

Tina S. Dickason  
574 Leighton St.  
Cambria, CA. 93428

May 18, 2018

Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA

c/o Jon Rokke, [jon.rokke@waterboards.ca.gov](mailto:jon.rokke@waterboards.ca.gov)

RE: Cambria Community Services District (CCSD) Proposed Update of Order R3-2014-0050,  
Hearing Notice and Availability of Proposed Update of Waste Discharge and Water Recycling  
Requirements

Dear President Wolff and Members of the CCRWQCB:

Thank you for the opportunity to comment on the proposed order update. This is now the third set of comments I have prepared for your Board, in addition to having attended three meetings: November, 2014, July, 2017 and December, 2017—all related to the Cambria Community Services (CCSD) Emergency Water Supply (EWS) facility. What stands out vividly in my mind are comments made by members of your Board, including President, Dr. Jean-Pierre Wolff at the July, 2017 meeting, where he stated that if he knew then (Nov. 2014) what he knows now (July, 2017), he would not have approved permits for Title 22 or Title 27 to the CCSD. At least one other Board member has commented that for a small town such as the size of Cambria, the EWS project is not financially feasible. I would concur that both these observations have proven to be true, as I will attempt to explain in my comments below.

Before going into details relevant to the report and the project, I would like to request that the proposed hearing date of June 28-29, 2018, be re-scheduled to a later date, since I have learned that Mr. Jon Rokke, Control Engineer, will be unavailable for the June hearing. Because this matter involves technical discussion of various analytes and constituents in the RO brine waste concentrate of the EWS plant, I think it would be in the best interests of all participating in the hearing that Mr. Rokke be present, so that he can be available to address questions and if necessary, to provide more detailed information to the Board and members of the public.

I would also request that the revised order, originally issued in November, 2014, be immediately modified to preclude the discharge of diluted reverse osmosis (RO) brine waste into the percolation ponds, based on new data contained in Table 6 of the draft order.

**Page 5**, new requirement #3 of the proposed order, would allow for the suspension of groundwater monitoring during “periods of inactivity” which is a vague and ambiguous term, left up to the discretion of the CCSD. It should be noted that even though the Emergency Water Supply (EWS) plant is not currently producing water, RO concentrate is currently being percolated into leaking perc ponds next to San Simeon Creek. It is not clear when CCSD will operate the EWS plant, but it is my understanding that the District would need to declare a

Stage 3 Drought Emergency Condition before operating the plant, as identified in the Emergency CDP from the County, and from the excerpt below in the Draft Report, Page 1, #4

*The Emergency Coastal Development Permit states that it “is valid until such time that the CCSD-declared Stage 3 Water Shortage Emergency has ended, or the project has been authorized to continue to serve existing development through approval of a regular Coastal Development Permit, whichever is sooner. While processing the regular Coastal Development Permit, the emergency water facility may only be re-activated and utilized to produce water in the event of the occurrence of another Stage 3 Water Shortage Emergency and only after the CCSD has issued a formal declaration of the existence of such a Stage 3 Water Shortage Emergency.” The Emergency Coastal Development Permit further requires that the Discharger apply for a regular Coastal Development Permit for the project, which the CCSD did on June 13, 2014. As of June 28, 2018, a regular Coastal Development Permit has not been issued to CCSD.*

As recently as May 17, at a Finance Committee that I attended, the CCSD General Manager stated that he would like to see the EWS plant “come on line” by this September, even though the aquifer is currently showing levels that look comparatively good for this time of year. (See link below to San Simeon well levels over the past 7 years)

<https://www.cambriacsd.org/assets/ss-creek-well-levels-last-7-years-apr-30.pdf>

If the plant is to begin operation in September, then the requisite 60-day process will bring us into the rainy season before any water is produced. We have no way of predicting exactly where the well levels will be in September, nor do we have evidence of whether it will rain in October, November or December. At this time, it would appear that the well levels are looking good, as we approach June. Cambrians have been exemplary in conserving water, and even though we are now in a Level II Drought Emergency Condition, many Cambrians continue to conserve. (The water/sewer bill that arrived in our mailbox today reveals that my husband and I used the same number of units (3) for a 2-month period, as we did one year ago).

Below, is an excerpt from the CCSD’s May 24, 2018, agenda packet, page 174, with a different scenario of how often they suggest they will run the plant. (This is part of an agenda item related to new rate increases to be imposed, while we are in the middle of a 5-year rate increase!). (bold enhanced)

*SWF rates were originally adopted prior to construction and operation of the facility based on preliminary engineering cost estimates. These rates need to be increased to provide adequate funding for operations and maintenance and also to provide a small level of ongoing funding for capital improvements. The proposed SWF rates eliminate the previously-adopted temporary surcharges levied during periods of operation and transition cost recovery to the ongoing rates charged year-round. **The proposed rates support funding for two months of SWF operations (including brine hauling and disposal costs) each year. If the SWF does not need to be operated in future years, CCSD may be able to defer and/or reduce future year rate increases.***

On Page 5, 2<sup>nd</sup> paragraph of the Staff report, I am unclear as to why that paragraph (see below) was incorporated into the staff report. The application for the revised Title 22 permit was submitted to the Regional Board for the “Emergency Water Supply Project,” not for any other project, bearing a different name or purpose. Cambrians voted for an Emergency Water Supply, as an alternative source of water for current residents in times of drought. They did **not** vote for a “bait and switch” for a facility to be repurposed with a new title, Sustainable Water

Facility (SWF) to “supply enough water to accommodate new development,” as indicated in the comments below. That decision was made without input from the community!

