1.1.5 Response to Letter from Marina Coast Water District

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MCWD-1	The comment accurately describes an identified purpose of the Slant Test Well Project and two relevant CEQA thresholds under which the proposed project was analyzed in the MND. No response is necessary.
MCWD-2	This comment states that Cal Am lacks the right to pump groundwater from the CEMEX site pursuant to the terms of a 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands and that the City's approval of the project would be a breach of that Agreement. This comment relates to contractual rights rather than potential environmental impacts or CEQA requirements. Therefore, no further response is necessary.
MCWD-3	This comment compares the amount of water to be pumped through operation of the slant test well to historic water usage within MCWD's Central Marina Service Area and states that the test pumping could have a significant impact on the Salinas Valley Groundwater Basin (SVGB). The MND identified the total amount of water to be pumped through the slant test well project and addressed potential impacts to the SVGB at pages 111 to 113. The IS/MND analyzed the potential for environmental effects on the SVGB and determined that operation of the slant test well would not result in a significant impact on the SVGB or its users. As noted in Response to IX(b), at pages 111 to 113 of the MND, the slant test well would primarily capture water originating from the seaward direction rather than the landward direction, reducing the possibility that it would capture freshwater from the Salinas Valley Groundwater Basin. The 2013 SWRCB draft report supports this conclusion, stating: "with a landward gradient of groundwater flow, more of the water captured by the pumping well comes from the upgradient direction (in this case from the seawater direction) and a much smaller proportion of the water captured by the pumping well is from downgradient (inland) direction. Water captured from the seaward direction would likely be seawater. Water captured from the landward side could potentially have a greater likelihood of capturing some portion of freshwater. Therefore, because the gradient means more water will be captured from the seaward direction there is a reduced possibility that the wells will capture freshwater. An individual might assume the extraction wells would draw water equally from seaward and landward areas. While this may be true in a system that has no gradient of flow, it would not be true in the proposed MPWSP area because there is a significant gradient of groundwater flow from the seaward areas toward the inland pumping depressions. In this situation, the extraction well system would draw most of its water from the upgradient (seaward) direction, and very little of the 'fresh' water from inland areas would be captured." (Appendix E, page 21). The MND conservatively recognizes that a small percentage of landward water could be captured by the slant test well as there is some uncertainty in the ratio of seawater to brackish water that the well ultimately would withdraw. However, the SWRCB report notes that the water withdrawn from the landward side is likely to be brackish, not freshwater, and therefore it is unlikely that injury would result (Appendix E, page 37 and 38). Pumping activities would be of a limited duration and would not create a long-standing use or right to water within the aquifers. The water pumped from the aquifers would primarily be tidally influenced groundwater and is not expected to

