

3.11 Master Response on CEQA Public Process

3.11.1 Introduction

Overview

This master response addresses the issues commenters raised on adequacy of the CEQA public notification process and the review period.

This master response is organized by the following subtopics:

- 3.11.2 CEQA Public Notification
- 3.11.3 CEQA and Meetings
- 3.11.4 Adequacy of CEQA Review Period

3.11.2 CEQA Public Notification

Summary of Issues Raised by Commenters

Comments were received stating that the public notification for the Draft EIR is inadequate. Specifically commenters stated that landowners surrounding the proposed Project area were not notified of the availability of the Draft EIR, and that the EIR should be re-circulated.

Response

CEQA Noticing Requirements

CEQA Guidelines section 15087 requires a lead agency to give public notice of the availability of a Draft EIR by one of several methods. Section 15087(a) requires that a Notice of Availability (NOA) be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing.

Section 15087(a) also requires that in addition to the above notifications, at least one of the following procedures be implemented:

1. Publication at least one time by the public agency in a newspaper of general circulation in the area affected by the proposed Project;
2. Posting of notice by the public agency on and off the site in the area where the Project is to be located; or
3. Direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the Project is located.

To comply with these requirements, NOAs were sent to organizations and individuals who previously requested notifications pursuant to section 15087(a) and NOAs were published in several newspapers pursuant to section 15087(a)(1) as explained below.

Section 15087(d) requires the NOAs to be posted for 30 days in the office of the county clerk of each county in which the project will be located. NOAs were posted with the county clerks for five counties: San Bernardino, Orange, Riverside, Los Angeles, and Ventura counties.

Section 15087(f) requires that an NOA be sent to affected responsible, trustee, and federal agencies through the State Clearinghouse. Notices were sent to affected agencies as described below.

Section 15087(g) requires that lead agencies place copies of Draft EIRs in public libraries. Copies were placed in five libraries as described below. The following sections explain how the Project Draft EIR was noticed, satisfying these requirements.

Notification of Responsible, Trustee and Federal Agencies

On December 5, 2011, NOAs were sent to the State Clearinghouse, as well as to responsible, trustee, and federal agencies that may have an interest in the Project. The NOA was circulated to over 200 local, state, and federal agencies and to organizations and individuals that expressed interest in reviewing and commenting on the Draft EIR.

The following table lists the agencies that received an NOA. Delivery of these NOAs satisfies CEQA Section 15087(a).

Federal

Environmental Protection Agency
National Park Service
Southern California Agency - Bureau of Indian Affairs
United States Marine Corps
US Army Corps of Engineers
US Bureau of Indian Affairs
US Bureau of Land Management
US Bureau of Reclamation
US Department of Agriculture
US Department of the Interior
US Fish and Wildlife Service
USGS Water Resources Division
US Geological Survey (USGS)

State

Calif. Dept. of Toxic Substances Control
California Air Resources Board
California Department of Conservation
California Department of Fish and Game
California Department of Food and Agriculture
California Department of Forestry
California Department of Housing and Community Development
California Department of Parks and Recreation
California Department of Public Health

California Department of Transportation
California Department of Water Resources
California Emergency Management Agency
California Energy Commission
California Environmental Protection Agency
California Highway Patrol
California Integrated Waste Management Board
California Public Utilities Commission
California Resources Agency
California Department of Transportation (Caltrans) Planning
Colorado River Basin Regional Water Quality Control Board
Native American Heritage Commission
Office of Historic Preservation
State Clearing House
State Lands Commission
State Water Resources Control Board

Local

Bighorn-Desert View Water Agency
California Water Service Company
City of Barstow
City of Needles
City of Twentynine Palms
Golden State Water Company
Hi-Desert Water District
Imperial County
Imperial Irrigation District
Inland Empire Utilities Agency
Jurupa Community Services District
Los Angeles County
Mojave Desert Air Quality Management District
Mojave Desert Heritage and Cultural Association
Municipal Water District of Orange County
Orange County
Orange County Public Works
Palo Verde Irrigation District
Riverside County Planning Department
Riverside County Flood Control and Water Conservation District
San Bernardino Agricultural Commission
San Bernardino Associated Governments
San Bernardino County Regional Parks Department
San Bernardino County Department of Planning and Land Use (DPLU)
San Bernardino County Environmental Health Services
San Bernardino County Fire Department
San Bernardino County Museum
San Bernardino International Airport
San Bernardino Valley Municipal Water District
San Diego County DPLU
Santa Margarita Water District

Southern California Association of Governments
Suburban Water Systems
Three Valleys Municipal Water District
Town of Yucca Valley
Ventura County
Ventura County Planning Division.

