



M E M O R A N D U M

Date:	July 26, 2023
To:	David Stoldt, General Manager Monterey Peninsula Water Management District
Via:	Email (dstoldt@mpwmd.net)
From:	Megan Jones, Managing Principal 831-920-5424 mjones@rinconconsultants.com
Subject:	Water Allocations and CEQA Project Status
Project Number:	23-14635
Attachments:	Table 1, Programmatic CEQA Document Review

The purpose of this memorandum is to identify an approach to the California Environmental Quality Act (CEQA) review of anticipated future water allocations by the Monterey Peninsula Water Management District (MPWMD, or District). This memorandum presents two factual inquiries: (1) whether the allocation qualifies as a "project" under CEQA, and (2) if so, what is the appropriate level of CEQA review.

The assessment below is based on Rincon’s extensive CEQA experience, application of relevant statutes and case law, and a thorough review of the project background and relevant environmental documents. This memorandum is not intended as legal advice, but rather as an objective assessment of the proposed allocations, applicability of prior CEQA documentation, and the options to approach CEQA review.

The memorandum includes sections on project background, methodology, analysis, and conclusion and recommendation. The project background provides an overview of prior water allocations and context for the proposed new allocations, while the methodology outlines the approach used to complete the analysis herein. The analysis examines the extent to which allocations have already been analyzed in prior CEQA documents, and the conclusion and recommendation summarizes findings and suggests the appropriate level of CEQA review.

Project Background

Prior Allocations

MPWMD was formed in 1978 under the enabling legislation found in West’s California Water Code, Appendix Chapters 118-1 to 118-901. The District serves approximately 105,911 people within the cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Seaside, and Sand City; the Monterey Peninsula Airport District; and portions of unincorporated Monterey County including Pebble Beach, Carmel Highlands, and Carmel Valley. The District has established five main goals:

1. Increase the water supply to meet community and environmental needs
2. Assist California American Water in developing a legal water supply



3. Protect the quality of surface and groundwater resources and continue the restoration of the Carmel River environment
4. Instill public trust and confidence
5. Manage and allocate available water supplies and promote water conservation (MPWMD 2023a)

The District's first allocation program was originally adopted and implemented in April 1981. At that time, the MPWMD Board determined that the allocation program was categorically exempt from CEQA. The allocation program operated without challenge until 1986, when the City of Carmel-by-the-Sea requested an allocation increase and suggested that the program should be subject to environmental review under CEQA. In 1987, Carmel-by-the-Sea was granted an additional 100 acre-feet (AF) of water per year as part of an "interim allocation," and the MPWMD Board initiated preparation of an Environmental Impact Report (EIR) (MPWMD 1990a).

The 1990 water allocation program included three components:

- A limit on how much total water may be produced annually from the Monterey Peninsula Water Resources System, and a limit on how much of this can be produced by Cal-Am, given the need to protect instream fish and wildlife resources, protect riparian resources, provide for drought protection, and prevent seawater intrusion.
- A scheme for allocating Cal-Am water to each of the jurisdictions within the Cal-Am service area.
- A set of mechanisms for monitoring jurisdictional water use, ensuring jurisdictional compliance with the allocation scheme, and making adjustments to the allocation scheme over time.

The Water Allocation Program Final EIR was certified on November 5, 1990 (MPWMD 1990a; SCH #87030309) and the Board approved Supply Option V analyzed therein, which limited Cal-Am's water production to 16,744 acre-feet and total annual production from the Monterey Peninsula Water Resource System to 19,881 acre-feet.

Soon after certification of the Water Allocation Program Final EIR, the MPWMD Board approved an Initial Study-Negative Declaration (IS-ND) for the addition of new production capacity to the existing Cal-Am system via a new potable water production well on Paralta Avenue in Seaside, and subsequent modification and increase to the Cal-Am system capacity limit. The *Review of California-American Water Company's System Capacity Limit Final IS-ND* was approved by the MPWMD Board on December 13, 1990 (MPWMD 1990b; SCH #90030919). The so-called "Paralta allocation" ultimately distributed 385 AFY toward new permits (per Mitigation Measure 1; MPWMD 1990b). There have been no new allocations by the District since the Paralta allocation in 1990. However, the District manages the allocation program on an ongoing basis. Each time a jurisdiction issues a permit for new development, the District issues a water permit and subtracts the water demand estimate for that project from the applicable jurisdiction's allocation balance. The MPWMD Board reviews this information monthly as part of the Monthly Allocation Report provided at each Board hearing.

