

CALIFORNIA COASTAL COMMISSION

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F3a

State of California

California Coastal Commission
North Coast District Office

MEMORANDUM

Date: November 22, 2002

TO: Commissioners and Interested Parties

FROM: Peter Douglas, Executive Director
Steve Scholl, Deputy Director
Robert Merrill, North Coast District Manager
Randall Stemler, Coastal Planner

SUBJECT: **Protest to State Water Resources Control Board Concerning Applications of Alaska Water Exports to Divert Water From Gualala and Albion Rivers (For Commission Meeting of December 13, 2002, Item F3a)**

At the meeting of December 13, 2002, the Commission will hold a public hearing and consider authorizing the Executive Director to submit a protest to the State Water Resources Control Board, Division of Water Rights concerning the applications of Alaska Water Exports to divert water from the Gualala & Albion Rivers in Sonoma and Mendocino Counties for municipal water supply use in San Diego. Water would be drawn from the rivers through infiltration gallery structures and transported through buried pipelines along the river bottom and ocean floor to offshore loading facilities in the ocean. The water would then be loaded into large polyfiber bags holding approximately 40.52 acre-feet of water and then pulled by tugboat to San Diego. Each diversion is the subject of a separate application to appropriate water being considered by the Division of Water Rights.

The Division of Water Rights originally set a deadline of November 12, 2002 for filing any protest of the water appropriation applications. In early November, the Division of Water Rights determined that new notice of the appropriation permits must be given, and that the notice period must be extended by 60 days from the date new notice has been given. New notice has not yet been given and the final deadline for filing a protest has not yet been established. However, the Division of Water Rights indicates the deadline will be no sooner than mid-January, 2003.

GUALALA AND ALBION RIVER WATER EXPORTS

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This item had originally been scheduled for Commission consideration at the November 7, 2002 Commission meeting in San Diego but was postponed.

Attached to this memo for the Commission's consideration are two DRAFT protest letters, one for each application. Minor revisions only have been made to the drafts since the drafts were first distributed with the staff report mailed prior to the November 7, 2002 meeting.

Also attached are various exhibits, including the two original notices of application distributed by the Division of Water Rights providing information about the proposals and the review process and a subsequent memo making clarifications to the notices. In addition, a blank protest form which must be submitted to the Division of Water Rights in conjunction with a protest letter or statement of facts to file a protest is attached. Other exhibits include a Division of Water Rights Web page announcement of the pending issuance of new notices of the applications, a map of the proposed water service areas in San Diego where the water proposed to be diverted from the Gualala and Albion Rivers would be used, and copies of correspondence on the Commission's consideration of this item received since distribution of the staff report prior to the November 7, 2002 Commission meeting.

MOTION

I move that the Executive Director submit a protest to the State Water Resources Control Board, Division of Water Rights concerning the two applications of Alaska Water Exports to divert water from the Gualala and Albion Rivers for municipal water supply use in San Diego.

STAFF RECOMMENDATION

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the submission of protests to the Water Resources Control Board, Division of Water Rights on the two applications of Alaska Water Exports to divert water from the Gualala and Albion Rivers for municipal water supply use in San Diego.

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ATTACHMENT 1

DRAFT

January ___, 2003

Kathryn Gaffney
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

SUBJECT: Protest of Water Rights Application No. 31194 (Gualala)

Dear Ms. Gaffney:

Thank you for providing the Coastal Commission with notice of Water Rights Application Number 31194 submitted by Alaska Water Exports for the proposed diversion of water from the Gualala River in Mendocino and Sonoma Counties, and its export to San Diego, California for municipal water use. The Commission has reviewed the application notice and has directed me to submit the following comments on behalf of the Commission protesting approval of the application.

Proposed Diversion and Development

As described in the Notice of Application, the applicant, Alaska Water Exports, proposes to divert water from the Gualala River through an intake infiltration gallery structure (cistern) to be buried within the active river channel, as described in Water Rights Application No. 31194. Water collected by the gallery would be transported through a pipeline to an offshore loading facility in the Pacific Ocean. The water would then be loaded into large polyfiber bags, each designed to hold 50,000 cubic meters (approximately 40.52 acre-feet) of water. Tugboats would tow the bags to San Diego where the water would be used for municipal water supply. The proposed pipeline from the infiltration gallery to the loading facility would be buried within the active river channel and submerged under the sea. The pipeline as proposed would be a 24" diameter concrete pipe approximately 9,250 feet to 12,225 feet in length. The proposed maximum diversion rate would be 30 cubic feet per second. The maximum amount of water that would be diverted from the Gualala River annually would be 8,700 acre-feet. The proposed period of time during which the diversion of water from the Gualala River would occur would be from October 1st of each year through May 1st of the following year. The point of diversion as proposed would be located on the border between Mendocino and Sonoma Counties within the SE ¼ of SE ¼ of Section 27, T11N, R15W, MDB&M.

Coastal Development Permit Jurisdiction

State regulation of California's coastal resources began with the passage of Proposition 20 in 1972. The Legislature made such regulation permanent with the enactment of the California Coastal Act of 1976 ("Coastal Act" Public Resources Code, Section 30000 *et seq.*). Section 30001 of the Coastal Act declares that "*the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people*" and that "*the permanent protection of the state's natural and scenic resources is a paramount concern to the present and future residents of the state and nation.*" To this end, the purposes of the Coastal Act are, *inter alia*, to "[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment" and to "[a]ssure orderly, balanced utilization and conservation of coastal zone resources."

In order to implement the Coastal Act's policies, any person wishing to engage in development¹ in the coastal zone must first obtain a coastal development permit ("CDP") that is consistent with the policies and requirements of the Coastal Act. The Coastal Act initially vests the Commission with the authority to issue CDPs for any coastal development in the coastal zone. The statutory scheme, however, is designed to transfer primary permitting authority from the Commission to local governments through the preparation and adoption of local coastal programs (LCPs). An LCP consists of land use plans, zoning ordinances, zoning district maps, and other implementing actions that are designed to satisfy the policies and requirements of the Coastal Act. The local government is responsible for preparing the LCP and submitting it to the Commission for its review and approval.