*CCSD’s Board certified a Supplemental Environmental Impact Report (SEIR) for this project on July 27, 2017. The SEIR contains project modifications including changing the purpose of the project from a facility intended for use during emergency drought conditions to supply water to existing residents of Cambria, to an everyday facility which would supply enough water to accommodate new development. The SEIR refers to the project as the “Sustainable Water Facility” instead of the “Emergency Water Supply” project. The updated Order continues to use the EWS nomenclature consistent with the Emergency Coastal Development Permit.*

Apart from the Cease and Desist Order (CDO), it should be noted that the CCSD has a history of generating numerous violations, documented in Notices of Violation (NOV) and filed Cal. EPA complaints. While it is true that the vast majority of these NOV’s were due to late reporting or non-reporting (page 4 of staff report), the staff report fails to disclose that some of the NOV’s were related to chlorine discharges, and discharges of excessive levels of boron (from the RO concentrate) and nitrate from the perc ponds. Page 2, paragraph 4 of the staff report, misleads the public into believing that chlorinated water has not yet been introduced into San Simeon Creek, by stating that “introducing chlorinated water into San Simeon Creek and Lagoon **would** violate WDR’s.” In fact, the CCSD **did** introduce chlorine into Van Gordon Creek, a tributary feeder into San Simeon Creek State Natural Preserve, and habitat for several federal and state listed species, which is documented in a NOV. (I take note that a de-chlorinator has been installed to help prevent such incidents from occurring in the future).

**Page 8**, Item 21 (paragraph 5) of the draft order proposes to generously grant the discharger the discretion to operate **“the facility”** for **longer hours in the future** (longer than 8 hours per day, 5 days per week for 6-months of the year when **“drought conditions are most severe.”**) Item 21 is vague and ambiguous, insofar as it does not define which facility it refers to (EWS or SWF, or portions thereof?), and it does not define “longer hours” or define “when drought conditions are most severe.” Does the Board intend to give the discharger the discretion to operate the “Emergency Water System” year-round, including during the rainy season when the aquifer is full? If so, why, as this would be a significant change of project scope from the EWS RWQCB applications and County Emergency CDP application and would be producing potable water to discharge into the ocean? How does it make sense to allow the EWS to operate longer than when drought conditions are most severe? This seems to be contradictory and out of scope from the original permit applications.

It would be an abrogation of duty and violation of public trust to not require year-round monitoring, given the discretion CCSD has to choose when to operate components of the plant, to percolate RO concentrate into percolation ponds, even when the plant is “non-operational” and given the CCSD’s history of late or non-reporting. The proposed requirement of monitoring 30 days before and 60 days after “during periods of inactivity” is inadequate to ensure water quality downstream of the plant, in the State Natural Preserve and public beach/lagoon berm.

It makes no sense that the Board would grant such an ambiguous and favorable revised order to a discharger that has yet to comply with all the terms of a CDO, and has such a poor track record of late and non-reporting. Why would the board give up its regulatory authority, leverage, and bargaining position to the CCSD with such a favorable revised order, while the CDO remains outstanding and CCSD is still non-compliant?

Since the decommissioning of the surface impoundment, ordered by the RWQCB, the CCSD will be required to dispose of all brine waste from the facility when operational, by trucking to an approved facility. The District has a contract with the South San Luis Obispo County Services District (SSLOCSD) to dispose of brine waste, but that facility's NPDES permit limits brine waste to 50,000 gallons per day and is on a first-come, first-serve basis. When the Reclamation Project in South County is completed, how will that project impact the SSLOCSD's NPDES permit, and the possible impact it may have on Cambria's ability to dispose of their brine waste at that facility?

I have yet to be convinced of tracer tests conducted in late 2014 which did not pass, and again in fall of 2016, which passed from my understanding through "modeling." See comments below from the Staff Report, Page 2:

*An initial tracer study conducted in 2014 injected water at a rate averaging 437 gallons per minute, and concluded that the minimum 60-day residence time for indirect potable recharge projects was not met. A second tracer study was conducted in the fall of 2016 using an average injection rate of 406.9 gallons per minute (gpm). The second study concluded that the 60-day minimum residence time was met, and the Division of Drinking Water (DDW) **conditionally accepted the study** in a letter dated October 10, 2017, provided that the injection of recycled water does not exceed 400 gpm. This updated Order includes a 400 gpm limit on recycled water injection. (bold enhanced)*

I am also not convinced of the plant producing 250 acre feet. There has been no proof to date that the project can produce what it has been purported to. Attached, is the Department of Finance's Audit Report, which was released at the beginning of May, 2018 and is related to the Proposition 84 Grant funding, of which the CCSD received approximately \$4.3 million for the EWS project. (**See Attachment 1, below**). The audit report notes that the project has not run for 6 consecutive months to show that it is capable of providing 240-250 acre feet of water.