Pure Water Monterey Expansion

The Pure Water Monterey/Groundwater Replenishment (PWM/GWR) Project is an advanced water recycling project, jointly developed by MPWMD and Monterey One Water (M1W), that provides both purified potable water for domestic use, as well as tertiary treated water for the Salinas Valley agricultural industry (MPWMD/M1W 2023). The PWM/GWR Final EIR was certified by M1W in October 2015, with Addenda approved in June 2016, March 2017, and October 2017 to address project changes (SCH #2013051094; MPWMD/M1W 2015; 2016; 2017a; 2017b). Initially, the approved PWM/GWR Project had an operational capacity of 4.0 million gallons per day (mgd). In 2017, M1W



approved a modification to the PWM/GWR Project that expanded operational capacity from 4.0 mgd to 5.0 mgd (MPWMD/M1W 2019).

In 2019, M1W prepared a Draft Supplemental EIR for modifications to expand the water supply yield of the approved PWM/GWR Project. These modifications would expand facility peak capacity from 5 mgd to 7.6 mgd and would ultimately result in an additional 2,250 AFY of purified recycled water for injection into the Seaside Groundwater Basin and subsequent extraction, for a total average yield of 5,750 AFY (MPWMD/M1W 2019). The Final Supplemental EIR was certified in April 2021 and an Addendum was approved in November 2021 (SCH #2013051094, MPWMD/M1W 2020; 2021).

With this new water source anticipated to come online in the coming years, the District is considering an additional water allocation for the various jurisdictions within the MPWMD service area. This includes the County of Monterey; cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside; the Monterey Peninsula Airport District; and the Department of Defense (potentially including separate allocation accounts for the Coast Guard, Army, and Navy). The anticipated methodology of the new allocation is described below.

Proposed Allocation

To allocate the 2,250 AFY of new water supply generated by PWM/GWR expansion, the District will consider various factors, including: historical average consumption data, production data, water availability, and estimates of job and population growth by jurisdiction, based on the Association of Monterey Bay Area Governments (AMBAG) Regional Growth Forecast. The calculation will be consistent across jurisdictions, but may be modified based on specific requests or agreements reached during the negotiation process with each jurisdiction. The allocations will be codified via adoption of an Ordinance by the MPWMD Board of Directors that identifies the amount allocated to each jurisdiction.

The allocations are not expected to not dictate the type of land use that will receive the allocated water (Stoldt 2023). While the calculation determines the assigned share of available water resources for each jurisdiction, it does not directly influence or control the specific land use decisions associated with that water allocation. Land use decisions fall under separate planning and regulatory processes, and they are influenced by factors beyond the water allocation calculation, such as zoning regulations, environmental considerations, and local policies.¹

The District does not anticipate allocating the entire 2,250 AFY at this time (Stoldt 2023). Although the precise allocation amount is to-be-determined, based on historical growth and development trends for the District's service area, allocations are expected to be more than sufficient to meet the needs of each jurisdiction (Stoldt 2023). The District will revisit the allocations on a regular basis, including with each updated AMBAG Regional Growth Forecast (updated every four years), and when a jurisdiction requests an additional allocation. The allocation program will continue to be managed on an ongoing basis, with Monthly Allocation Reports provided to the MPWMD Board outlining changes to each jurisdiction's available water allocation. In this way, the proposed allocation is a continuation of the existing program, but with an additional "balance" to be added to each jurisdiction's water "account."

¹ Although it is not expected that allocations will dictate the type of land use that will receive the allocated water, State and local jurisdictional goals and policies may be taken into account, including the potential identification and preference for affordable housing already planned for in general plans, housing elements, or project-specific development applications. Each jurisdiction would assess the affordable housing project for consistency with zoning, land use, and other General Plan goals and policies, as they would any other development application, including any required environmental review under CEQA at a project level. Given these considerations, such an option would not alter the discussion or conclusions in the remainder of this memorandum.



