https://digitalcommons.csumb.edu/cgi/viewcontent.cgi?article=1008&context=hornbeck_cgb_6_b.

⁴ Draft Engineer’s Report, p.30; MCWRA, Salinas Valley Water Project Engineer’s Report, 2003, p. 3-3.

⁵ HBA, p. ES-4.

⁶ Draft Engineer’s Report, p.36 [correlating “ESUs used in the HBA to the subareas used for this Engineer’s Report”].

Engineer's Report attribute any water supply benefits to ESU 4 or 11 based on the HBA, because the HBA itself does not do so.⁷ In sum, there is simply no data or analysis in the HBA that would justify assuming that the dams provide any special benefit to the Toro/Fort Ord area or the Prunedale area.

The Draft Engineer's Report should revise the Benefit Zone to exclude up-gradient areas where there is no evidence that the reservoirs have provided water supply or flood control benefits. If these areas are not excluded entirely, then the Engineer's Report must provide some evidence of the existence and magnitude of benefits enjoyed. Assessing these up-gradient areas as if they are on the Valley floor would result in an inappropriate cross-subsidy.

C. Use of current modeling

Furthermore, the benefits evaluation should be based on current data and modeling, not on the outdated analyses undertaken to support the 1998 Historic Benefit Analysis and the 2003 Salinas Valley Water Project Engineer's Report. MCWRA has access to the current modeling being used to develop the Groundwater Sustainability Plans for the various subbasins of the Salinas Valley Groundwater Basin. The Draft Engineer's Report should be revised to base its evaluation of special benefits on this current modeling. Landowners throughout the assessment zone must have assurance that their cost allocation is truly proportionate to benefits.

D. Consideration of least cost alternative

The Draft Engineer's Report assumes the cost of the dam repair project includes the complete replacement of the San Antonio Dam spillway. We understand that a less expensive option may be available, i.e., the repair of the existing spillway, but that option has not been separately costed or evaluated. We also understand that the complete replacement of the spillway would only be required, and lays the foundation, for the Interlake Tunnel Project, a separate project that has not been analyzed, environmentally reviewed, or approved. This raises several concerns.

First, the public and landowners who will be paying the assessments should be advised of the least cost, feasible, and effective alternative. Common sense indicates that the least cost alternative would be the minimum level of repairs necessary to maintain the reservoirs in a manner that allows them to operate as required pursuant to their water rights and approved projects. The public and the landowners are entitled this information, but it is not in the Draft Engineer's Report. The information should be provided and a decision should be made as to the most appropriate project elements to build – before the completion of the Engineer's Report and the Proposition 218 vote. It is

⁷ HBA Tables 3-1, 3-2, 3-4, 3-9, 3-13, 3-14, 3-15, 3-17, 3-18, 3-19 [flood control and water supply benefits exclude ESU 4 and 11].

not sufficient to plan to refine the repair project after the Proposition 218 vote; the landowners should know what they are paying for and how much it will actually cost.

Second, if in fact the repair project includes expenditures that are not needed to support status quo and approved operations, but are needed or useful only to implement the Interlake Tunnel Project, then MCWRA cannot approve these expenditures without completing CEQA review of the Interlake Tunnel Project. Commitment to the needed groundwork for the Interlake Tunnel Project without CEQA review would violate CEQA through piecemeal approval.

Third, if the total cost of the dam repair project contains costs incurred only or primarily to lay the foundation for the Interlake Tunnel Project, then that assessment of special benefits must be revised to reflect the existence, location, and proportionality of special benefits allocable to the Interlake Tunnel Project itself.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

Cc: Brent Buche
Michael DeLapa