In regard to Wet Weather Preparedness, while the Staff Report, page 2, (see below in italics) refers to "design flaws" related to the flooding in early January, 2017, I would add that the District did not respond to the Wet Weather Preparedness notice from the RWQCB of September, 2016, which required a response by October 1, 2016. The District did not respond to the notice until February 2, 2017, after major flooding had occurred in early and mid January of 2017. While there may well have been design flaws, (have they been identified and reported?) I also feel the District was negligent in seriously addressing Wet Weather Preparedness until the fall of 2017, when they undertook major efforts in doing so, which in the course of such, was shocking to see how much was destroyed in an Environmentally Sensitive Habitat (ESHA) area.

*On July 13, 2017 the Central Coast Water Board adopted cease and desist order (CDO) R3- 2017-0016 for the Title 27 surface impoundment after flood waters inundated the facility in early 2017. The 2017 flooding resulted in the discovery of significant **design flaws** with the impoundment. The CDO led to the subsequent approval of a Pond Closure Plan, and significant changes to the waste disposal procedures originally described in Order R3-2014-0050. This proposed updated Order reflects the new waste disposal procedures and surface impoundments closure (see Figures 2 & 3). (bold enhanced)*

Page 2, #7 of the Draft Order, states:

*7. In addition to re-injection of 576,000 gpd of reverse osmosis (RO) water, the CCSD **potentially** supplies approximately 72,000 gpd of membrane filtrate (MF) product water to San Simeon Creek to prevent dewatering of the fresh water lagoon, and discharges up to 90,000 gpd of MF backwash to the CCSD percolation ponds.*

The words “potentially” and “approximately” are ambiguous in the above paragraph. What do they really mean? Where is the clarification for water to be supplied to the lagoon?

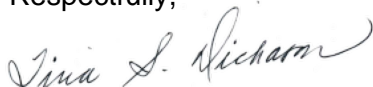
Other regulatory agencies have raised issues related to the EWS. Please see the attached letter from the California Coastal Commission to the San Luis Obispo County Planning Department, dated February 15, 2018 (**see Attachment 2, below**). The issues raised in the letter have created a huge stumbling block in pursuing the regular CDP. CCSD's plan in attempting to resolve the issues, are again at a huge expense to ratepayers. It would have been far wiser for CCSD to have paid attention in July of 2014, when the Coastal Commission, as well as other regulatory agencies, including RWQCB and members of the public, who made very clear in their comments when responding to the Initial Study Mitigated Negative Declaration (ISMND) to the CCSD, issues that the CCSD chose to ignore, but which have become major stumbling blocks as the District attempts to obtain a regular CDP. The project will have been built 4 years this October!

Another issue I would like to bring to the Board's attention, and am attaching a report for your convenience, relates to the “Clean Water Act May Be Required for Pollution Discharged Indirectly into Navigable Waters.” If the hearing is delayed, I would ask that the Board consider taking some time to look into this issue, as it would seem that at some point it will need to be addressed. (**See Attachment 3, below**)

I have touched on some areas of concern relating to the report, and others that are of indirect concern, but which have and continue to have an impact on this project and the people of Cambria. In my opinion, this project is, sadly, a travesty. I appreciate the opportunity to make comments, and I hope you will consider my comments as you address this item in an upcoming hearing.

I would like to thank members of the RWQCB staff, who have worked tirelessly on issues surrounding the EWS project, and whom I greatly respect.

Respectfully,



Tina S. Dickason

**Attachment 1: CDOF Audit**

**Attachment 2: Coastal Commission Comments on CCSD Coastal Development Permit**

**Attachment 3: Clean Water Act Permit**



## San Luis Obispo Flood Control and Water Conservation District

Proposition 84 Bond Program

Grant Agreements 4600009717, 4600010061,  
4600010880, and 4600011487

### **Team Members**

Jennifer Whitaker, Chief  
Cheryl L. McCormick, CPA, Assistant Chief  
Diana Antony, CPA, Manager  
Vance Cable, Supervisor  
Jared Smith

Final reports are available on our website at <http://www.dof.ca.gov>

You can contact our office at:

California Department of Finance  
Office of State Audits and Evaluations  
915 L Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814  
(916) 322-2985

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EDMUND G. BROWN JR. ■ GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Transmitted via e-mail

May 4, 2018

Ms. Karla Nemeth, Director  
California Department of Water Resources  
P.O. Box 942836, Room 1115-1  
Sacramento, CA 94236-0001

Dear Ms. Nemeth:

**Final Report—San Luis Obispo Flood Control and Water Conservation District,  
Proposition 84 Grant Audit**

The California Department of Finance, Office of State Audits and Evaluations, has completed its audit of the San Luis Obispo Flood Control and Water Conservation District's (District) grants 4600009717, 4600010061, 4600010880, and 4600011487, issued by the California Department of Water Resources.

The enclosed report is for your information and use. The District's response to the report findings is incorporated into this final report. The District agreed with our findings. We appreciate their assistance and cooperation during the engagement, and their willingness to implement corrective actions. This report will be placed on our website.