A water allocation is different from a water permit, which is a legal authorization granted by a regulatory authority that allows an individual or entity to access and use water from a specific source or water body. While the District will allocate water under this program, the allocation is not a permit for a specific type of use.

Methodology

The methodology employed for this analysis involved two primary components. First, interviews were conducted with three individuals who possess significant knowledge and expertise regarding the water allocations under consideration. These interviews aimed to gather insights and perspectives on the proposed allocations and their potential implications. The interviews included:

- David Laredo, General Counsel, MPWMD; June 6, 2023
- Stephanie Locke, Water Demand Manager, MPWMD; June 15, 2023
- David Stoldt, General Manager, MPWMD; June 12, 2023

Second, a comprehensive review was conducted of existing environmental documents pertaining to water supply projects in the District's service area, as well as programmatic documents addressing General Plan buildout for jurisdictions within the service area. The documents reviewed for this analysis include the following:

- Water Allocation Program EIR, Monterey Peninsula Water Management District (April 1990)
- Monterey Peninsula Water Supply Project Final EIR/EIS, Monterey Bay National Marine Sanctuary/California Public Utilities Commission (March 2018)
- Pure Water Monterey Groundwater Replenishment (PWM/GWR) Project Final Consolidated EIR, Monterey Peninsula Water Management District/Monterey One Water (October 2015) and Addenda Nos. 1, 2, and 3 (June 2016, February 2017, and October 2017)
- PWM/GWR Modifications Final Supplemental EIR, California Public Utilities Commission/Monterey Bay National Marine Sanctuary (April 2021) and Addendum No. 1 (November 2021)
- 2045 Metropolitan Transportation Plan/Sustainable Communities Strategy EIR, Association of Monterey Bay Area Governments (June 2022)
- General Plan EIRs for the County of Monterey and cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside
- Airport Master Plan EIR, Monterey Peninsula Airport District (August 2020)

The purpose of this review was to determine to what extent growth that could be accommodated by the water allocations has already been analyzed under CEQA, and to compare the methodology and assumptions used in the various documents for quantifying water demand.

Discussion

CEQA Project Definition

Within the context of CEQA, the term "project" has been interpreted to mean far more than the ordinary dictionary definition of the term. Pursuant to CEQA Guidelines Section 15378:



- (a) “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
 - (1) An activity directly undertaken by any public agency including but not limited to public works construction and related activities clearing or grading of land, improvement to existing public structures, enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700.
 - (2) An activity undertaken by a person which is supported in whole or in part through public agency contacts, grants subsidies, or other forms of assistance from one or more public agencies.
 - (3) An activity involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Public Resources Code Section 21065 provides a similar definition:

“Project” means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

The proposed water allocation qualifies as a project subject to CEQA. Although it does not entail a direct physical change in the environment, the allocation could lead to reasonably foreseeable indirect physical changes by facilitating water usage. As the allocation is undertaken by a public agency (in this case MPWMD), it falls within the criteria specified in CEQA Guidelines Section 15378 and Public Resources Code Section 21065, making it subject to CEQA. Despite not being a contract, assistance, permit, or entitlement, the action's potential for indirect physical changes and its status as a public agency undertaking necessitate CEQA's application.

That the water allocation qualifies as a project under CEQA is supported by case law. Notably, in a decision released in 2019, *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, the California Supreme Court addressed the definition of a “project” under CEQA and clarified the appropriate scope of review for when an activity constitutes a project. The decision arose in the context of whether proposed new or changed zoning ordinances must first undergo CEQA review, particularly those that concentrate or shift property uses within a jurisdiction. The Court ruled that the changes to the City’s zoning ordinance constituted a project because they would facilitate new storefronts, potentially resulting in indirect physical changes to the environment. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1199). As a result, the decision has wider application. Following this opinion, government agencies examining whether an action constitutes a project under CEQA should focus on whether the activity could, in general, have a direct or indirect environmental impact and not on whether the action is likely to have specific impacts.