Once the Commission certifies that the entire LCP (i.e., the land use plan, the zoning ordinances and other implementing actions) is in conformity with the Coastal Act, primary permit authority over coastal zone development is transferred from the Commission to the local government. The local government then reviews CDP applications for consistency with the certified LCP. However, even after it certifies an LCP, the Commission retains appellate jurisdiction over local government actions

¹ "Development" is defined as meaning, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of the use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

approving certain types of development projects, and developments located in certain sensitive geographical areas.

The proposed project constitutes development in the coastal zone. Pursuant to Public Resource Code Section 30519(b), all portions of the proposed project involving development to be undertaken in the coastal zone located below the mean high tide line, on submerged land, or where the public trust may exist fall within the Commission's retained coastal development permit jurisdiction. Any project elements involving development to be undertaken in these areas including development within the active channel of the lower Gualala River or the near-shore waters of the Pacific Ocean would require a coastal development permit from the California Coastal Commission. The standard of review for any portions of the proposed project involving development to be undertaken within the Commission's jurisdiction is the project's consistency with the California Coastal Act. The Coastal Commission notes it has concurrent authority to implement the public trust as it is embodied in the Coastal Act.

Since the Commission has certified a LCP for both Mendocino and Sonoma County, coastal development permit authority also resides with Mendocino County and Sonoma County for any proposed project involving development to be undertaken within the coastal zone of their jurisdiction. Pursuant to Coastal Act Sections 30604(b) and (c), the standard of review for any portions of the proposed project involving development to be undertaken within Mendocino or Sonoma County's coastal development permit jurisdiction would be the project's consistency with the Mendocino County or Sonoma County certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. Section 30005 of the Coastal Act allows local governments to adopt local coastal programs with policies and standards regulating development that might adversely affect coastal resources that are more restrictive and limiting than the Chapter 3 policies of the Coastal Act. The certified Mendocino County Local Coastal Program contains such policies and standards that are more restrictive and limiting than the Chapter 3 policies cited herein. In addition, although both Mendocino and Sonoma County have primary permit authority over development undertaken in their respective portions of the coastal zone, the project site is located in an area of the Commission's appeal jurisdiction. Subsequently, pursuant to Sections 30603 of the Coastal Act, any action by the local government to approve the portion of the project within the local government's jurisdiction would be appealable to the Coastal Commission.

Finally, Coastal development permit authority and Commission appeal jurisdiction may also reside in other local jurisdictions with certified local coastal programs at the destination site in the San Diego area.

The Coastal Commission will utilize the environmental information prepared by the State Water Resources Control Board to evaluate the consistency of the proposed project with the Chapter 3 policies of the California Coastal Act for development proposed to occur within the retained jurisdiction of the Coastal Commission. If a coastal development

permit granted by a local government and the permit is appealed to the Commission, the Coastal Commission will also utilize the environmental information prepared by the State Water Resources Control Board to evaluate the consistency of the proposed project with the policies and standards of the applicable Local Coastal Program(s).

Protest of Application No. 31194 (Gualala)

The Coastal Commission objects to the approval of Application No. 31194 on the basis that: (1) the proposed diversion of water and associated development would cause adverse environmental impacts to the resources of the coastal zone, (2) the proposed diversion would be contrary to law, including the Coastal Act, and (3) the proposed diversion would not best protect coastal resources and other public trust uses, and therefore would not be in the public interest. Environmental analysis has not been conducted and presented that demonstrates that all adverse environmental impacts would be avoided, minimized, or mitigated consistent with the Chapter 3 policies of the Coastal Act, and the relevant standards of applicable certified Local Coastal Programs.

Riverine and Estuarine Habitat

The Coastal Act incorporates provisions for protection of water quality and the biological productivity of coastal habitats and environmentally sensitive habitat area associated with rivers and wetlands.

Section 30231 of the Coastal Act related to biological productivity and water quality states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act related to diking, filling or dredging; and continued movement of sediment and nutrients states in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
 - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
 - (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
 - (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
 - (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
 - (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
 - (7) Restoration purposes.*
 - (8) Nature study, aquaculture, or similar resource dependent activities.*
- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.*
- (c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities,*

restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30236 of the Coastal Act related to water supply and flood control states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 of the Coastal Act related to environmentally sensitive habitat areas and adjacent developments states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The proposed development would have adverse impacts on streambed erosion. For example, trenching would affect the streambed armor. The full extent of adverse impacts of the proposed project on riverine habitat and species are unknown because no studies have been performed to document these potential impacts and evaluate necessary mitigation for such impacts. However, the proposed project would result in adverse environmental impacts to the beneficial uses and healthy functioning of the Gualala River.

Natural “armoring” occurs in streambeds over a period of time through hydraulic sorting, as fines are washed away, or are worked into deeper layers of the substrate. Coarse aggregate accumulates near the surface thereby hardening the upper layers of the streambed, and increasing resistance to scour. Trenching in the active channel as proposed would dramatically increase the erosion potential by disrupting the armored layer and leaving finer-sized materials nearer the streambed surface that would be more easily mobilized by stream flow; thus bed load movement would occur at lower stream velocities following placement of the proposed pipeline. Any disruption of the armored layer causing increased mobilization of bed load can combine to initiate down cutting of the stream channel in both upstream and downstream directions. Down cutting would cause a fluvial geomorphic response contributing to increased potential for adjacent

stream banks to collapse, thereby introducing additional sediments into the stream. The effects of trenching and pipeline placement on stream channels include local adjustments, increased meandering or widening of the stream channel, changes in thalweg configuration, altered pool-riffle sequences, shifts from braided to single-thread channels, and down cutting of the channel bed.

Trenching and pipeline placement would also change the frequency and extent of bed load movements and increase the amount of suspended fine sediments and turbidity in the water column. It is generally agreed that turbidity caused by excavation decreases shortly after the disturbance ceases; however, turbidity caused by changes in erosion potential of the substrate as described above would persist until the streambed restabilizes. Fine sediments would settle locally, or travel downstream to settle in or near the estuary or near-shore marine waters. As a result, downstream or offshore substrates would be covered with sand, mud, and silt adversely affecting marine life and habitat ecology.