In addition, SMWD filed a NOA with the Governor's Office of Planning and Research on December 5, 2012.

The Draft EIR was made available at the following locations:

- Santa Margarita Water District, 26111 Antonio Parkway, Rancho Santa Margarita, CA 92688;
- Rancho Santa Margarita Public Library, 30902 La Promesa Drive, Rancho Santa Margarita, CA 92688;
- Twentynine Palms Library, 6078 Adobe Rd., Twentynine Palms, CA 92277;
- Joshua Tree Library, 6465 Park Blvd., Joshua Tree, CA 92252;
- San Bernardino County Library, 104 W. 4th St., San Bernardino, CA 92415; and,
- Online at: <http://www.smwd.com/operations/the-cadiz-valley-project.html>.

Publication in a Newspaper

The NOA was published in the Orange County Register on December 18, 2011, the Press Enterprise on December 18, 2011, the Hi-Desert Star on December 21, 2011, and the Desert Trail on December 22, 2011. The notice of extension was published in the same newspapers on February 9, 2012. These published notices satisfy CEQA section 15087(a)(1). With notification published in local newspapers, the noticing requirements of section 15087(a) were satisfied in compliance with the CEQA Guidelines. The other suggested means of providing notice including site posting or mailing to contiguous properties (sections 15087(a)(2) and (3)) are optional. A new appendix (Final EIR Vol. 7, Appendix K Draft EIR Notification Materials) has been added to the Final EIR that includes proof of publication of the Draft EIR with each newspaper.

Posting at Counties

On December 5, 2011, NOAs were filed with the Clerk's office for San Bernardino County, Riverside County, Orange County, Los Angeles County, and Ventura County. Receipt of these NOAs satisfies CEQA section 15087(d).

Notification to Interested Parties

A total of 200 NOA's were mailed to members of the public, as well as local, state, and federal agencies concerning the availability of the Draft EIR. The list included all parties that commented

on the Notice of Preparation (NOP) and all parties that contacted SMWD requesting to be notified about the Project. The mailing of NOAs satisfies CEQA Guidelines section 15087(a).

In addition, SMWD published two notices in four (4) different newspapers of general circulation in the area affected by the Project (Desert Trail, Hi-Desert Star, OC Register and the Press Enterprise) pursuant to Guidelines CEQA section 15087(a)(1). Further, notices of the review period extension were sent on February 9, 2012 to all interested parties that originally received an NOA or Draft EIR. Additionally, to reach as many interested people as possible, notices were also sent to each person who attended the public meetings on the Draft EIR. Further, to reach as many interested parties as possible, SMWD published a Notice of Extension in five (5) different newspapers of general circulation in the area affected by the Project (Desert Trail, Hi-Desert Star, OC Register, Press Enterprise, and the Needles Desert Star).

Notification of Surrounding Landowners

CEQA Guidelines section 15087(a) provides three, independently sufficient options for a lead agency to provide the public with notice of the availability of an EIR. One of these is via direct mailing to the owners and occupants of property contiguous to the parcel or parcels on which the project is located. However, SMWD opted instead, as authorized under section 15087(a), to provide notice of availability of the Draft EIR (as noted above) by publishing the NOA in Orange County Register on December 18, 2011, the Press Enterprise on December 18, 2011, the Hi-Desert Star on December 21, 2011, and the Desert Trail on December 22, 2011.

The Cadiz Inc. property, on which the Project is located, is surrounded primarily by federal property and private uninhabited parcels. Because of this, the notification method of publication described above rather than posting was utilized to reach interested parties.

As shown on Figure 4.10-1, some private properties exist in the proximity of the Project, but most of the Project facilities, including the wellfields would be located far from these properties. The private property that is directly contiguous to the Project facilities was viewed between May 10 and 17, 2012 and no structures, infrastructure or wells were observed to be located on these parcels. Further, there are no known groundwater users located on the parcels adjacent to the proposed Project facilities, including the wellfield area and pipeline. The 43-mile pipeline would be located within the Arizona and California Railroad Company (ARZC) railroad easement, terminating in property owned by Metropolitan Water District of Southern California (Metropolitan). The Bureau of Land Management (BLM), ARZC, and Metropolitan were each sent NOAs pursuant to section 15087(a)(3) of the CEQA Guidelines.