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	significantly reduce available freshwater supplies for existing or planned land uses. The effects of the temporary pumping program would be closely monitored throughout its duration to determine the precise amount of drawdown caused by the slant test well. Due to the minimal extent of drawdown anticipated, the unusable condition of wells in the Dune Sand, 180-FTE, and 400-Foot Aquifers in the project area, potential impacts associated with groundwater supplies were found to be less than significant with recommended monitoring and reporting measures. The amount of proposed pumping is not substantial when compared to the SVGB as a whole. The SVGB is divided into eight sub-regions; the project area is located in the 180/400 Foot Aquifer sub-region. Calculations by the California Department of Water Resources (DWR) estimate the total storage capacity of the 180/400 Foot Aquifer sub-basin to be 7,240,000 acre feet and as of 1998, there was an estimated 6,860,000 acre feet of groundwater in storage (California's Groundwater Bulletin 118; DWR 2004). The maximum amount of water proposed to be pumped by Cal Am during operation of the slant test well equates to approximately 0.1 percent of the estimated groundwater in storage in the 180/400 Foot Aquifer sub-region, and a large majority of the pumped water would be seawater captured from the seaward direction. Monterey County Water Resources Agency (MCWRA) has designated four distinct hydrologic zones of the SVGB; the project is located in the Pressure Subarea designated by MCWRA. MCWRA estimated the total 2012 extractions from the Pressure Subarea from agricultural and urban pumping to be 113,898 acre feet (2012 Ground Water Summary Report; MCWRA 2013). Pumping activities proposed by Cal Am through the slant test well project (1,613 to 4,032 acre feet per year) equate to approximately 1.4 to 3.5 percent of 2012 extractions from the Pressure Subarea. Again, a large portion of this percentage would be comprised of seawater. It is unknown exactly what portion of SVGB groundwater would be captured by the slant test well, though the large majority of captured water is expected to come from the upgradient (seaward) direction. Any portion captured from the downgradient (landward) direction would consist of saline or brackish water with little to no beneficial use due to the extent of seawater intrusion, further reducing the potential for significant impacts on usable SVGB freshwater resources. Even under MCWD's hypothetical, if 25 percent of the slant test well's source water came from the landward direction SVGB groundwater (up to a maximum of 1,008 acre feet/year or a total of up to 2,016 acre feet), this would equate to pumping of up to a maximum of approximately 0.0003 percent of the total groundwater in the 180/400 Foot Aquifer sub-region per DWR estimates, and up to approximately 0.9 percent of 2012 annual extractions from the MCWRA-designated Pressure Subarea. In the context of the larger SVGB, pumping of approximately 0.0003 percent of the total groundwater in the 180/400 Foot Aquifer sub-region, and a less than 1 percent annual increase in pumping in the Pressure Subarea, for a limited duration of up to 2 years, is considered a less than significant impact.

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MCWD-4	This comment asserts that the MND misrepresented the contents of the 2013 SWRCB draft report, and in particular, that the statement that "SWRCB has indicated that Cal Am has the right to pump from within the aquifers at the CEMEX site" is a "significant misrepresentation" of what the SWRCB report actually said. The comment does not suggest that the determination made in Response to XVII(d) is incorrect. Rather, the comment takes issue with the abbreviated description of SWRCB's conclusions in the passing reference to SWRCB's report. The comment fails to acknowledge that the full report is included in the MND as part of Appendix E. The comment implies the MND suggested that Cal Am has the right to pump groundwater from the aquifer below the CEMEX site without regard to the impacts on SVGB or its users. That was not the intent of the reference. Instead, what was meant by the reference was that SWRCB has identified a pathway by which Cal Am would be able to extract saline or brackish water at that location. Obviously, Cal Am would have to follow the prescribed pathway in order to be able to perform the subject pumping, but the MND reflected SWRCB's conclusion that it appeared possible for Cal Am to do so. The comment accurately notes the conclusion in the SWRCB report that, in order to pump groundwater from within the Basin, the burden is on Cal Am to show no injury to the SVGB or its users. However, the comment fails to recognize the MND's analysis of impacts to the SVGB and conclusion that no significant impacts would occur, or SWRCB's additional discussion of various legal means by which it appears Cal Am could meet this requirement, including through replacement of fresh water supplies within the Basin and/or use of a "physical solution". The SWRCB report states: "The aquifers underlying the proposed extraction locations have been intruded with seawater since at least the 1940's. The impairment means that there is little or no beneficial use of the water in the intruded area. Groundwater quality at the site of the proposed MPWSP wells will play an important role in determining the effects of extraction on other users in the Basin." (Appendix E, pages i and ii) "There is expected to be minimal impact to freshwater sources at start-up and for the first several years of operation as water will certainly be sourced from the intruded portion of the aquifer." (Appendix E, page 37). "Based on the information provided in the FEIR [for the Coastal Water Project], North Marina Project modeling suggests a zone of influence of approximately 2 miles from the proposed extraction wells. Within this zone, there are approximately 14 known water wells. These 14 wells are within the seawater intruded portion of the Basin. The current use of these well is unknown; however, it is unlikely the MPWSP would injure users of these wells as the wells are within a zone where water quality is significantly impacted from seawater intrusion. Within this 2-mile radial zone, the two foreseeable injuries that overlying users could experience are: (1) a reduction in the overall availability of fresh water due to possible incidental extraction by the MPWSP; and (2) a reduction in groundwater elevations requiring users to expend additional pumping energy to extract water from the Basin. Monetary compensation for increased pumping costs is one possible mitigation approach for any lowering of the water table caused by MPWSP." (Appendix E, page 38)