If you have any questions regarding this report, please contact Diana Antony, Manager, or Vance Cable, Supervisor, at (916) 322-2985.

Sincerely,

Original Signed by

Jennifer Whitaker, Chief  
Office of State Audits and Evaluations

Enclosure

cc: Ms. Cindy Messer, Chief Deputy Director, California Department of Water Resources  
Ms. Katherine Kishaba, Deputy Director of Business Operations, California Department of Water Resources  
Mr. Michael Tufts, Acting Deputy Assistant, Bond Accountability Office, California Department of Water Resources  
Mr. David Whitsell, Chief Auditor, California Department of Water Resources  
Mr. Bryan Cash, Assistant Secretary for Administration and Finance, California Natural Resources Agency  
Ms. Julie Alvis, Deputy Assistant Secretary, California Natural Resources Agency  
Mr. Wade Horton, County Administrative Officer, County of San Luis Obispo  
Mr. John Peschong, Chair, Board of Supervisors, County of San Luis Obispo

# BACKGROUND, SCOPE AND METHODOLOGY

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## BACKGROUND

California voters approved the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84). The \$5.4 billion of bond proceeds finance a variety of natural resource programs.

Established by the Legislature in 1945, the San Luis Obispo Flood Control and Water Conservation District (District) is tasked with identifying flooding problems, recommending solutions, and helping local areas in the County of San Luis Obispo (County) implement recommended solutions. Governed by the County Board of Supervisors, the District shares the same staff and the same geographic boundaries as the County.

The District received four grants from the California Department of Water Resources (DWR) as part of DWR's Integrated Regional Water Management Program (IRWM), designed to improve water supply reliability and to improve and protect water quality. Specifically:

- Grant 4600009717 – \$10.4 million to assist with four separately identified projects.
- Grant 4600010061 – \$1 million to update the San Luis Obispo County Region's IRWM Plan to meet standards established in the August 2010 IRWM Program Guidelines.
- Grant 4600010880 – \$6.3 million to assist with four separately identified projects.
- Grant 4600011487 – \$3.7 million to assist with four separately identified projects.

For each grant, the District is required to provide a minimum of 25 percent of the total project cost as match funding. The District is the lead agency for administering the grants and collaborates with several Local Project Sponsors (LPS) to oversee the completion of projects awarded under the grants. An LPS is a local public agency which provides project management, oversight, and compliance administration. The LPSs are responsible for completing the project deliverables and providing the support for reimbursable grant expenditures.

## SCOPE

In accordance with the California Department of Finance's bond oversight responsibilities, we audited the following District Proposition 84 funded grants:

<u>Grant Agreement</u>	<u>Audit Period</u>
4600009717	August 16, 2011 through December 21, 2016 <sup>1</sup>
4600010061	September 30, 2008 through March 31, 2015
4600010880	January 1, 2010 through March 20, 2017 <sup>2</sup>
4600011487	October 1, 2014 through September 26, 2016 <sup>3</sup>

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<sup>1</sup> An interim audit was conducted on grant 4600009717 as the grant period ends May 30, 2018.

<sup>2</sup> An interim audit was conducted on grant 4600010880 as the grant completion report had not been submitted at the time of our fieldwork in November 2017.

<sup>3</sup> An interim audit was conducted on grant 4600011487 as the grant period ends June 30, 2019.

The audit objectives were to determine whether the District claimed grant expenditures in compliance with the grant requirements and to determine whether grant deliverables were completed as required. We did not assess the efficiency or effectiveness of program operations. Further, no assessment was performed on the reasonableness of the land acquisition costs or the conservation value of acquired land or projects completed.

The District's management is responsible for ensuring accurate financial reporting and compliance with applicable laws, regulations, and grant requirements. DWR and the California Natural Resources Agency are responsible for the state-level administration of the bond program.

## **METHODOLOGY**

To determine whether grant expenditures were in compliance with the grant requirements; and if the grant deliverables were completed, we performed the following procedures:

- Examined grant files, grant agreements, and applicable policies and procedures, to gain an understanding of the IRWM grant projects and program.
- Interviewed DWR, District, and LPS personnel responsible for overseeing reimbursable grant expenditures to obtain an understanding of how each party oversees various grant funded projects.
- Selected a sample of projects to determine if claimed expenditures, including match, were allowable (i.e. grant-related, incurred within the grant period), and supported by accounting records by reviewing District and LPS accounting records, vendor invoices, and bank statements or similar documentation. Projects were selected to achieve representation of the various LPS, project statuses, and project types.
- Evaluated whether a sample of grant compliance terms and deliverables were met by reviewing quarterly progress reports, project completion reports certified by a California Registered Civil Engineer, engineering and inspection reports, construction site photos, and conducting a site visit to verify existence.

In conducting our audit, we obtained an understanding of the District's internal controls, including any information systems controls that we considered significant within the context of our audit objectives. We assessed whether those controls were properly designed, implemented, and operating effectively. No deficiencies in internal control were identified during our audit or were determined to be significant within the context of our audit objectives.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Except as noted below, the grant expenditures claimed, including match, complied with the grant agreements' requirements. Additionally, the grant deliverables available for review at the time of our audit fieldwork in November 2017, were completed as specified in the grant agreements. However, as detailed in Finding 2, one of the projects funded under agreement 4600010880 was non-operational as of our audit fieldwork in November 2017. The Schedules of Claimed and Questioned Amounts are presented below.