The proposed development would have adverse impacts on migratory and resident fish species within the river. For example, salmonid spawning migration for the Gualala River occurs during the late fall, winter, and early spring depending on discrete storm events and resulting river flow sufficient to produce adequate water depths necessary to signal spawners to enter, and to move up the river system. Two salmonid species inhabit the Gualala River. Both are listed as threatened under the Endangered Species Act. Coho salmon (*Oncorhynchus kisutch*) migrate first, usually beginning in November, during and just after the first big rains, and can continue through February, after which time they die. Steelhead (*Oncorhynchus mykiss*) spawners follow later, usually in late November or December, and can continue through February or March after which time they can return to the ocean. Most upstream migration of adult spawners occurs during and immediately following periods of heavy storm runoff. Such runoff provides for the upstream attraction flows and physical transport mechanism for adult fish. In addition to providing attraction flows for spawning anadromous fish, high winter flows are essential for proper ecological functioning of the estuary and near shore ocean conditions. The timing during which water would be diverted for export per the project as proposed—October to May of each year—would conflict with the anadromous fishery spawning requirement for sufficient attraction flows. Additional adverse impacts from the proposed project would involve altered flow regimes affecting natural fluvial geomorphic process, and water level fluctuations including reductions in the volume of water critical for flushing flows that are necessary for routing sediment during the winter.

Estuaries and lagoons provide critical habitat for all juvenile salmonids migrating to the ocean and are essential to all anadromous salmonids. These critical habitats play an important role as a feeding area for juvenile salmonids and also in the acclimatization to higher salinities (smolting). Damaging alterations of those habitats would limit food resources for juvenile salmonids. As result, juveniles would tend to migrate to open water at a smaller size and thus be more susceptible to predation. Ocean survival for

juvenile salmonids is greatly increased if rearing fish are able to attain larger size for an extended period in the estuary. Development and operation of the proposed water diversion and export facilities would cause changes in riverine sediment transport and storage, altered flow and temperature regimes, water level fluctuations, and changes in the timing and quantity of stream flow, all of which would adversely affect a large and diverse population of freshwater and marine species including algae, phytoplankton, zooplankton, benthos, aquatic invertebrates, fish, birds, and mammals.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to riverine and estuarine habitat, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that all adverse impacts to riverine and estuarine habitat would either be avoided as required or minimized to the maximum extent feasible.

Marine Habitat

The Coastal Act incorporates provisions for protection of coastal water quality and the biological productivity of coastal habitats.

Section 30230 of the Coastal Act related to maintenance of marine resources states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The full extent of adverse impacts of the proposed project on marine habitat and species are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts. However, adverse impacts would occur to marine resources in the near-shore tidal waters resulting from activities associated with the proposed project. For example, excavation and pipeline trenching for installation of structural improvements and other construction activities would disturb and degrade marine habitat potentially including sensitive marine resources (e.g., hard bottom habitat, kelp and eelgrass) in the location of the proposed mooring/loading facility. To the extent new facilities are required for mooring/unloading at the proposed San Diego destination point, similar construction impacts would occur there. Furthermore, tugboat, waterbag, and buoy anchoring devices would displace and disturb bottom habitat during installation and ongoing anchoring operations. As proposed, the infrastructure facility for filling water bags, and the tugboat mooring station would overlap with migration paths for

California grey whales and other marine mammals. The continuing tugboat and waterbag filling and towing operations would pose a threat to this protected marine wildlife.

Adverse impacts in the Gualala River estuary and on near-shore ocean ecology to benthic habitat and marine organisms would occur from increased siltation due to changes in upstream erosion potential resulting from instream disturbance to the channel substrate from trenching and pipeline placement. For example, adverse changes in the invertebrate community affecting the food sources upon which the fishery depends would adversely impact listed salmonids. Further, the project would increase the opportunity for a tugboat to go aground on the rocks during winter storms or incur other mishaps at sea such as collisions with other vessels and increase the risks of a fuel spill. The export of water would transfer pathogens and other microorganisms drawn in with the water from the northern California watershed to the San Diego coast at the receiving end. Similarly, marine species that attach to the large water bags would be transferred from one marine habitat to another, affecting the ecosystem of marine waters at the terminal destination.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to marine habitat, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that marine resources are maintained and enhanced and that uses of the marine environment are carried out in a manner that will sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms.

Water Quality

Section 30231 of the Coastal Act related to biological productivity and water quality states:

The biological activity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The full extent of adverse impacts of the proposed project on water quality resources are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

The biological productivity of marine and coastal waters is in part, a function of good water quality. Development and operation of the proposed project would result in adverse impacts to water quality. For example, removal of a significant portion of winter flow from the water column of the lower approximately 1.7 to 2.3 miles of the Gualala River would contribute to periodic and premature closures of the sand spit at the mouth of the river by reducing flows that would scour the mouth to keep it open between storm events during the months of proposed water diversion. Such closure would affect the lagoon/estuary sequence adversely impacting water temperature regimes and thereby levels of dissolved oxygen, and the delicate biological processes associated with the healthy functioning of estuaries and near-shore tidal waters. In addition, the proposed trenching and placement of the cement pipeline would significantly raise levels of turbidity, initially during the aftermath of the trench excavation activities, and over a much longer period of time from changes in erosion potential of the channel substrate. The heightened turbidity and associated erosion and sedimentation resulting from the proposed project would adversely affect healthy functioning of riverine habitat.

Construction related activities would have other impacts on water quality. For example, without implementation of Best Management Practices, there would be adverse environmental impacts to riverine water quality and associated habitat from unavoidable incidental leakage of lubricating oils and greases, hydraulic fluids and fuel associated with the use of the requisite heavy equipment for initial inlet construction, trenching and pipeline placement, and development of the mooring and loading facility, as well as from the ongoing operation and maintenance of the water diversion facility over the long term. To the extent new mooring/unloading facilities must be installed and operated in marine waters located at the destination point at San Diego to accept the water deliveries, similar impacts would occur in those coastal waters. Further, approval of the proposed water appropriation would increase the opportunity for a tugboat to go aground on the rocks during winter storms or incur other mishaps at sea such as collisions with other vessels thereby increasing the possibility of a fuel spill. The large water bags, each approximately 262 meters long by 82 meters wide would be sizeable obstacles that would pose navigation hazards to other vessels at sea.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to water quality, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that the biological activity and quality of coastal waters is maintained and where feasible restored.