That the Court’s determination of what constitutes a project in *Union of Medical Marijuana Patients* is applicable to the allocation of water is further supported in *County of Mono v. City of Los Angeles*



(2022) 81 Cal.App.5th 657,669-670. In *County of Mono*, the Court specifically looked at whether a reduction in allocation of water was a project and determined that allocation of water did meet the criteria set forth in Public Resources Code section 21065. The Court then looked at whether, as is in question here, the allocation was a separate project or part of a larger action already analyzed under CEQA. (*Id.*).

Document Review Results

Water Allocation EIR

As noted previously, per urging from the City of Carmel-by-the-Sea, the District prepared an EIR for their first water allocation program in 1990. The 1990 water allocation program consisted of three key elements: limitations on annual water production, allocation of water to jurisdictions within the service area, and mechanisms for monitoring usage, ensuring compliance, and adjusting allocations. The EIR assesses two broad categories of impacts: those related to water production itself, and cumulative impacts of water consumption within the MPWMD boundaries. The Final EIR analyzed the effects of five levels of annual Cal-Am production, ranging from 16,744 acre-feet per annum (AFA) to 20,500 AFA. On November 5, 1990, the MPWMD Board certified the Final EIR, adopted findings, and passed a resolution that set Option V as the new water allocation limit. Option V resulted in an annual limit of 16,744 AF for Cal-Am production, and 3,137 AF for non-Cal-Am production, resulting in a total allocation of 19,881 AFA for the water resource system.

Water Supply Projects

For the CEQA documents on water supply projects in the District's service area, the focus of review was to determine if the documents sufficiently analyzed growth inducement associated with the proposed new water source. Growth inducement refers to the potential for a proposed project to stimulate or encourage additional development or growth in an area, including through the removal of an obstacle to growth. In addition to reviewing the above water supply project EIRs, Rincon reviewed programmatic CEQA documents prepared for general plans and other land use programs within the MPWMD service area. The purpose of this review was to compare the methodology and assumptions used in the various documents for quantifying water demand.

Monterey Peninsula Water Supply Project

The Draft EIR provides a summary of growth inducing effects of the MPWSP in Section 5.2.3, *Summary of MPWSP Final EIR/EIS Findings*. As noted therein, "the MPWSP could support growth by removing some water supply limitations that have been an obstacle to growth, thereby enabling a degree of growth within the area served by the MPWSP" (MPWMD/M1W 2020, p. 5-1). Most of the MPWSP water would replace current withdrawals from the Carmel River and Seaside Groundwater Basin in excess of Cal-Am's legal rights, thereby serving existing customers. Some would also serve existing Pebble Beach entitlements. This portion for the supply is not considered growth-inducing. The remainder of the water produced by the MPWSP would be used to meet future demands associated with rebound of the tourism industry or to serve development of vacant legal lots of record within the Cal-Am service area. The MPWSP Final EIR/EIS concluded that this would remove an obstacle to the development and could induce growth under CEQA. However, this would not be growth beyond the level anticipated in adopted General Plans (MPWMD/M1W 2020, p. 5-2).

The MPWSP Final EIR/EIS acknowledges that MPWMD is responsible for allocating water to the jurisdictions within its boundary and assumed that the District's allocation of water provided by the MPWSP would be similar to the District's current and past allocation programs. The analysis further



assumes that supply provided by the MPWSP would be used to meet existing demand within the Cal-Am service area, and that water service capacity beyond that amount would be allocated to the jurisdictions in general proportion to an estimate of their future water supply needs. This is consistent with the current proposed allocation. As described in the Draft Supplemental EIR:

Once the water is allocated to the jurisdictions, each city and the County (for the unincorporated areas) would have the responsibility and discretion to approve or deny proposed development projects for which water was available, consistent with the jurisdiction's role as the primary land use authority and applicable land use plans, policies, regulations and laws. For example, the analysis [in the MPWSP EIR/EIS] recognized that supply based on an estimate of demand associated with lots of record may not exclusively serve development of existing vacant lots; some portion of it could, for example, support development of lots created after the preparation of the MPWSP Final EIR/EIS or the approval of that project, depending on the jurisdiction's internal allocation system and assuming water service capacity were available (MPWMD/M1W 2020, pp. 5-3 – 5-4).