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	"There are two types of potential impacts the proposed extraction wells could have on inland water users. First, the inland groundwater users may experience a reduction in groundwater levels in their wells, with associated increases in pumping costs... The second type of effect the extraction well system could have on in-Basin groundwater users is a reduction in the quantity of fresh water that is available for their future use." (Appendix E, page 27) The SWRCB report indicates that there would be little to no injury to Basin users associated with extraction of seawater-intruded groundwater, and further concludes that monetary compensation is a feasible mitigation approach for any lowering of the water table that did occur. The report states that "So long as overlying users are protected from injury, appropriation of water consistent with the principles previously discussed in this report should be possible" (Appendix E, page ii and 39). The MND discussed the potential for well drawdown in proximity of the slant test well and concluded that any such drawdown would be a less than significant impact due to the degraded and unusable condition of water in the project vicinity. The MND also identified appropriate mitigation, including compensation for increased pumping costs, in the event actual drawdown or loss of freshwater supplies substantially exceeds current estimates developed through best available information and modeling. These measures are consistent with recommendations and findings in the SWRCB report and are consistent with the statement that Cal Am can establish an appropriative groundwater right to pump from within the CEMEX parcel by showing no injury to other users ("In summary, to appropriate groundwater from the Basin, the burden is on Cal Am to show no injury to other users." Appendix E, page 38). Further, the SWRCB report specifically recommends development of additional necessary information through a series of test borings and test wells: "Second, the effects of the MPWSP on the Basin need to be evaluated. Specifically, a series of test boring/wells would be needed to assess the hydrogeologic conditions at the site." (Appendix E, page 42) "The studies will form the basis for a plan that avoids injury to other groundwater users and protects beneficial uses in the Basin." (Appendix E, page 43). The slant test well meets a specific recommendation of SWRCB and would provide the additional information identified as necessary in the SWRCB report. The IS/MND does not prejudge the slant well test results, but rather cites to substantial evidence in the SWRCB report in support of its finding that the impacts are not expected to be significant. The IS/MND conservatively incorporated mitigation measure HYD/mm-1 in the event unexpected impacts do occur.
MCWD-5	The comment quotes the MND's statement that "drawdown of water in surrounding wells would not constitute an adverse effect on a usable water source" due to the extent of seawater intrusion in the potentially affected area and points out that the SWRCB recognized that the MPWSP "could extract some fresh water from within the Basin". The comment does not recognize the SWRCB statements that little to no impact would result from extraction of intruded portions of the Basin (refer to Response to MCWD-5, above) or ultimate conclusion that "So long as overlying users are protected from injury, appropriation of water consistent with the principles