## Schedule of Claimed and Questioned Amounts

Grant Agreement Number 4600009717		
Task	Claimed <sup>1</sup>	Questioned
Direct Project Administration	\$ 55,556	\$ 0
Construction/Implementation	7,883,471	0
<b>Total Grant Funds</b>	<b>\$ 7,939,027</b>	<b>\$ 0</b>
Match Funds	47,361,486	0
<b>Total Project Expenditures</b>	<b>\$ 55,300,513</b>	<b>\$ 0</b>

Grant Agreement Number 4600010061		
Task	Claimed	Questioned
Personnel Services	\$ 400,000	\$ 113,603
Professional and Consultant Services	600,000	0
<b>Total Grant Funds</b>	<b>\$ 1,000,000</b>	<b>\$ 113,603</b>
Match Funds	434,660	0
<b>Total Project Expenditures</b>	<b>\$ 1,434,660</b>	<b>\$ 113,603</b>

Grant Agreement Number 4600010880		
Task	Claimed <sup>2</sup>	Questioned
Direct Project Administration	\$ 281,220	\$ 0
Land Purchase/Easements	13,821	0
Planning/Design/Engineering/Environmental Documentation	1,088,547	0
Construction/Implementation	4,939,402	0
<b>Total Grant Funds</b>	<b>\$ 6,322,990</b>	<b>\$ 0</b>
Match Funds	3,089,850	0
<b>Total Project Expenditures</b>	<b>\$ 9,412,840</b>	<b>\$ 0</b>

Grant Agreement Number 4600011487		
Task	Claimed <sup>3</sup>	Questioned
Planning/Design/Engineering/Environmental Documentation	11,970	\$ 0
Construction/Implementation	337,831	0
<b>Total Grant Funds</b>	<b>\$ 349,801</b>	<b>\$ 0</b>
Match Funds	86,259	0
<b>Total Project Expenditures</b>	<b>\$ 436,060</b>	<b>\$ 0</b>

<sup>1</sup> DWR awarded \$10,401,000; however, the District only claimed \$7,939,027 as of December 21, 2016.

<sup>2</sup> DWR awarded \$6,323,610; however, the District only claimed \$6,322,990 as of March 20, 2017.

<sup>3</sup> DWR awarded \$3,702,762; however, the District only claimed \$349,801 as of September 26, 2016.

### **Finding 1: Expenditures Claimed Outside Allowable Period**

The District claimed \$113,603 for work that was performed prior to the beginning of the allowable period of grant agreement 4600010061. Specifically, the allowable period for grant funds and match funding are distinct. Grant Agreement, section 11, states that work performed after the grant award date, November 29, 2012, shall be eligible for reimbursement. However, the District erroneously used section 6 of the Grant Agreement, which allows match funding to be claimed if performed after September 30, 2008. Consequently, the \$113,603 claimed represented expenditures for work performed prior to November 29, 2012.

#### **Recommendations:**

- A. Remit \$113,603 to DWR for the portion of project expenditures reimbursed for work performed prior to the beginning of the grant term.
- B. Ensure claimed expenditures are incurred within the appropriate grant term. The grant agreement provisions should be used as a guide to develop any desk procedures for preparing reimbursement claims.

### **Finding 2: Non-Operational Project**

Although the Cambria Community Services District (Cambria), a local project sponsor, completed an Advanced Water Treatment Plant (Plant) in accordance with grant agreement 4600010880, the Plant is currently non-operational. Specifically, Cambria received over \$4.3 million in grant funds from DWR to construct a Plant that would provide approximately 240 to 250 acre-feet of water during a six-month dry period. Cambria reported in its June 2016 project completion report that it had completed construction of the Plant and had determined through intermittent testing that the Plant could produce the requisite amount of water. However, due to subsequent events, the Plant became non-operational.

Specifically, on July 13, 2017, the Regional Board adopted Cease and Desist Order No. R3-2016-007 (Order), which required Cambria to immediately cease use of the evaporation pond, a key component of the Plant. According to the Regional Board, an inundation of surface water in January and February 2017 caused several regulatory violations that threatened water quality and the environment, resulting in the issuance of the Order. As a result, Cambria worked with the Regional Board to develop a plan to remediate the issues, which in December 2017 the Regional Board voted to accept. Cambria's plan involves ultimately abandoning the evaporation pond and modifying the Plant's water treatment process with a targeted completion date of August 2018. However, Cambria has not tested whether its modified Plant will be able to produce the requisite amount of water. As part of the grant agreement, Cambria must submit to DWR an annual Post-Performance Report that summarizes, among other things, the actual performance of the Plant compared to its expected performance and any additional information relevant to its continued operation.

#### **Recommendations:**

- A. Monitor Cambria's efforts in complying with the Regional Board's cease and desist order and modification of the Plant.
- B. After Plant modifications, require Cambria to test whether the new Plant can produce the requisite 240 to 250 acre-feet of water over a six-month dry period and report the results of its testing to the District and DWR.