Based on this analysis, the MPWSP Final EIR/EIS determined that some portion of the new water source could serve new development within the service area. However, the MPWSP “would indirectly support growth by removing some water supply limitations as an obstacle to growth, thereby enabling a degree of growth under the approved general plans within the area served by the MPWSP” (California Public Utilities Commission 2018). As a result, the MPWSP Final EIR/EIS concluded that potential secondary impacts associated with future growth could be significant and unavoidable.

Pure Water Monterey/Groundwater Replenishment Project

The PWM/GWR Supplemental EIR provides a summary of the original PWM/GWR Project's growth inducing effects in Section 5.2.2, Summary of PWM/GWR Project Final EIR Findings:

The PWM/GWR Project Final EIR evaluated the potential growth inducing effects associated with the approved PWM/GWR Project. Addenda (Nos. 1, 2 and 3) did not change that evaluation. The PWM/GWR Project Final EIR concluded that the approved PWM/GWR Project would not foster economic growth or remove an obstacle to growth because it would replace existing municipal water supplies (i.e., purified water generated by the approved PWM/GWR Project would replace existing supplies that were previously diverted from the Carmel River system). The approved PWM/GWR Project would not provide new water to serve growth. Moreover, the PWM/GWR Project Final EIR also identified that the provision of additional recycled water for crop irrigation to existing lands in agricultural production would not increase population nor cause economic growth that would facilitate other activities that would have significant environmental effects. Therefore, the PWM/GWR Project Final EIR concluded that the approved PWM/GWR Project would not induce growth. (MPWMD/M1W 2020, p. 5-2)

As noted in the *Project Background* section, the proposed modifications would result in an additional 2,250 AFY of purified recycled water for injection into the Seaside Groundwater Basin and subsequent extraction (MPWMD/M1W 2020). The expansion is intended as a backup to the MPWSP, in the event that the Cal-Am desalination project is delayed beyond the Cease and Desist Order deadline (MPWMD/M1W 2020).

Growth inducement is addressed in two locations in the PWM/GWR Draft Supplemental EIR. The first, Impact PH-2 in Section 4.15, *Population and Housing*, focuses on operations-related growth inducement. As discussed therein, operation of the proposed modifications (PWM/GWR expansion) would not result in substantial population growth *directly* during project operations. The potential secondary effects of growth inducement associated with removing limitations on water supply as an



obstacle to growth are addressed in Section 5.2, *Growth Inducement*. This section summarizes growth inducing effects of the MPWSP and PWM/GWR, and then addresses growth inducement of the proposed PWM/GWR expansion in Section 5.2.4, *Growth Inducing Effects of the Proposed Modifications*. As noted therein, “as a backup to the approved MPWSP, the Proposed Modifications could induce growth in a manner that is comparable to that identified in the MPWSP Final EIR/EIS” (p. 5-4). However, the PWM/GWR expansion could accommodate additional growth in the form of serving legal lots of record and/or general plan buildout “if such growth is approved by the relevant jurisdictions” (p. 5-6). The analysis goes on to state that, “to the extent that discretionary governmental approvals are needed for new development, the secondary effects associated with growth would be evaluated as part of project-level CEQA review completed in the future by the affected land use jurisdictions. Potential impacts would be addressed as part of that review” (p. 5-7). Ultimately, the analysis concludes that the PWM/GWR expansion would remove an obstacle to growth that could result in adverse physical environmental effects. These effects are summarized in Table 5-2 on page 5-7 of the Draft Supplemental EIR (MPWMD/M1W 2020) and include 26 significant and unavoidable impacts related to aesthetics, agricultural resources, air quality, biological resources, cultural resources, hazards and hazardous materials, hydrology and water quality, transportation, population, land use, and cumulative impacts.

Other Programmatic CEQA Documents

The results of the review of programmatic CEQA documents in the service area are presented in Attachment 1. As shown therein, only a subset of the CEQA documents quantitatively address cumulative impacts related to water supply. The City of Monterey General Plan EIR, for example, estimated future water demand and determined that sufficient water supply was not available to support projected demand. Notably, the EIR states that “the development potential identified in the General Plan Update will not be realized until supplemental water supply is available” (City of Monterey 2003, p. 2-135). The Monterey County General Plan EIR similarly quantifies projected water demand by region, including specifically for the MPWMD service area. That EIR concludes that significant cumulative impacts to water supply would occur due to existing water supply shortages (County of Monterey 2010).