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	previously discussed in this report should be possible" (Appendix E, page ii and 39). The statements on page 112 of the MND are consistent with the SWRCB findings. The entire 2013 SWRCB draft report is included in the MND. Alleged inconsistencies in the findings of the SWRCB report are addressed in Response to MCWD-4, above.
MCWD-6	The comment requests mitigation measures be developed in the event the project increases seawater intrusion. The MND discusses the potential for additional seawater intrusion as a result of pumping activities and found no risk associated with operation of the slant test well, consistent with SWRCB and MCWRA information. All groundwater within the CEMEX parcel and a 2-mile radius has been rendered unusable due to the extent of seawater intrusion and the SWRCB has concluded that these waters would have little or no beneficial use. Therefore, an increase in salinity in these areas would not constitute a significant environmental impact on a water resource. No evidence has been provided that would indicate a risk of increased seawater intrusion as a result of operation of the slant test well; therefore, no mitigation is necessary. CEQA does not require development of mitigation for impacts that are found to be unlikely to occur, and doing so would place an unjustified burden on project applicants to mitigate conditions that would not be caused by their proposed actions.
MCWD-7	This comment states that the MND fails to recognize that Cal Am would need to obtain a construction water permit from MCWD for an out-of-district use. Cal Am commonly obtains water needed for various projects from the nearest local municipality and proposed the same when the MND was drafted. If a purchase of water from MCWD is infeasible, Cal Am would purchase water from an alternative proximate source, such as one of its other water systems or a third party supplier, and truck it to the project site for well construction as proposed.
MCWD-8	The comment asserts that potential impacts of the project cannot be assessed unless the MND discloses when, where, and for how long specific activities are expected to occur, and recommends a timeline showing when all entitlements would be obtained. The Project Description describes when, where, and how long project activities would occur, including a 5-month construction phase, 2-year operational phase, and 4-week decommissioning phase. Pumping would occur for a duration long enough to obtain a predictable trend in salinity data, up to a maximum of 2 years, though a shorter time period may be adequate based on test results. The project would be located in interior portions of the CEMEX parcel as depicted on graphics in the MND. All required entitlements identified in Table 1 on page 27 of the MND would have to be obtained prior to project construction. Approval of the monitoring plan would be required prior to construction as stated in HYD/mm-1.
MCWD-9	The comment asserts that HYD/mm-1 is inadequate and a focused EIR should be prepared to assess potential impacts associated with a depletion of groundwater supplies because the legal burden is on Cal Am to prove no injury to users in the Basin. The comment does not explain why HYD/mm-1 is inadequate in the view of the commenter. As discussed in Response to MCWD-4, above, the SWRCB has indicated that "[t]here is expected to be minimal impact to freshwater sources at start-up and for

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	the first several years of operation as water will certainly be sourced from the intruded portion of the aquifer" (Appendix E, page 37). Impacts to groundwater supplies in the SVGB were analyzed in the IS/MND and determined to be less than significant with implementation of HYD/mm-1, which is also consistent with recommendations in the SWRCB report. Therefore, due to the limited anticipated impact and mitigation measures in place to compensate adjacent water users in the event of any unanticipated injuries, consistent with the SWRCB recommendations, impacts would be less than significant. No EIR is necessary for the Slant Test Well Project.
MCWD-10	The comment states that the amount of water proposed to be pumped is a significant amount and the proposed MPWSP would pump over 6 times the amount proposed through operation of the slant test well. The MND accurately disclosed the amount of water proposed to be pumped and assessed the potential for environmental impacts associated with proposed test pumping (refer also to Response to MCWD-3, above). The amount of water to be pumped by the MPWSP, if developed, is not relevant to the Slant Test Well Project or IS/MND.
MCWD-11	The comment states that HYD/mm-1 is inadequate because baseline hydraulic measurements must be taken during critical, dry, below normal, above normal, and wet years. The Slant Test Well Project proposes a short-term pumping and testing activities for a limited duration to provide information regarding the hydraulic conditions of the groundwater aquifers in the project vicinity. Timing is of the essence due to water supply shortages that have existed on the Monterey Peninsula for decades. The comment recommends that the project be postponed until all five types of water years (critical, dry, below normal, above normal, and wet) have occurred and baseline fluctuations can be monitored; this would take a minimum of 5 years and most likely it would take much longer to experience all five weather conditions. This requirement would result in an unreasonable delay in project implementation under CEQA, which envisions that a negative declaration for a private project requiring a permit from a city is supposed to be completed within 180 days after the application for the permit is accepted as complete. Additional baseline monitoring is not required under CEQA and would not minimize any potentially significant environmental impacts. Monitoring wells would monitor changes in water levels and quality in areas surrounding the slant test well. HYD/mm-1 requires preliminary monitoring and sampling prior to pumping activities to develop a baseline condition of groundwater levels and quality, including the reasonable range of natural fluctuations, in the Dune Sand, 180-FTE, and 400-Foot Aquifers. HYD/mm-1 also eliminates the possibility of greater than 1 foot drawdown on any adjacent well. HYD/mm-1 is adequate to mitigate all potential impacts to less than significant levels.
MCWD-12	This comment states that Cal Am's monitoring plan must be submitted to MCWD and all well owners within a 2-mile radius of the slant test well for review and approval. HYD/mm-1 requires Cal Am coordination with and reporting to adjacent well owners, including CEMEX and other users within 2 miles of the slant test well. It is subject to review and approval of the City. There is no environmental justification under CEQA for requiring further approval by other parties other than the CEQA Lead Agency. However, the monitoring plan will be a public document and any party who wishes to submit comments relating to the plan will be able to do so.