Visual Resources

Section 30251 of the Coastal Act related to scenic and visual resources states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The full extents of the project's adverse visual impacts are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

Impacts to public scenic resources would occur from activities associated with the initial construction of the proposed development including installation of the intake facility, trenching and placement of the pipeline, and installation of the mooring/loading facility. Adverse public visual impacts would continue after construction during any ongoing maintenance activities. For example, normal operation of the completed water diversion and export facility would involve the presence and maneuvering of large towboats and tenders imposing significant adverse visual distraction from the natural visual qualities of the coast. The water bags would each cover approximately 262 meters long by 82 meters wide—21,484 square meters of ocean surface area—and would be highly visible from coastal bluffs in the loading area as well as from numerous public vantage points all along the coastline from the point of origin to the destination in San Diego.

Adverse visual and aesthetic impacts resulting from the proposed project would affect public views from existing and proposed public recreation trails and vantage points as well as from vessels at sea and/or kayaks or canoes navigating in the vicinity of the proposed project location. For example, public views to and along the ocean from the Gualala bluff top access trails as designated on the certified Mendocino County Land Use Plan would be seriously jeopardized by the placement of the mooring/loading facility as proposed. Public views from the Gualala Point Regional Park located adjacent to the southern bank of the Gualala River for the entire reach of the proposed project, from the proposed water intake facility to the mouth of the river would be adversely affected. This park is a popular visitor destination for beach walking, whale watching, and kayaking. Additionally, public views from the Highway One Bridge, both upstream and downstream, would be adversely impacted by construction, maintenance and ongoing operation of the proposed water diversion project.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that: (1) evaluates the full extent of all impacts to visual resources, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and

other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that all visual resources are considered and protected as a resource of public importance.

Geologic Stability

Section 30253 of the Coastal Act related to minimization of adverse impacts state in applicable part:

New development shall:

- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The full extent of the proposed project's contribution to geologic hazards are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

However, the proposed project would contribute to geologic hazards, including, but not limited to, seismic hazards. The proposed project site is located in the San Andreas Fault Zone subject to seismic hazards that include ground shaking, surface faulting, ground failure, and seismically induced water waves. The project as proposed would involve approximately 1.7 to 2.3 miles of buried 24" diameter concrete pipeline that even moderate ground shaking would likely disrupt. Considering the project proposal to install an upstream intake and pumping facility, trench and bury a pipeline in the active channel, and install an outlet mooring/loading facility in near-shore coastal waters, it is evident that the development would be highly susceptible to the natural instabilities of the local region. Failure to perform thorough geotechnical analysis of the project and develop the project in conformance with adequate design criteria would create risks of geologic hazards.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to geologic stability, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that all new development assures stability and structural integrity and neither creates nor significantly contributes to erosion, geologic instability, or destruction of the site.

Commercial Fishing and Recreational Boating

Section 30234 of the Coastal Act related to commercial fishing and recreational boating facilities states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5 of the Coastal Act related to the economic, commercial, and recreational importance of fishing states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The full extent of adverse impacts of the proposed project on commercial fishing and recreational boating is unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

Commercial fishing and recreational boating are protected activities that would be disrupted by the presence of near-shore tugboat-maneuvering waterbag-towing traffic. For example, the physical placement of the pipeline and mooring/loading facility in near-shore coastal waters would be considered “fill” that would displace protected marine habitat, thereby affecting marine ecology. Mooring and loading operations would displace commercial and/or recreational fishing from a large area of the ocean around the loading facility. Physical disruption to commercial and recreational fishing activities from net and line snagging on the proposed pipeline and/or mooring/loading facility would be detrimental. Increased siltation resulting from significant disruption of the active channel during pipeline trenching and placement, and periodic maintenance of the intake and pipeline facilities would adversely affect riverine and marine life-form habitat and ecology, and would therefore be adverse to a healthy fishery. To the extent new mooring and unloading facilities must be installed and operated in marine waters at the proposed destination point located off San Diego to accept the water deliveries, similar impacts would occur in those coastal waters.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to commercial fishing and recreational boating, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives

involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that commercial fishing and recreational boating are protected and that new development will not interfere with the needs of the commercial fishing industry.

Public Access and Recreation

Section 30210 of the Coastal Act related to public access, recreational opportunities, and posting states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act related to new development states:

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
 - (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
 - (2) Adequate access exists nearby, or,*
 - (3) Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
- (b) For purposes of this section, "new development" does not include:*
 - (1) Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*
 - (2) The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*
 - (3) Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*

- (4) *The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.*
- (5) *Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Section 30211 of the Coastal Act restricts development from interfering with access:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30220 of the Coastal Act protects certain water-oriented activities and states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

The Coastal Act confers authority to the Coastal Commission to protect public trust resources including the public's right to use and enjoy navigable waters and tidelands for a variety of activities such as boating, fishing, and recreation. Public access to and along the coast is a primary public trust resource governed by the Coastal Commission.

The full extent of adverse impacts of the proposed project on public access and recreation are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts. However, the project as proposed would interfere with public access and recreation during construction of the proposed project, and during periodic maintenance activities. For example, adverse impacts to public access and recreation would occur where public access and/or recreational activities such as kayaking, fishing, or walking are blocked or disrupted by the initial construction of the proposed project and/or ongoing maintenance and operation of the proposed water diversion and export facilities. The project would also adversely affect river and ocean shoreline access to the extent that staging areas and support facilities

interfere with such access areas, both at the northern California diversion and loading facility site, as well as at the San Diego receiving facility site. Gualala Point Regional Park in Sonoma County is located along the southern bank of the Gualala River for the entire reach of the proposed project area, from the proposed point of water diversion just upstream of the old state highway, all the way to the mouth of the river. One option proposed for the project would trench through a portion of the Gualala Point Regional Park for pipeline placement. This option would clearly adversely impact recreational use of that portion of the park that would be closed off during construction and maintenance operations. Proposed shoreline access as shown on the adopted post local coastal program certification map for the Gualala area designates public trails along the southern portion of the Gualala River bank from the tip of Mendocino County immediately west of the Highway One bridge over the Gualala River, all the way to the mouth of the river. Initial construction and ongoing maintenance of the proposed project would adversely impact this public access trail system.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to public access and recreation, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that public access and recreational opportunities are protected and that development does not interfere with the public's right of access to the sea.