**COUNTY OF SAN LUIS OBISPO**  
**Department of Public Works**  
*John Diodati, Interim Director*

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April 13, 2018

**TRANSMITTED VIA EMAIL ONLY**

Ms. Jennifer Whitaker, Chief  
Office of State Audits and Evaluations  
Department of Finance  
915 L Street  
Sacramento, CA 95814-3706

Subject: Response to Draft Report-San Luis Obispo Flood Control and Water Conservation  
District, Proposition 84 Grant Audit

Dear Ms. Whitaker:

We are in receipt of your draft audit report dated March 30, 2018 and have prepared the attached responses.

The District appreciates the opportunity to respond to your recommendations and findings, and hope for mutual resolution. If you have any questions regarding the responses, please contact Mladen Bando, Water Resources Engineer, or Straith Smith Zanartu, Finance Division Manager, at (805) 781-5252.

Sincerely,

"Original signed by"

JOHN DIODATI  
Interim Director

Enclosure

c: Wade Horton, County of San Luis Obispo Administrative Officer  
Mark Hutchinson, Deputy Director, Department of Public Works  
Straith Smith Zanartu, Finance Division Manager, Department of Public Works  
Wendy Hall, Division Manager Administration, Department of Public Works  
Courtney Howard, Division Manager Water Resources, Department of Public Works  
Kerry Bailey, Audit Chief, Auditor Controller Treasurer Tax Collector  
Mark Maier, Auditor, Auditor Controller Treasurer Tax Collector

File: CF 900.48.01.01

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**San Luis Obispo Flood Control and Water Conservation District**  
**Department of Public Works, County of San Luis Obispo**  
**Proposition 84 Grant Audit**  
**Responses to Findings**

**Response to Finding #1: Expenditures Claimed Outside Allowable Period**

Regarding Grant Agreement 4600010061, at the time the initial billing was done, the Project Manager at Department of Water Resources indicated that the budget could be reallocated via a formal budget adjustment between categories to align with the actual costs incurred for the program. This budget was adjusted on Amendment #1 to the grant agreement, which was executed on February 9, 2015. Shortly after executing the Amendment, Invoice #1 was submitted to Department of Water Resources by the District as originally prepared. Unfortunately, when the budget was reallocated within the three budget categories (Personnel, Operating Expenses, and Professional Services), the amounts and categories were incorrectly reapportioned. Since the budget adjustment was completed after the billing was prepared, the District did not discern this error as this was the District's first and only billing. It was the intent of both parties to mirror the invoice and the budget to reconcile the grant.

Due to the fact that the budget adjustment was not completed in alignment with the billing, the District is proposing two alternatives instead of returning \$113,603. The first alternative would be for the District to work with the Department of Water Resources and request a budget amendment to realign the budgeted line items with actual expenditures, which was the intent of the budget amendment originally. The second alternative would be that since the District has sufficient expenditures in other budget line items that do fit within the grant timeline criteria and program scope, the District would resubmit these expenditures to the Department of Water Resources for their approval, and ultimately back to the Department of Finance for their audit.

The District takes grant program compliance very seriously, values the ongoing partnerships and continued collaboration with the Department of Water Resources, who have been an integral partner in many of District's programs. The District also understands the Department of Finance's role in safeguarding grant funding to ensure resources are spent in accordance with the grant's scope of work.

As recommended, the District will develop a grant agreement procedure manual. In addition, a supplementary review process will be implemented regarding follow up on budget adjustments to ensure that the Grantor and Grantee are both in agreement with any budget revisions.

**Response to Finding #2: Non-Operational Project**

The District agrees that the Cambria Community Services District (CSD) emergency water supply project is currently non-operational and they are working to modify the facility so that it is operational for future drought conditions. Although the CSD submits annual post-performance reports that summarize the actual performance of the facility, the District will request additional monthly reports from the CSD to monitor its compliance with the Regional Water Board's cease and desist order. The District is committed to taking all actions necessary to satisfy its obligations under the grant agreement, including those set forth in Paragraph 20 related to operation and maintenance of the project. Upon modification of the facility and pursuant to the grant agreement and the District's related funding agreement with the CSD, the District will direct the CSD to test and report to the District and DWR that the facility can achieve the benefits stated in the grant agreement.

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
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February 15, 2018

Airlin Singewald  
San Luis Obispo County Department of Planning and Building  
976 Osos Street, Room 200  
San Luis Obispo, CA 93408

**Subject: Proposed Coastal Development Permit (Minor Use Permit Application DRC2017-00086) for Cambria Community Services District's (CCSD's) Wet Weather Preparedness Activities at 990 San Simeon Creek Road**

Dear Mr. Singewald:

We are providing these comments on the above-referenced coastal development permit (CDP) application submitted by the CCSD. In short, the proposed project application does not appear to be consistent with several applicable provisions of the County's Local Coastal Program (LCP), including its Coastal Zone Land Use Ordinance (CZLUO). Please accept the following preliminary comments in response to your request for our input via the project referral package that we received on January 23, 2018.