Several of the documents reviewed were prepared over 30 years ago and do not analyze or consider the issue directly. It is noteworthy that several jurisdictions, including Monterey, Pacific Grove, and Seaside, are in the process of updating their general plans and associated EIRs. While these updated documents are expected to provide more comprehensive and up-to-date information, they are at varying stages of completion and have not been certified. Consequently, the extent of the cumulative water analysis remains uncertain, and they cannot be relied upon at present.

Document Review Summary

Growth inducement associated with the PWM/GWR expansion is clearly accounted for in the PWM/GWR Supplemental EIR and MPWSP EIR/EIS. These documents recognize that MPWMD will allocate the new water generated by PWM/GWR expansion and acknowledge the potential for these allocations to serve legal lots of record and/or general plan buildout, extending beyond existing customers, and the proposed water allocation is a continuation of the District’s ongoing allocation program. However, the approval of any land development is subject to review and approval by the relevant jurisdiction, which will evaluate consistency with their adopted general plan and conduct project-level analysis under CEQA, as needed. Although future project-specific CEQA review may be required, the PWM/GWR Supplemental EIR did not defer to future CEQA review but rather acknowledged the potential for significant effects resulting from the allocation or distribution of water.



Therefore, the PWM/GWR Supplemental EIR has already analyzed the growth-inducing and secondary environmental effects associated with the proposed water allocation.

The programmatic CEQA documents reviewed, including General Plan EIRs for the jurisdictions within the MPWMD service area, provide varying levels of detail regarding future water supply and demand. While some of the documents provide a sufficient and qualitative discussion, this is not consistent across jurisdictions.

CEQA Pathways

Based on the document review presented above, there are three potential CEQA pathways for the proposed water allocations: (1) do nothing; (2) prepare an Addendum to PWM/GWR Supplemental EIR; or (3) a commonsense exemption.

Do Nothing

Because growth inducement associated with the PWM/GWR expansion is clearly accounted for in the PWM/GWR Supplemental EIR and MPWSP EIR/EIS, the environmental effects of the allocation and use of the 2,250 AF of additional supply has already been analyzed under CEQA. As such, in theory, no further review is required. The benefit of this approach is that it costs nothing to the District, both in terms of time and financial resources. However, the approach presents a risk. With no public record showing that the proposed allocation has been previously analyzed, a challenger would simply need to show that the allocation is different in some way than the existing allocation program or has the potential to cause physical changes to the environment that were not considered previously. Most courts would prefer to see some level of analysis or documentation of these issues. As such, this approach has some level of risk associated with it.

Addendum

An addendum can be used when there are only minor changes or additions to a project, and there would be no new significant environmental impacts or mitigation required as a result (CEQA Guidelines, CCR section 15164). Whether to use an addendum is a factual question and must be supported by substantial evidence that the change is minor and that no new substantial impacts would result. The courts look to whether substantial evidence supports that there will be no new significant impacts to support an addendum. *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 804–805. Substantial evidence here means enough relevant information and reasonable inferences to support a fair argument for the use of the addendum.

As noted previously, the PWM/GWR Supplemental EIR and MPWSP EIR/EIS adequately analyze growth inducing effects associated with the PWM/GWR expansion. The MPWSP Final EIR/EIS specifically acknowledges that MPWMD would allocate water provided by the MPWSP and assumed that this allocation would be similar to the District's current and past allocation programs. The PWM/GWR expansion is intended as a backup to the MPWSP, in the event that the Cal-Am desalination project is delayed beyond the Cease and Desist Order deadline (MPWMD/M1W 2020). Because the District's allocation was assumed in these analyses and because new development could not occur without discretionary approvals from the relevant jurisdiction, the actual allocation of water would not result in new significant impacts or mitigation measures. As such, an EIR Addendum would be an appropriate CEQA document for the proposed allocation.