Conclusion

As discussed above, the proposed water diversion project and its associated development would cause adverse environmental impacts to coastal resources including riverine and estuarine habitat, marine habitat, water quality, visual resources, public access, commercial and recreational fishing, and would contribute to geologic hazards. The Coastal Commission objects to the approval of Application No. 31194 on the basis that: (1) the proposed diversion of water and associated development would cause adverse environmental impacts to the resources of the coastal zone, (2) the proposed diversion would be contrary to law, including the Coastal Act, and (3) the proposed diversion would not best protect coastal resources and other public trust uses, and therefore would not be in the public interest. Environmental analysis has not been conducted and presented that demonstrates all adverse environmental impacts would be avoided, minimized or mitigated consistent with the Chapter 3 policies of the Coastal Act, and the relevant standards of applicable certified local coastal programs.

KATHRYN GAFFNEY

Protest of Water Rights Application No. 31194 (Gualala)

January __, 2003

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We appreciate the opportunity to comment on this project. Please contact Randall Stemler of our North Coast District staff at (707) 445-7833 if you have any questions.

Sincerely,

Peter Douglas
Executive Director

CALIFORNIA COASTAL COMMISSION

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ATTACHMENT 2

DRAFT

January __ , 2003

Kathryn Gaffney
State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

SUBJECT: Protest of Water Rights Application No. 31195 (Albion).

Dear Ms. Gaffney:

Thank you for providing the Coastal Commission with notice of Water Rights Application Number 31195 submitted by Alaska Water Exports for the proposed diversion of water from the Albion River in Mendocino County, and its export to San Diego, California for municipal water use. The Commission has reviewed the application notice and has directed me to submit the following comments on behalf of the Commission protesting approval of the application.

Proposed Diversion and Development

As described in the Notice of Application, the applicant, Alaska Water Exports, proposes to divert water from the Albion River through an intake infiltration gallery structure (cistern) to be buried within the active river channel, as described in Water Rights Application No. 31195. Water collected by the gallery would be transported through a pipeline to an offshore loading facility in the Pacific Ocean. The water would then be loaded into large polyfiber bags, each designed to hold 50,000 cubic meters (approximately 40.52 acre-feet) of water. Tugboats would tow the bags to San Diego where the water would be used for municipal water supply. The proposed pipeline from the infiltration gallery to the loading facility would be buried within the active river channel and submerged under the sea. The pipeline as proposed would be a 24" diameter concrete pipe approximately 7,960 feet in length. The proposed maximum diversion rate

would be 30 cubic feet per second. The maximum amount of water that would be diverted from the Albion River annually would be 6,200 acre-feet. The proposed period of time during which the diversion of water from the Albion River would occur would be from November 1st of each year through April 1st of the following year. The point of diversion as proposed would be located in Mendocino County within the NW ¼ of SE ¼ of Section 21, T16N, R17W, MDB&M.

Coastal Development Permit Jurisdiction

State regulation of California's coastal resources began with the passage of Proposition 20 in 1972. The Legislature made such regulation permanent with the enactment of the California Coastal Act of 1976 ("Coastal Act" Public Resources Code, Section 30000 *et seq.*). Section 30001 of the Coastal Act declares that "*the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people*" and that "*the permanent protection of the state's natural and scenic resources is a paramount concern to the present and future residents of the state and nation.*" To this end, the purposes of the Coastal Act are, *inter alia*, to "[p]rotect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment" and to "[a]ssure orderly, balanced utilization and conservation of coastal zone resources."

In order to implement the Coastal Act's policies, any person wishing to engage in development² in the coastal zone must first obtain a coastal development permit ("CDP") that is consistent with the policies and requirements of the Coastal Act. The Coastal Act initially vests the Commission with the authority to issue CDPs for any coastal development in the coastal zone. The statutory scheme, however, is designed to transfer primary permitting authority from the Commission to local governments through the preparation and adoption of local coastal programs (LCPs). An LCP consists of land use plans, zoning ordinances, zoning district maps, and other implementing actions that are designed to satisfy the policies and requirements of the Coastal Act. The local government is responsible for preparing the LCP and submitting it to the Commission for its review and approval.

² "Development" is defined as meaning, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of the use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Once the Commission certifies that the entire LCP (i.e., the land use plan, the zoning ordinances and other implementing actions) is in conformity with the Coastal Act, primary permit authority over coastal zone development is transferred from the Commission to the local government. The local government then reviews CDP applications for consistency with the certified LCP. However, even after it certifies an LCP, the Commission retains appellate jurisdiction over local government actions approving certain types of development projects, and developments located in certain sensitive geographical areas.

The proposed project constitutes development being undertaken in the coastal zone. Pursuant to Public Resource Code Section 30519(b), all portions of the proposed project involving development to be undertaken in the coastal zone located below the mean high tide line, on submerged land, or where the public trust may exist fall within the Commission's retained coastal development permit jurisdiction. Any project elements involving development to be undertaken in these areas including development within the active channel of the lower Albion River or the near-shore waters of the Pacific Ocean would require a coastal development permit from the California Coastal Commission. The standard of review for any portions of the proposed project involving development to be undertaken within the Commission's jurisdiction is the project's consistency with the California Coastal Act. The Coastal Commission notes it has concurrent authority to implement the public trust as it is embodied in the Coastal Act.

Since the Commission has certified a LCP for Mendocino County, coastal development permit authority also resides with Mendocino County for any proposed project elements involving development to be undertaken within the coastal zone of Mendocino County outside of the Commission's retained jurisdiction. Pursuant to Coastal Act Sections 30604(b) and (c), the standard of review for any portions of the proposed project involving development to be undertaken within the County's coastal development permit jurisdiction would be the project's consistency with the Mendocino County certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act. Section 30005 of the Coastal Act allows local governments to adopt local coastal programs with policies and standards regulating development that might adversely affect coastal resources that are more restrictive and limiting than the Chapter 3 policies of the Coastal Act. The certified Mendocino County Local Coastal Program contains such policies and standards that are more restrictive and limiting than the Chapter 3 policies cited herein.

In addition, although Mendocino County has primary permit authority over development undertaken in its portion of the coastal zone, the project site is located in an area of the Commission's appeal jurisdiction. Subsequently, pursuant to Sections 30603 of the Coastal Act, any action by the local government to approve the portion of the project within the local government's jurisdiction would be appealable to the Coastal Commission.