**ESHA**

Our primary concern is that the proposed project includes extensive vegetation removal and grading within an environmentally sensitive habitat area (ESHA), which is not allowed under the County's LCP. The CZLUO defines ESHA as including "areas known as habitat for species determined to be threatened, endangered, or otherwise needing protection." As noted in the CCSD's July 2017 Final Environmental Impact Report (FEIR), the area in which this application proposes to conduct vegetation removal and grading is designated critical habitat for the California red-legged frog. The FEIR also noted the presence of three other sensitive wildlife species on the site, and noted the "moderate to high" potential of suitable habitat for eight additional sensitive wildlife species. Pursuant to CZLUO Section 23.07.170(c), all development in ESHA is limited to uses that are dependent on the resource, and such resource-dependent uses are required to avoid any significant disruption or degradation of habitat values and to be the least environmentally damaging feasible alternative. In this case, however, the proposed project does not constitute a resource-dependent use and thus, per the LCP, the proposed project is prohibited in ESHA by the first ESHA test alone. We note on this point that we have repeatedly raised this concern regarding CCSD-proposed activities in ESHA at and near this location since at least 2014, but neither the County nor the CCSD have acknowledged nor addressed these potentially fatal LCP problems.

**Project Description**

The application does not fully or consistently describe the proposed project activities, and does not include all information required as part of the application. For example, it is not clear whether this application is for "wet weather preparedness activities" only, or whether it is

intended to also authorize other components of the CCSD's proposed water facility. The application's initial project description (on pages 1-2) states that the proposed project is for "wet weather preparedness activities." However, the application later states (on page 5 – Water Supply Information) that the project is a "community water system." If this application is intended to propose development other than "wet weather preparedness activities," it does not adequately describe the entirety of development that would be included in an also-proposed "community water system." This inconsistency is particularly important to resolve given that we understand that the County is separately processing a follow-up regular CDP for the CCSD's separately proposed community water project.

Similarly, the application (on page 4) states that the project site is 96 acres, which presumably would encompass the CCSD's entire proposed water facility rather than just the area in which wet weather preparedness activities would occur. However, most of the rest of the application appears to focus just on the area of ESHA vegetation removal and grading around the evaporation basin and does not describe conditions within the full 96 acres (e.g., it notes that floodwaters from across the adjacent County road affected the basin, but it does not mention the other two severe flooding events that have occurred on the parcel over the last two winters and that resulted in damage to, and shutdown of, the overall water facility). In addition, in several places the application omits important and required information. For example, the application (at page 3) does not include the total area of grading or removal of ground cover. This makes it difficult to determine whether the project would fall within the three-acre maximum site disturbance allowed under a Minor Use Permit (MUP) type of CDP, or would instead require a Development Plan type of CDP for site disturbance that is greater than three acres.

We strongly recommend that the application be revised to clearly identify the development activities for which a CDP is being requested. We further advise that processing of the proposed CDP application cease unless and until the actual proposed project parameters are identified. Absent such clarification, it is not clear what is being proposed and reviewed for LCP consistency, which will adversely affect the ability of the public to participate in the process and the ability of decision-makers to make appropriate CDP decisions under the LCP.

#### **CEQA**

The CZLUO establishes that a MUP is a type of CDP that is subject to an environmental determination as required under CEQA. Although the CCSD's application refers in several places to CCSD's July 2017 FEIR, that FEIR does not describe or evaluate the extensive grading and development in ESHA that appears to be proposed under this application. It appears, therefore, that these proposed activities have not yet been evaluated pursuant to CEQA requirements. We would advise that the LCP-required CEQA evaluation and determination be undertaken prior to any further processing of this CDP application.

Airlin Singewald

Cambria CSD's Wet Weather Preparedness (MUP Application DRC2017-00086)

February 15, 2018

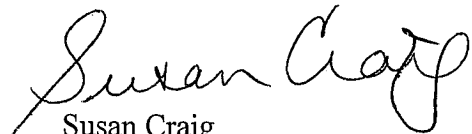
Page 3

### Public Hearing

This project appears at the very least to be a component of the larger desalination project and community-wide water project that has long been controversial, and which has generated a high level of local public interest. Further, the proposed project will also require the County to make a decision that involves significant LCP policies (e.g., allowable uses in ESHA) and impacts to species and habitat that are also protected by other statutes (e.g., California and Federal Endangered Species Acts) and agencies (e.g., U.S. Fish and Wildlife Service, California Department of Fish and Wildlife, etc.). As such, the LCP clearly advises that the CDP application be the subject of a duly noticed Planning Commission public hearing (including as provided for in CZLUO Section 23.02.033(b)(2)(iii)). Given the level of concern and controversy, it will also be particularly important for the County to appropriately and fully notice the hearing, including to ensure that all those who have previously expressed interest in the desalination project and other CCSD activities (e.g., by participating in previous local hearings and workshops on the desalination and other CCSD projects, by submitting comments on the FEIR, by expressing their views to the County in other ways (e.g., phone calls and meetings), by submitting written comments, etc.) are noticed pursuant to the LCP's noticing requirements.