There are several benefits of this approach. First, preparing an Addendum is relatively easy and does not require public review, making it an efficient process. However, it still maintains a higher level of transparency compared to the alternative of taking no action (option 1). Furthermore, this approach is



more defensible as it provides documentation and is held to the same legal standard as an EIR. A reviewing court gives deference to an agency's determination that an addendum is appropriate so long as the administrative record as a whole contains substantial evidence to support the determination that the changes in the project or its circumstances were not so substantial as to require major modifications of the EIR. "This deferential standard is a reflection of the fact that in-depth review has already occurred." *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 797–798. Therefore, this is a comparatively defensible approach.

Exemption

The third option is preparing a CEQA commonsense exemption. The commonsense exemption is utilized for the projects where there intuitively should be an exemption, but there does not seem to be any category that really fits. "A project that qualifies for neither a statutory nor a categorical exemption may nonetheless be found exempt under what is sometimes called the 'commonsense' exemption, which applies '[w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment'." (Muzzy Ranch at 380, citing CEQA Guidelines, Section 15061(b)(3), and *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 113–118). CEQA Guidelines Section 15061(b)(3) is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA.

It is the lead agency's burden to demonstrate that this exemption applies. "Accordingly, when a legitimate question is raised about the possible environmental impacts of a proposed activity, the public agency has 'the burden to elucidate the facts that justified its invocation of CEQA's commonsense exemption.'" (*Los Angeles Dept. of Water & Power v. County of Inyo* (2021) 67 Cal.App.5th 1018, 1036). Whether a particular activity qualifies for the commonsense exemption presents an issue of fact. What this means is that there must be substantial evidence in the record supporting the use of the exemption and demonstrating that appropriately applies to the project. Substantial evidence "may be found in the information submitted in connection with the project, including at any hearings that the agency chooses to hold." (*CREED-21 v. City of San Diego* (2015) 234 Cal.App.4th 488, 510).

The benefit of this option is efficiency, as public review is not required. This option should be carefully considered, however, as the courts are reluctant to apply exemptions to environmentally sensitive or controversial topics, such as water resources, where no environmental review has occurred. (See e.g., *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697). If the commonsense exemption were used in this case, it would be appropriate to provide a more comprehensive analysis to support the exemption. Such an analysis would be particularly supportable if it could be shown that each jurisdiction in the District's service area has already analyzed the environmental impacts of their buildout, which would potentially be facilitated by the allocation of a new water source. As demonstrated in Attachment 1 and the summary under *Document Review Results*, however, only a subset of the CEQA documents quantitatively address cumulative impacts related to water supply. As such, it is unclear if there is enough substantial evidence to support a commonsense exemption.

Conclusion and Recommendation

As described in this memorandum, the proposed water allocation qualifies as a project under CEQA because it is being undertaken by a public agency (MPWMD) and has the potential for reasonably foreseeable indirect physical changes in the environment, such as facilitating land development through the provision of increased water supplies. In other words, the additional water that would be



available to jurisdictions in the District's service area could facilitate development that would have otherwise been impossible due to lack of water availability.

The document review determined that the PWM/GWR Supplemental EIR has already analyzed the growth-inducing and secondary environmental effects associated with the proposed water allocation, which is, in practice, a continuation of the District's existing water allocation program. Based on these findings, this memorandum considers three CEQA options, including (1) do nothing; (2) an Addendum to PWM/GWR Supplemental EIR; or (3) a commonsense exemption. Based on the advantages and disadvantages of each and considering the controversial nature of water supply on the Monterey Peninsula, Rincon recommends preparation of Addendum. This approach balances efficiency with defensibility and is appropriate given the facts presented herein.

References

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Water Allocation and CEQA Project Status
Attachment 1: Programmatic CEQA Document Review