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Finally, coastal development permit authority and Commission appeal jurisdiction may also reside in other local jurisdictions with certified local coastal programs, including at the destination site in the San Diego area.

The Coastal Commission will utilize the environmental information prepared by the State Water Resources Control Board to evaluate the consistency of the proposed project with the Chapter 3 policies of the California Coastal Act for development proposed to occur within the retained jurisdiction of the Coastal Commission. If a coastal development permit is granted by a local government and the permit is appealed to the Commission, the Coastal Commission will also utilize the environmental information prepared by the State Water Resources Control Board to evaluate the consistency of the proposed project with policies and standards of the applicable Local Coastal Program.

Protest of Application No. 31195 (Albion)

The Coastal Commission objects to the approval of Application No. 31195 on the basis that (1) the proposed diversion of water and associated development would cause adverse environmental impacts to the resources of the coastal zone, (2) the proposed diversion would be contrary to law, including the Coastal Act, and (3) the proposed diversion would not best protect coastal resources and other public trust uses, and therefore would not be in the public interest. Environmental analysis has not been conducted and presented that demonstrates that all adverse environmental impacts would be avoided, minimized or mitigated consistent with the Chapter 3 policies of the Coastal Act and the relevant standards of applicable certified Local Coastal Programs.

Riverine and Estuarine Habitat

The Coastal Act incorporates provisions for protection of water quality and the biological productivity of coastal habitats and environmentally sensitive habitat area associated with rivers and wetlands.

Section 30231 of the Coastal Act related to biological productivity and water quality states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 of the Coastal Act related to diking, filling or dredging; and continued movement of sediment and nutrients states in applicable part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.*
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (7) Restoration purposes.*
- (8) Nature study, aquaculture, or similar resource dependent activities.*

(b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils

suitable for beach replenishment should be transported for such purposes to appropriate beaches or into suitable long shore current systems.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30236 of the Coastal Act related to water supply and flood control states:

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 of the Coastal Act related to environmentally sensitive habitat areas and adjacent developments states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The full extent of adverse impacts of the proposed project on riverine habitat and species are unknown because no studies have been performed to document these potential impacts and evaluate necessary mitigation for such impacts. However, the proposed project would result in adverse environmental impacts to the beneficial uses and healthy functioning of the Albion River.

The proposed development would have adverse impacts on streambed erosion. For example, trenching would affect the streambed armor. Natural "armoring" occurs in streambeds over a period of time through hydraulic sorting, as fines are washed away, or are worked into deeper layers of the substrate. Coarse aggregate accumulates near the

surface thereby hardening the upper layers of the streambed, and increasing resistance to scour. Trenching in the active channel as proposed, would dramatically increase the erosion potential by disrupting the armored layer and leaving finer-sized materials nearer the streambed surface that would be more easily mobilized by stream flow; thus bed load movement would occur at lower stream velocities following placement of the proposed pipeline. Any disruption of the armored layer causing increased mobilization of bed load can combine to initiate down cutting of the stream channel in both upstream and downstream directions. Down cutting would cause a fluvial geomorphic response contributing to increased potential for adjacent stream banks to collapse, thereby introducing additional sediments into the stream. The effects of trenching and pipeline placement on stream channels include local adjustments, increased meandering or widening of the stream channel, changes in thalweg configuration, altered pool-riffle sequences, shifts from braided to single-thread channels, and down cutting of the channel bed.

Trenching and pipeline placement would also change the frequency and extent of bed load movements and increase the amount of suspended fine sediments and turbidity in the water column. It is generally agreed that turbidity caused by excavation decreases shortly after the disturbance ceases; however, turbidity caused by changes in erosion potential of the substrate as described above would persist until the streambed restabilizes. Fine sediments would settle locally, or travel downstream to settle in or near the estuary or near-shore marine waters. As a result, downstream or offshore substrates would be covered with sand, mud, and silt adversely affecting marine life and habitat ecology.

The proposed development would have adverse impacts on migratory and resident fish species within the river. For example, salmonid spawning migration for the Albion River occurs during the late fall, winter, and early spring depending on discrete storm events and resulting river flow sufficient to produce adequate water depths necessary to signal spawners to enter, and to move up the river system. Two salmonid species inhabit the Albion River. Both are listed as threatened under the Endangered Species Act. Coho salmon (*Oncorhynchus kisutch*) migrate first, usually beginning in November, during and just after the first big rains, and can continue through February, after which time they die. Steelhead (*Oncorhynchus mykiss*) spawners follow later, usually in late November or December, and can continue through February or March after which time they can return to the ocean. Most upstream migration of adult spawners occurs during and immediately following periods of heavy storm runoff. Such runoff provides for the upstream attraction flows and physical transport mechanism for adult fish. In addition to providing attraction flows for spawning anadromous fish, high winter flows are essential for proper ecological functioning of the estuary and near shore ocean conditions. The timing during which water would be diverted for export per the project as proposed—November to April of each year—would conflict with the anadromous fishery spawning requirement for sufficient attraction flows. Additional adverse impacts from the proposed project would involve altered flow regimes affecting natural fluvial geomorphic process, and

water level fluctuations including reductions in the volume of water critical for flushing flows that are necessary for routing sediment during the winter.

Estuaries and lagoons provide critical habitat for all juvenile salmonids migrating to the ocean and are essential to all anadromous salmonids. These critical habitats play an important role as a feeding area for juvenile salmonids and also in the acclimatization to higher salinities (smolting). Damage to those habitats would limit food resources for juvenile salmonids. As a result, juveniles would tend to migrate to open water at a smaller size and thus be more susceptible to predation. The ocean survival for juvenile salmonids is greatly increased if rearing fish are able to attain larger size for an extended period in the estuary. Development and operation of the proposed water diversion and export facilities would cause changes in riverine sediment transport and storage, altered flow and temperature regimes, water level fluctuations, and changes in the timing and quantity of stream flow, all of which would adversely affect a large and diverse population of freshwater and marine species including algae, phytoplankton, zooplankton, benthos, aquatic invertebrates, fish, birds, and mammals.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that: (1) evaluates the full extent of all impacts to riverine and estuarine habitat, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that all adverse impacts to riverine and estuarine habitat would either be avoided as required or minimized to the maximum extent feasible.