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MCWD-13	The comment requests justification for the 1 foot drawdown threshold. The threshold was considered appropriate because a water level change of 1 foot would not be critical to the operation of most municipal or private water supply wells, particularly in the seawater-intruded area of the SVGB, where there is little to no beneficial use of groundwater in the Dune Sand and 180-Foot (or equivalent) Aquifers. Increased pumping costs potentially created by a 1 foot drawdown would be marginal (i.e., a pump running six hours per day pumping an additional 1 foot because of drawdown would cost an estimated $6 to $10 more per year in electricity). It is not uncommon for groundwater levels in the project vicinity to naturally fluctuate by 1 foot or more in any given year and other studies have used a 1 foot drawdown as the appropriate significance threshold. The 1 foot threshold is extremely conservative considering drawdown is expected to be limited to seawater-intruded areas of the basin, and there is little to no beneficial use of groundwater within the Dune Sand and 180-Foot (or 180-Foot equivalent) Aquifers in the project area. There are portions of the 400-Foot Aquifer within 2 miles of the slant test well that are outside of the seawater-intruded zone; however, no pumping is proposed in the 400-Foot Aquifer and no significant drawdown is expected in the 400-Foot Aquifer as a result of operation of the slant test well.
MCWD-14	This comment states that the Slant Test Well Project should cease entirely in the event a 1 foot drawdown is reflected in any well and discusses the additional pumping that would occur under the MPWSP. The MND determined that drawdown of less than 1 foot in the seawater-intruded areas surrounding the slant test well would be a less than significant impact. Therefore, there is no justification under CEQA to require that all pumping cease in the event this threshold is initially exceeded; doing so would defeat the information-gathering purpose of the slant test well. Mitigation is identified in HYD/mm-1 that would require pumping activities to be reduced in the event the threshold is exceeded to ensure drawdown is limited to less than 1 foot in any adjacent well. This measure is adequate to ensure potential impacts associated with well drawdown would be less than significant. No further measures are required under CEQA to avoid or reduce impacts. Potential impacts associated with the MPWSP are outside of the scope of the MND.
MCWD-15	The comment states that compensatory mitigation is inappropriate where the MPWSP would extract 6 to 15 times greater amounts of water. The SWRCB specifically mentioned potential feasible mitigation for well drawdown through compensatory measures, including measures to cover the additional costs of pumping. Therefore, this mitigation is appropriate to minimize potential impacts of slant test well pumping. Potential impacts associated with the MPWSP are outside of the scope of the MND.
MCWD-16	The comment states that the person designated to monitor implementation of the monitoring plan should have at least 10 years of hydrology or hydrogeology experience and not have been a consultant of Cal Am on any past, present, or future projects. The designated monitor will be subject to City review and approval. The City will consider these suggestions in considering whether to approve the monitor and the approval process will ensure a properly-qualified monitor is designated. The monitoring reports would be public documents that any interested party could comment on.
MCWD-17	The comment requests regular reporting (no less than monthly) of monitoring results, submittal of monitoring reports to relevant agencies and owners within 2