Document	Geographic Area	Analyzed Buildout	Growth Inducement Discussion	Impact Determination	Quantified Projected Water Demand, if available
2045 Metropolitan Transportation Plan/Sustainable Communities Strategy EIR, Association of Monterey Bay Area Governments (June 2022)	Monterey, San Benito, and Santa Cruz counties	Population increase from 775,000 to 870,000 (net increase of 95,000 people) by 2045 in the AMBAG region	Qualitative discussion that states water supply and demand would be accounted for in the Urban Water Management Plans and Groundwater Sustainability Plans of each jurisdiction within AMBAG region	Significant and unavoidable impacts to water supply; Growth inducement discusses transportation projects only	Not provided
Airport Master Plan EIR, Monterey Peninsula Airport District Airport District (August 2020)	Monterey Regional Airport property	Various improvements to airport facilities	Does not identify growth that would be induced by the project	Significant and unavoidable impacts to long-term water supply as water demand would exceed the airport's current allocation Significant and unavoidable cumulative impacts to water supply as water demand would exceed the airport's current allocation	Airport's water allocation (as of August 2020): 62.37 acre-feet per year (AFY) Project would increase water demand to 63.55 AFY, which would exceed allocation by 1.18 AFY
Monterey County General Plan EIR, County of Monterey (October 2010)	Unincorporated Monterey County	Projected 2030 buildout of 135,375 residents and 48,670 dwelling units Projected 2092 buildout of 207,424 residents	Concludes that general plans are inherently growth inducing since they must at least plan for RHNA/state housing demand. Implementation of land use policies will also increase demands for	Significant and unavoidable impacts to water supply Significant and unavoidable cumulative impact to water supply	Projected 2030 water demand for each development area of the county; projected demand of 2030 buildout for the MPWMD area

Water Allocation and CEQA Project Status
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		and 74,573 dwelling units	services/infrastructure, including water Concludes cumulatively considerable impact for water supply due to existing water supply shortages	Significant and unavoidable impacts to growth inducement	was 6,888 AF (1,834 AF from Carmel River and 5,054 AF from Seaside Aquifer)
Carmel-by-the-Sea General Plan EIR, City of Carmel-by-the-Sea (1983)	Carmel-by-the-Sea city limits	851 additional dwelling units for a total of 4,055 dwelling units	Not discussed	No significant and unavoidable impacts identified	Public Facilities and Services Element of the General Plan (updated in 2009) says city is close to exceeding its water allocation
Del Rey Oaks General Plan EIR, City of Del Rey Oaks (May 1997) ¹	Del Rey Oaks city limits	Unknown	Unknown	Unknown	Unknown
Monterey General Plan EIR, City of Monterey (July 2004)	Monterey city limits	Projected 20 year (2024) increase of 2,131 new dwelling units and 4,189 new residents	Almost all proposed growth is in developed areas already served by infrastructure, so no obstacles to growth other than lack of water supply	Significant and unavoidable impact for water supply. Development envisioned by 2003 General Plan would not have sufficient water supply.	Projected 2020 residential water demand <ul style="list-style-type: none"> • Single family: 46.6 AF • Multi family: 241.5 AF • Military: 7.8 AF • Total: 295.9 AF for 2,131

Water Allocation and CEQA Project Status
Attachment 1: Programmatic CEQA Document Review

Document	Geographic Area	Analyzed Buildout	Growth Inducement Discussion	Impact Determination	Quantified Projected Water Demand, if available
Pacific Grove General Plan EIR, City of Pacific Grove (1992)	Pacific Grove city limits	Not quantified but intended to accommodate a modest level of growth based on historic trends.	Concludes that the General Plan does not accommodate or intensify growth, but rather maintains and improves standards for existing development. The removal of obstacles to growth, such as limited water and sewer capacity, are considered beyond the scope of the General Plan and are the responsibility of regional agencies.	No impacts identified	projected dwelling units Not provided
Sand City General Plan IS-ND, Sand City (2002) ¹	Sand City city limits	Unknown	Unknown	Unknown	Unknown
Seaside General Plan EIR, City of Seaside (January 2004)	Seaside city limits	Estimates 20 year (2024) net increase of 1,550 dwelling units, 7,400 people, and 446,000 square feet of non-residential area	Concludes anticipated growth is generally consistent with regional growth projections	Significant and unavoidable impacts to water supply as projected growth would exceed existing supply. Includes mitigation measures that would involve coordination with regional water agencies and preparation of water supply verifications before	Not provided

Water Allocation and CEQA Project Status
 Attachment 1: Programmatic CEQA Document Review

Document	Geographic Area	Analyzed Buildout	Growth Inducement Discussion	Impact Determination	Quantified Projected Water Demand, if available
				approving new development	

1. The applicable CEQA document was not available via online research. Contact was made with the jurisdiction to locate a copy of the document, but no responses were received to such requests.