3.11.3 CEQA Public Meetings

Summary of Issues Raised by Commenters

Comments were received stating that the Public Meetings were held in areas in excessive distance from the proposed Project. Requests were received for supplemental public meetings to be held closer to the Project site.

Public Meeting Locations

CEQA Guidelines section 15082 requires a lead agency to publish an NOP of an EIR to all responsible agencies, trustee agencies, and the California Office of Planning and Research (OPR or State Clearing House). These agencies have 30 days to specify the scope and content of the environmental information germane to their area of statutory responsibility. Public Resource Code section 21080.4 further provides that a lead agency must convene a scoping meeting to discuss these issues upon the request of any responsible agency, trustee agency, or the Project applicant. The NOP must be sent to these agencies by certified mail or equivalent procedure. For this Project, SMWD held two public scoping sessions. The first was held on March 16, 2011 in Rancho Santa Margarita and the second was held on March 24, 2011 in Joshua Tree.

CEQA encourages public participation during the review period of an environmental document, but does not require public meetings. In order to encourage public participation, however, SMWD held a community workshop on January 11, 2012 in Joshua Tree. The purpose of the community workshop was to provide access to the scientists and groundwater experts who had conducted the environmental analysis contained in the Draft EIR. Although not required by the CEQA Guidelines, the workshop provided an opportunity for the public to engage in informal discussions with the experts and ask questions.

Following the community workshop, to further encourage public participation, SMWD held two public comment meetings to receive comments on the Draft EIR. The first was held on January 24, 2012 in Rancho Santa Margarita and the second was held on February 1, 2012 in Joshua Tree.

The Joshua Tree location for the community workshop and one public meeting was determined based on a number of factors including proximity to the Project site, the size and availability of the meeting room, and the centrality of the location to as many interested parties as possible. The Project site is located in a remote location and suitable meeting rooms are not available in the closest local communities of Cadiz and Amboy (both these communities have populations of less than 30 people). Accordingly, the community of Joshua Tree was selected because it offered a reasonable drive from the Project site (approximately 80 miles west of the Cadiz Inc. properties) and is closer to established communities and accessible to interested parties in San Bernardino and the Coachella Valley. It also has a community building large enough to accommodate meeting attendees.

This is in contrast to Needles, which is closest to only the northern portion of the Fenner Valley near the New York and Providence Mountains and is remote from other known interested parties to the west and south. The distances and interested persons were taken into account when locating a central location for public meetings.

Additional public outreach was conducted at the University of Redlands in two (2) separate sessions on May 15 and May 17, 2012. Several key technical and scientific experts who worked on the Project provided an opportunity to learn more about the physical investigations and technical work conducted on the geology and hydrogeology of the Watershed, as well as the impacts analysis conducted including the chemistry and composition of the Dry Lakes.

Each session was conducted by one of the Project experts. Notice was published in the Redlands Daily Facts (Sunday, May 13, 2012), San Bernardino Sun, (Sunday, May 13, 2012), The Press Enterprise, (Monday, May 14, 2012), and Hi-Desert Star, (Saturday, May 12, 2012).

3.11.4 Adequacy of CEQA Review Period

Summary of Issues Raised by Commenters

Commenters asserted that the review period for the Draft EIR was inadequate and commenters requested an extension of the review period. They also requested that the EIR be re-circulated.

Response

CEQA Guidelines section 15105 requires that a Draft EIR provide a public review period not less than 45 days. The Draft EIR was published on December 5, 2011 with the review period set to close on February 13, 2012, a period of 70 days. In response to requests for an extension of the comment period, in February, SMWD granted an additional 30 days in February. The Draft EIR public review period ended March 14, 2012, providing a total of 100 days for public review, which is more than twice the required 45 days. Notices of the review period extension were sent to all interested parties that had originally received the Draft EIR or NOA on February 9, 2012. The 100-day review period provided an extended period for interested parties to review the technical information provided in the Draft EIR and to adequately provide substantive comments on the analysis.

CEQA also provides that a Draft EIR needs to be recirculated only if significant new information is added to an EIR after notice of public review has been given, but before certification of the Final EIR. (Pub. Res. Code, § 21092.1; CEQA Guidelines, section 15088.5; *Vineyard Area Citizens for Resp. Growth Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412,447.) The critical issue in this inquiry is whether any new information added is "significant"; if so then recirculation is required. (Pub. Res. Code, § 21092.1) If it is not significant, no recirculation is required. CEQA Guidelines, § 15088.5(a) states "new information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."