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	miles of the slant test well, and posting on the City's website within 3 days of receipt. HYD/mm-1 requires regular reporting (no less than annually) and submittal of monitoring reports to the City and other interested regulatory agencies. Therefore, monitoring information will be made public and available to MCWD and other interested parties. The monitoring plan will define timing and frequency of reporting requirements, which would be subject to City approval. These measures are adequate under CEQA to minimize potential impacts associated with the project and ensure regular reporting by Cal Am.
MCWD-18	The comment asserts that the MND failed to address the 1996 Annexation Agreement limiting groundwater extractions from the CEMEX property to 500 acre feet per year. The MND focuses on the potential environmental impacts of the project as opposed to the impact of any contractual agreements. The comment does not address any environmental issue; therefore, no further response is necessary. Impacts to the SVGB are addressed in the IS/MND and were found to be less than significant with identified mitigation. Refer to Response to MCWD-3, above.
MCWD-19	This comment asserts that the MND failed to identify MCWD as the source of potable water needed for drilling activities. The applicant proposes to purchase construction water from a proximate source and truck it to the site for drilling. If purchase from the City's supply through MCWD is infeasible, an alternate source would be utilized. Due to minimal amount of water needed for construction purposes, no significant environmental impact would result, regardless of the ultimate source. See Response to MCWD-7, above.
MCWD-20	The comment states that a focused EIR should be prepared for the slant test well. Despite the long history of groundwater planning in the project area, when considered under CEQA, implementation of the Slant Test Well Project as proposed does not implicate significant environmental impacts. All potentially significant impacts associated with the project would be mitigated to less than significant levels through fairly standard mitigation identified in the MND. Therefore, no EIR is required under CEQA.

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July 1, 2014

Via Email

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Re: Draft Initial Study and Mitigated Negative Declaration for the California American Water Slant Test Well Project

Dear Ms. Szymanis,

As project applicant, California-American Water Company ("CAW") wishes to briefly address the following issues related to the *Draft Initial Study and Mitigated Negative Declaration for the California American Water Slant Test Well Project*: (A) comments sent to the City of Marina by the Marina Coast Water District ("MCWD") and the Ag Land Trust; and (B) issues raised to CAW by the land owner of the property on which the project is to be located. I would be happy to provide any further information on these issues if necessary.

1. Construction and operation of the Slant Test Well Project on the CEMEX site does not conflict with 1996 Annexation Agreement

In its comments, MCWD argues that extraction from a slant test well located on the CEMEX property would conflict with the 1996 Annexation Agreement by and among MCWD, the City of Marina, the Monterey County Water Resources Agency ("MCWRA"), Armstrong Ranch and CEMEX predecessor, Lonestar. MCWD has repeatedly and unsuccessfully advanced this argument in other proceedings related to CAW's proposed Monterey Peninsula Water Supply Project ("MPWSP"). This argument provides no basis for the City to disapprove the IS/MND and is misplaced for the following reasons.

The Annexation Agreement is inapplicable to the Slant Test Well Project. Paragraph 7.2 of the Annexation Agreement provides that Lonestar (or its successors or assignees) may pump up to 500 afy of groundwater for overlying use on the Lonestar property. The

provision is intended to recognize and protect Lonestar's overlying groundwater rights for use on the property. (See, Annexation Agreement, ¶¶ 5.1.1.3 [referring to the limitations as "*Lonestar's* entitlement" (emphasis added)]; 7.2 ["*Lonestar* shall limit withdrawal" (emphasis added)]; Executive Summary ["*Lonestar* will limit its pumping to its current use of 500 afy" (emphasis added)].) The Annexation Agreement does not, in any way, limit pumping of salt or brackish water for analytical testing or desalination as part of the Slant Test Well Project and the MPWSP, because the Annexation Agreement itself does not prohibit or restrict a project that proposes to appropriate water from the CEMEX property.[1]

MCWD is well aware of this fact because it had proposed the CEMEX property as a location for the installation of similar water supply wells for the failed Regional Desalination Project, which it was undertaking with MCWRA. MCWD is now taking a position contrary to its longstanding interpretation of the Annexation Agreement simply because it is no longer a participant in the project.

2. The water rights approach for the Slant Test Well Project is consistent with water rights law, as set forth in the July 2013 State Water Resources Control Board Report

In its comment letter, the Ag Land Trust objects to the Slant Well Test Project "due to lack of any proof... that [CAW] has any groundwater rights within the overdrafted Salinas Valley aquifers."