In closing, thank you for your attention to these comments. Please ensure that these comments are made part of the public record for the proposed project, and that they are provided in full to all appropriate decision-making bodies. We look forward to continuing to work closely with you and your staff and the CCSD on the subject application, and we would appreciate the opportunity to understand any clarified project materials, including with respect to the project description and CEQA compliance, as soon as possible. If you have any questions regarding these comments, or would like to further discuss project issues, please don't hesitate to contact Tom Luster in our San Francisco office or Daniel Robinson in our Santa Cruz office.

Sincerely,



Susan Craig  
Central Coast District Manager  
California Coastal Commission

cc: Cambria Community Services District: Jerry Gruber ([JGruber@cambriacsd.org](mailto:JGruber@cambriacsd.org))

Bob Gresens ([BGresens@cambriacsd.org](mailto:BGresens@cambriacsd.org))

California Central Coast Regional Water Quality Control Board: Jon Rokke ([Jon.Rokke@waterboards.ca.gov](mailto:Jon.Rokke@waterboards.ca.gov))

California Department of Fish and Wildlife: Charles Walbridge ([Charles.Walbridge@wildlife.ca.gov](mailto:Charles.Walbridge@wildlife.ca.gov))

California Department of Parks and Recreation: Doug Barker ([Doug.Barker@parks.ca.gov](mailto:Doug.Barker@parks.ca.gov))

United States Fish and Wildlife Service: Chris Diel ([Christopher\\_Diel@fws.gov](mailto:Christopher_Diel@fws.gov))

## California Land Use &amp; Development Law Report

LEGAL COMMENTARY ON PLANNING AND DEVELOPMENT™

# Clean Water Act Permit May Be Required for Pollution Discharged Indirectly into Navigable Waters

By Jacob Aronson on April 4, 2018

Posted in Clean Water Act, Environmental Regulation

A Clean Water Act permit is required for discharging wastewater from injection wells into groundwater where wastewater is “fairly traceable” to navigable waters, the U.S. Court of Appeals for the Ninth Circuit held in *Hawai‘i Wildlife Fund v. County of Maui*, 881 F.3d 754 (9th Cir. 2018).

The County of Maui owns and operates a municipal wastewater treatment plant, and disposes of most of the treated effluent by injecting it into four wells. In 2013, a study by the Environmental Protection Agency, Hawaii Department of Health, and other researchers demonstrated that effluent from at least two of the wells flowed through groundwater and eventually reached the Pacific Ocean. The researchers placed tracer dye into the wells and found that it took 84 days for the tracer dye to emerge from submarine seeps in the ocean floor.

Environmental plaintiffs filed a citizen suit against the county, alleging that it was violating the Clean Water Act’s prohibition on discharging pollutants to navigable waters from a point source without a permit. The federal district court ruled in favor of the plaintiffs, and the county appealed to the U.S. Court of Appeals for the Ninth Circuit. The court of appeals agreed with the plaintiffs that the county’s discharges of effluent into the injection wells without a permit violated the Clean Water Act.

The parties did not dispute that the wells were point sources and that wastewater injected into the wells reached the Pacific Ocean via an underground hydrologic connection. And the county conceded that it would need a permit if it discharged effluent *directly* into the Pacific Ocean. The key legal issue, therefore, was whether the Clean Water Act required the county to obtain a permit to discharge pollutants into groundwater that *indirectly* reached navigable waters.

The court articulated a standard for determining when a permit is required for indirect discharges of pollutants to navigable waters: (1) the pollutants are discharged from a point source, (2) the pollutants are fairly traceable from a point source to a navigable water such that the discharge is the functional equivalent of a discharge into the navigable water, and (3) more than a de minimis level of pollutants reaches navigable waters. Applying this standard, the court concluded that the county was liable under the Clean Water Act. The court declined to decide “when, if ever, the connection between a point source and a navigable water is too tenuous to support liability.”

Over the past several decades, district and appellate courts have not agreed on the scope of Clean Water Act liability for discharges of pollutants that indirectly reach navigable waters. The U.S. Courts of

Appeals for the Second, Fourth, and Sixth Circuits are currently considering five cases involving Clean Water Act liability for pollutant discharges to groundwater that is hydrologically connected to navigable waters. See *26 Crown Associates, LLC v. Great New Haven Regional Water Pollution Control Authority*, No. 17-2426 (2d Cir.); *Upstate Forever v. Kinder Morgan Energy Partners*, No. 17-1640 (4th Cir.); *Sierra Club v. Virginia Electric Power Co.*, No. 17-1895 (4th Cir.); *Tennessee Clean Water Network v. Tennessee Valley Authority*, No. 17-6155 (6th Cir.); *Kentucky Waterways Alliance v. Kentucky Utilities Co.*, No. 18-5115 (6th Cir.).

Shortly following the Ninth Circuit's decision in *Hawai'i Wildlife Fund*, on February 20, 2018, the EPA initiated a 90-day request for comments on whether and how the agency should clarify or revise its prior statements on whether the Clean Water Act permitting regime applies to pollutant discharges to groundwater that has a direct hydrological connection to jurisdictional surface water. 83 Fed. Reg. 7126. EPA indicated in its notice that it would consider a rulemaking on this topic, among other possible actions. In the meantime, *Hawai'i Wildlife Fund* will provide some additional clarity to regulated entities in the Ninth Circuit.

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## California Land Use & Development Law Report

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