There are four situations in which recirculation is required:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of less than significant.

- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

CEQA Guidelines, § 15088.5; *Laurel Heights Improv. Assn. v. Regents of U C*. ["Laurel Heights II"] (1993) 6 Cal.4th 1112, 1120.

Here, the public has not been deprived of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible project alternative or mitigation measure. For example, no significant new information was added that would result in a new project impact. The information added supports the existing analysis and conclusions, and clarifies inquiries made from commenters. See Final EIR Vol. 6, Chapter 5 Draft EIR Text Changes. Nor was new significant information added that would substantially increase an impact unless mitigation measures would be adopted to offset the impact.

The Final EIR also clarifies the method by which SMWD proposes to commit to approval of Phase I of the Project, namely, approval of a Purchase and Sale Agreement. The Purchase and Sale Agreement pertains to SMWD's and Cadiz's contractual obligations regarding the delivery and purchase of water, the authority and structure of management of the Project to provide for the delivery of water to SWMD and other participants in the Project, and the structure and management of the planned Joint Powers Authority of which SMWD and FVMWC would be founding members. The Purchase and Sale Agreement is a financial and administrative document and its approval will not alter the Project as described in the EIR, nor will it result in any new or more serve impacts which would trigger the need to recirculate the EIR.

The Final EIR also includes the Updated GMMMP - Updated Groundwater Management, Monitoring and Mitigation Plan - Final EIR Vol. 7, Appendix B1: The Draft GMMMP was updated since the publication of the Draft EIR to clarify matters such as the County's enforcement authority over the management plan, the details of monitoring and corrective measures beyond those required by CEQA to protect critical resources, and to establish a "floor" for the drawdown of groundwater levels and a limit for brine migration. The revisions strengthen the management plan, but do not alter the analysis or findings in the Draft EIR, or present any new information that would require recirculation. The Updated GMMMP was prepared to satisfy the exclusion provisions of the County Ordinance and is subject to the County's discretionary review and approval as a responsible agency under CEQA. Accordingly, the inclusion of the Updated GMMMP in the Final EIR is not significant new information which would trigger the need to recirculate the EIR.

The Final EIR also includes the May MOU (May 2012 memorandum of understanding between SMWD, the County, FVMWC and Cadiz - Final EIR, Appendix N). The County's Desert Groundwater Management Ordinance (Ordinance) does not apply to the operation of groundwater wells where the operator has developed a groundwater management, monitoring, and mitigation

plan approved by the County that is consistent with guidelines developed by the County, and the County and the operator have executed a memorandum of understanding that complies with the provisions of the Ordinance. Accordingly, the May MOU is a first step in seeking exemption from the Ordinance and provides a framework for managing the basin consistent with the Ordinance. It does not obligate SMWD to proceed with the Project or to certify the EIR. In fact, it imposes no restriction on scope of environmental review of the Project undertaken by SWMD or the County. It also does not require the County to approve the GMMMP. As a procedural document which makes no final determinations and does not alter the Project, the May MOU would have no direct or indirect impacts on the environment. The inclusion of the May MOU as an appendix to the Final EIR is not significant new information which would trigger the need to recirculate the EIR.

SMWD's and the County's review and conditional approval of the MOU were conducted in full compliance with *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 139. *Riverwatch v. Olivehain Municipal Water District* (2009) 170 Cal.App.4th 1186, and *Cedar Fair L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150. Specifically, as required by all three decisions, the MOU contains language expressly conditioning final approval by the County on CEQA compliance. For instance, MOU Recital G provides: "The obligations of the Parties under this MOU are conditioned upon compliance with CEQA. In no event shall SMWD or the County be required to implement any provision of this MOU prior to SMWD's approval of the Project, and the County's taking discretionary action as a responsible agency, other than the County's obligation under Paragraph 4(c) to exercise its discretion within 90 days of certification of the Final EIR." MOU section 4(b) provides: "The Parties further acknowledge and agree that any modifications to the Project resulting from SMWD's or the County's compliance with CEQA may necessitate amendments to this MOU in a mutually acceptable manner." Further, MOU Section 4(a) also provides, in part: "The Project shall not proceed and the Project's exclusion from the Ordinance shall not become effective, however, unless and until the Parties have finalized the GMMMP based upon information produced from the CEQA environmental review process and following public review and all legally required procedures. Accordingly, the MOU is not a project for the purposes of CEQA.