Marine Habitat

The Coastal Act incorporates provisions for protection of coastal water quality and the biological productivity of coastal habitats.

Section 30230 of the Coastal Act related to maintenance of marine resources states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

The full extent of adverse impacts of the proposed project on marine habitat and species are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts. However, adverse impacts would occur to marine resources in the near-shore tidal waters resulting from activities associated with

the proposed project. For example, excavation and pipeline placement, and trenching for installation of other structural improvements and other construction activities would disturb and degrade marine habitat potentially including sensitive marine resources (e.g., hard bottom habitat, kelp and eelgrass) in the location of the proposed mooring/loading facility. To the extent new facilities are required for mooring/unloading at the proposed San Diego destination point, similar construction impacts would occur there.

Furthermore, tugboat, waterbag, and buoy anchoring devices would displace and disturb bottom habitat during installation and ongoing anchoring operations. As proposed, the infrastructure facility for filling water bags, and the tugboat mooring station would overlap migration paths for California grey whales and other marine mammals. The continuing tugboat and waterbag filling and towing operations would pose a threat to this protected marine wildlife.

Adverse impacts in the Albion estuary and on near-shore ocean ecology to benthic habitat and marine organisms would occur from increased siltation due to changes in upstream erosion potential resulting from instream disturbance to the channel substrate from trenching and pipeline placement. For example, adverse changes in the invertebrate community affecting the food sources upon which the fishery depends would adversely impact listed salmonids. Further, the project would increase the opportunity for a tugboat to go aground on the rocks during winter storms or incur other mishaps at sea such as collisions with other vessels and increase the risks of a fuel spill. The export of water would transfer pathogens and other microorganisms drawn in with the water from the northern California watershed to the San Diego coast at the receiving end. Similarly, marine species that attach to the large water bags would be transferred from one marine habitat to another, affecting the ecosystem of marine waters at the terminal destination.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that: (1) evaluates the full extent of all impacts to marine habitat, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that marine resources are maintained and enhanced and that uses of the marine environment are carried out in a manner that will sustain the biological productivity of coastal waters and maintain healthy populations of all species of marine organisms.

Water Quality

Section 30231 of the Coastal Act related to biological productivity and water quality states:

The biological activity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored

through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The full extent of adverse impacts of the proposed project on water quality resources are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

The biological productivity of marine and coastal waters is in part, a function of good water quality. Development and operation of the proposed project would result in adverse impacts to water quality. For example, removal of a significant portion of winter flow from the water column of the lower mile and a half of the Albion River would contribute to periodic and premature closures of the sand spit at the mouth of the river by reducing flows that would scour the mouth to keep it open between storm events during the months of proposed water diversion. Such closure would affect the lagoon/estuary sequence adversely impacting water temperature regimes and thereby levels of dissolved oxygen, and the delicate biological processes associated with the healthy functioning of estuaries and near-shore tidal waters. In addition, the proposed trenching and placement of the cement pipeline would significantly raise levels of turbidity, initially during the aftermath of the trench excavation activities, and over a much longer period of time from changes in erosion potential of the channel substrate. The heightened turbidity and associated erosion and sedimentation resulting from the proposed project would adversely affect healthy functioning of riverine habitat.

Construction related activities would have other impacts on water quality. For example, without implementation of Best Management Practices, there would be adverse environmental impacts to riverine water quality and associated habitat from unavoidable incidental leakage of lubricating oils and greases, hydraulic fluids and fuel associated with the use of the requisite heavy equipment for initial inlet construction, trenching and pipeline placement, and development of the mooring and loading facility, as well as from the ongoing operation and maintenance of the water diversion facility over the long term. To the extent new mooring/unloading facilities must be installed and operated in marine waters located at the destination point at San Diego to accept the water deliveries, similar impacts would occur in those coastal waters. Further, approval of the proposed water appropriation would increase the opportunity for a tugboat to go aground on the rocks during winter storms or incur other mishaps at sea such as collisions with other vessels thereby increasing the possibility of a fuel spill. The large water bags, each approximately 262 meters long by 82 meters wide would be sizable obstacles that would pose navigation hazards to other vessels at sea.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all

impacts to water quality, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that the biological activity and quality of coastal waters is maintained and where feasible restored.

Visual Resources

Section 30251 of the Coastal Act related to scenic and visual resources states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The full extent of the project's adverse visual impacts are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

Impacts to public scenic resources would occur from activities associated with the initial construction of the proposed development including installation of the intake facility, trenching and placement of the pipeline, and installation of the mooring/loading facility. Adverse public visual impacts would continue after construction during any ongoing maintenance activities. For example, normal operation of the completed water diversion and export facility would involve the presence and maneuvering of large towboats and tenders imposing significant adverse visual distraction from the natural visual qualities of the coast. The water bags would each cover approximately 262 meters long by 82 meters wide—21,484 square meters of ocean surface area—and would be highly visible from coastal bluffs in the loading area as well as from numerous public vantage points all along the coastline from the point of origin to the destination in San Diego.

The proposed project site from the upstream intake facility to the ocean would be located in a designated "highly scenic" area as shown on the certified Mendocino County Land Use Plan map, where new development must be subordinate to the character of its setting. Adverse visual and aesthetic impacts resulting from the proposed project would affect public views from existing and proposed public recreation trails and vantage points as well as from vessels at sea and/or vessels using the Albion Harbor. Public views to and along the ocean from the Dark Gulch bluff top access trail that exists immediately north of the proposed mooring/loading facility would be seriously jeopardized. Public views

from the existing Albion Flat Shoreline Access Trail located along the north bank of the Albion River at the mouth would be adversely affected as would public views from the bridge of Highway One. The proposed intake facility would be located immediately adjacent to the proposed shoreline access trail running along the north bank of the Albion River as designated on the adopted post local coastal program certification map. Proposed public access trails are also designated all along the bluff edge of the headlands of Albion Head overlooking the proposed mooring/loading facility, and public views from these trails would be adversely affected.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that: (1) evaluates the full extent of all impacts to visual resources, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that all visual resources are considered and protected as a resource of public importance.