Contrary to these statements, there is no requirement or means to obtain advanced written "proof" of a right to appropriate surplus groundwater in the Salinas Valley Groundwater Basin. The law is well established, and is thoroughly described in the State Water Resources Control Board's ("SWRCB's") July 2013 Report. Surplus waters may be appropriated if overlying users are not injured. California groundwater law authorizes the appropriation of surplus and developed groundwater. (*Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 368-369; *Garvey Water Co. v. Huntington Land & Imp. Co.* (1908) 154 Cal. 232, 241.)

The sea/brackish water in the vicinity of the project is unusable by other pumpers, and is surplus water that can be extracted by CAW if it can be done without causing injury to other groundwater users. Development of such waters furthers the constitutional mandate to maximize the beneficial use of the waters of the State. The law requires the development of measures that maximize the beneficial use of water and mitigates effects on other legal users of groundwater. (*Lodi v. East Bay Mun. Water Dist.* (1936) 7 Cal.2d 316, 344-345.) In the event that the Slant Test Well Project results in any such effect to other groundwater users, those effects will be mitigated such that no injury occurs. The

[1] Cal-Am has been working closely with the MCWRA, its representatives, and representatives of other parties including Salinas Valley Groundwater Basin water users to ensure the MPWSP is developed and carried out to avoid negatively impacting that basin, consistent with the purposes of the MCWRA Act. Indeed, the proposed Slant Test Well Project is in furtherance of this effort to understand the potential effects of the MPWSP.

mitigations contained in the City's negative declaration and conditions of approval require steps to taken to insure no such injury occurs to other groundwater users. The SWRCB's July 2013 Report endorses CAW's approach to development of appropriative rights to groundwater for the Slant Test Well Project and the MPWSP, and consistent with these principles.

3. The owner of the project property has raised the following issues in discussions with CAW.

The owner of the project property (CEMEX) has raised the following issues in discussions with CAW. CAW would like to note these for inclusion in the record.

Cultural Resources

The *Draft Initial Study and Mitigated Negative Declaration* concludes that there is no impact related to cultural resources as a result of this project because of this distance between the project and the structures located on the rest of the CEMEX property.

CEMEX does not believe that this property qualifies as a historic resource because it does not meet any of the United State Department of the Interior standards for consideration as a historic resource. Nor does the site qualify as a historic landscape as a result of the extensive site changes that have occurred on the property over the last century.

Site Restoration

There are various mitigation measures related to well abandonment and restoration of the site contained in the initial study.

The test well site is located within the active mining area of the CEMEX property. CEMEX wants to make sure that there is no condition requiring site restoration beyond the current (disturbed) condition of the test well site since such a requirement would be inconsistent with the continued use of this portion of their property as a part of their mining operation.

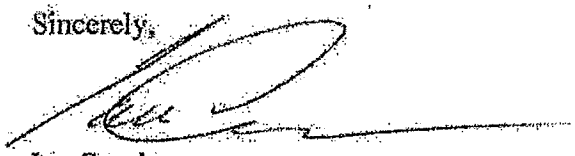
Wetlands Characterization

The "Biological Resources" section states that "the dredge and settling ponds within the [CEMEX] property meet the state definition of a wetland." (p.51.). This section then suggests that the United States Army Corps of Engineers and the California Coastal Commission would consider the dredge and settling ponds as wetlands subject to their regulation (pp.52, 66.) First, CEMEX's dredge and settling ponds are not within the 0.75 acre Project footprint. Second, per regulatory guidance, the United States Army Corp of Engineers has stated that it does not consider "[a]rtificial lakes or ponds created by excavating dry land to collect and retain water and which are used exclusively for such purposes as ...settling basins"; and "pits excavated for the purpose of obtaining... sand... as 'waters of the United States' unless and until the excavation operation is abandoned."

(Definitions of Waters of the United States, 51 Fed. Reg. 41206, 41217 (Nov. 13, 1986)). Furthermore, applying the California Coastal Commission's "one parameter" definition of wetlands (14 CCR § 13577(b)) literally would result in the unintended jurisdiction over bodies of water (such as dredging and settling ponds and swimming pools) simply due to satisfaction of the hydrology requirement.

Please let me know if you would like CAW to provide any further information on these issues.

Sincerely,



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