Geologic Stability

Section 30253 of the Coastal Act related to minimization of adverse impacts state in applicable part:

New development shall:

- (2) *Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The full extent of the proposed project's contribution to geologic hazards are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

However, the proposed project would contribute to geologic hazards, including, but not limited to, seismic hazards. The proposed project site is located in the San Andreas Fault Zone subject to seismic hazards that include ground shaking, surface faulting, ground failure, and seismically induced water waves. The project as proposed would involve approximately a mile and a half of buried 24" diameter concrete pipeline that even moderate ground shaking would likely disrupt. The northern California coast was struck by a severe tsunami after the Alaskan earthquake of 1964. Damage at the Albion River was reported at over half a million dollars. Considering the project proposal to install an upstream intake and pumping facility, trench and bury a pipeline in the active channel, and install an outlet mooring/loading facility in near-shore coastal waters, it is evident that the development would be highly susceptible to the natural instabilities of the local

region. Failure to perform thorough geotechnical analysis of the project and develop the project in conformance with adequate design criteria would create risks of geologic hazards.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to geologic stability, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that all new development assures stability and structural integrity and neither creates nor significantly contributes to erosion, geologic instability, or destruction of the site.

Commercial Fishing and Recreational Boating

Section 30234 of the Coastal Act related to commercial fishing and recreational boating facilities states:

Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.

Section 30234.5 of the Coastal Act related to the economic, commercial, and recreational importance of fishing states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The full extent of adverse impacts of the proposed project on commercial fishing and recreational boating is unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts.

Commercial fishing and recreational boating are protected activities that would be disrupted by the presence of near-shore tugboat-maneuvering waterbag-towing traffic. For example, the physical placement of the pipeline and mooring/loading facility in near-shore coastal waters would be considered “fill” that would displace protected marine habitat, thereby affecting marine ecology. Mooring and loading operations would displace commercial and/or recreational fishing from a large area of the ocean around the loading facility. Physical disruption to commercial and recreational fishing activities from net and line snagging on the proposed pipeline and/or mooring/loading facility would be detrimental. Increased siltation resulting from significant disruption of the

active channel during pipeline trenching and placement, and periodic maintenance of the intake and pipeline facilities would adversely affect riverine and marine life-form habitat and ecology, and would therefore be adverse to a healthy fishery. To the extent new mooring and unloading facilities must be installed and operated in marine waters at the proposed destination point located off San Diego to accept the water deliveries, similar impacts would occur in those coastal waters.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that (1) evaluates the full extent of all impacts to commercial fishing and recreational boating, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that commercial fishing and recreational boating are protected and that new development will not interfere with the needs of the commercial fishing industry.

Public Access and Recreation

Section 30210 of the Coastal Act related to public access, recreational opportunities, and posting states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212 of the Coastal Act related to new development states:

- (a) *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:*
- (1) *It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,*
 - (2) *Adequate access exists nearby, or,*
 - (3) *Agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*
- (b) *For purposes of this section, "new development" does not include:*

- (1) *Replacement of any structure pursuant to the provisions of subdivision (g) of Section 30610.*
- (2) *The demolition and reconstruction of a single-family residence; provided, that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.*
- (3) *Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height, or bulk of the structure by more than 10 percent, which do not block or impede public access, and which do not result in a seaward encroachment by the structure.*
- (4) *The reconstruction or repair of any seawall; provided, however, that the reconstructed or repaired seawall is not a seaward of the location of the former structure.*
- (5) *Any repair or maintenance activity for which the commission has determined, pursuant to Section 30610, that a coastal development permit will be required unless the commission determines that the activity will have an adverse impact on lateral public access along the beach.*

As used in this subdivision "bulk" means total interior cubic volume as measured from the exterior surface of the structure.

- (c) *Nothing in this division shall restrict public access nor shall it excuse the performance of duties and responsibilities of public agencies which are required by Sections 66478.1 to 66478.14, inclusive, of the Government Code and by Section 4 of Article X of the California Constitution.*

Section 30211 of the Coastal Act restricts development from interfering with access:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30220 of the Coastal Act protects certain water-oriented activities and states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

The Coastal Act confers authority to the Coastal Commission to protect public trust resources including the public's right to use and enjoy navigable waters and tidelands for

a variety of activities such as boating, fishing, and recreation. Public access to and along the coast is a primary public trust resource governed by the Coastal Commission.

The full extent of adverse impacts of the proposed project on public access and recreation are unknown because no studies have been performed to document these potential impacts and address mitigation for such impacts. However, the project as proposed would interfere with public access and recreation during construction of the proposed project, and during periodic maintenance activities. For example, adverse impacts to public access and recreation would occur where public access and/or recreational activities such as kayaking or fishing are blocked or disrupted by the initial construction of the proposed project and/or ongoing maintenance and operation of the proposed water diversion and export facilities. The project would also adversely affect river and ocean shoreline access to the extent that staging areas and support facilities interfere with such access areas, both at the northern California diversion and loading facility site, as well as at the San Diego receiving facility site.

Before any approval is granted to the proposed water appropriation permit application, environmental analysis should be conducted that: (1) evaluates the full extent of all impacts to public access and recreation, (2) evaluates alternatives to determine the least environmentally damaging feasible alternative that best protects coastal resources and other public trust uses, including, but not limited to, alternatives involving using other sources to supply municipal water to the City of San Diego, and (3) demonstrates that public access and recreational opportunities are protected and that development does not interfere with the public's right of access to the sea.

Conclusion

As discussed above, the proposed water diversion project and its associated development would cause adverse environmental impacts to coastal resources including riverine and estuarine habitat, marine habitat, water quality, visual resources, public access, commercial and recreational fishing, and would contribute to geologic hazards. The Coastal Commission objects to the approval of Application No. 31195 on the basis that: (1) the proposed diversion of water and associated development would cause adverse environmental impacts to the resources of the coastal zone, (2) the proposed diversion would be contrary to law, including the Coastal Act, and (3) the proposed diversion would not best protect coastal resources and other public trust uses, and therefore would not be in the public interest. Environmental analysis has not been conducted and presented that demonstrates all adverse environmental impacts would be mitigated avoided, minimized or mitigated consistent with the Chapter 3 policies of the Coastal Act, and the relevant standards of applicable certified local coastal programs.

KATHRYN GAFFNEY

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We appreciate the opportunity to comment on this project. Please contact Randall Stemler of our North Coast District staff at (707) 445-7833 if you have any questions.

Sincerely,

Peter Douglas
Executive Director