

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



December 8, 2014

Andrew Homer
Corporate Counsel
California American Water Company
1033 B Avenue, Suite 200
Coronado, CA 92118

RE: Issuance of Coastal Development Permit #A-3-MRA-14-0050 for California American Water Company – construction, operation, and decommissioning of a test slant well, at the CEMEX site in the City of Marina, County of Monterey.

Dear Mr. Homer:

We have attached Coastal Development Permit (“CDP”) #A-3-MRA-14-0050 for the above-referenced project. Please return the document with an original signature.

Please also return the CDPs we sent on Friday, December 5. As we discussed, Cal-Am has not yet met a “prior to issuance” requirement of Special Condition I to allow issuance of CDP 9-14-1735 for project-related work that would occur seaward of the mean high tide line. CDP 9-14-1735 was erroneously issued on December 5, and no work authorized under that permit may commence until the prior to issuance condition is met and a new permit has been issued.

Thanks very much, and please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Luster".

Tom Luster
Energy, Ocean Resources, and Federal Consistency Division

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**COASTAL DEVELOPMENT PERMIT**

On November 12, 2014, by a vote of 11-0, the California Coastal Commission granted to California American Water Company (Cal-Am) Coastal Development Permit #A-3-MRA-14-0050 subject to the attached standard and special conditions, for development consisting of:

Construction, operation, and decommissioning of a test slant well at the CEMEX sand mining facility in the City of Marina and beneath Monterey Bay in the County of Monterey.

Issued on behalf of the Coastal Commission on December 8, 2014.

CHARLES LESTER
Executive Director

A handwritten signature in cursive script, appearing to read "Alison J. Dettmer".

By: ALISON J. DETTMER
Deputy Director
Energy, Ocean Resources, and Federal Consistency Division

Acknowledgment:

The undersigned Permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

The undersigned Permittee acknowledges that Government Code Section 818.4, which states in pertinent part, that: "A public entity is not liable for injury caused by the issuance... of any permit..." applies to the issuance of this permit.

IMPORTANT: THIS PERMIT IS NOT VALID UNLESS AND UNTIL A COPY OF THE PERMIT WITH THE SIGNED ACKNOWLEDGMENT HAS BEEN RETURNED TO THE COMMISSION OFFICE (14 Cal. Admin. Code Section 13158(a).)

Date

Signature of Permittee or Representative

STANDARD CONDITIONS

This permit is subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

SPECIAL CONDITIONS

This permit is subject to the following special conditions:

1. **Proof of Legal Interest and Other Approvals.** The Permittee shall provide to the Executive Director a copy of each of the following approvals or documentation from the relevant agency that such approval is not required:
 - a. PRIOR TO PERMIT ISSUANCE, proof of legal interest in the project site.
 - b. PRIOR TO CONNECTING TO THE OUTFALL, the negotiated agreement or memorandum of understanding between the applicant and the Monterey Regional Water Pollution Control Agency ("MRWPCA") regarding connection and use of the ocean outfall for discharge of water produced from the test well.
 - c. PRIOR TO ISSUANCE OF CDP 9-14-1735, a lease from the State Lands Commission.

The Permittee shall inform the Executive Director of any changes to the project required by, or resulting from, these permits or approvals. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

2. **Liability for Costs and Attorneys Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (a) those charged by the Office of the Attorney General; and (b) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Coastal Commission, its officers, employees, agents, successors, and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

3. **Project Construction.** The Permittee shall conduct project construction as described and conditioned herein, including the following measures:
 - a. Project-related construction shall occur only in areas as described in the permit application.
 - b. Project-related construction, including site preparation, equipment staging, and installation or removal of equipment or wells, occurring between February 28 and October 1 of any year is subject to the timing and species protection requirements of Special Condition 14.
 - c. Construction equipment and materials, including project-related debris, shall be placed or stored where it cannot enter a storm drain or coastal waters. The Permittee shall ensure that all construction personnel keep all food-related trash items in sealed containers and remove them daily to discourage the concentration of potential predators in snowy plover habitat. All trash and construction debris shall be removed from work areas and properly disposed of at the end of each work day at an approved upland location. All vegetation removed from the construction site shall be taken to a certified landfill to prevent the spread of invasive species.
 - d. To reduce construction noise, noise attenuation devices (e.g., noise blankets, sound baffles, etc.) shall be installed around all stationary construction equipment, including drill rigs.
 - e. All project vehicles shall maintain speeds of 10 miles per hour or less when at the project site. Prior to moving any vehicle, project personnel shall visually inspect for special-status species under and around the vehicle, and shall notify the on-site biologist should any be detected.
 - f. To avoid predation of special-status species, wire excluders or similar anti-perching devices shall be installed and maintained on the top of all aboveground structures (e.g., electrical panel) to deter perching by avian predators.

No changes to these requirements shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is legally required.

4. **Protection of Water Quality.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit an erosion control plan for Executive Director review and approval. The Plan shall include a schedule for the completion of erosion- and sediment-control structures, which ensures that all such erosion-control structures are in place by mid-November of the year that construction begins and maintained thereafter. The plan

shall identify standard Best Management Practices to be implemented to address both temporary and permanent measures to control erosion and reduce sedimentation. Site monitoring by the applicant's erosion-control specialist shall be undertaken and a follow-up report shall be prepared that documents the progress and/or completion of required erosion-control measures both during and after construction and decommissioning activities. No synthetic plastic mesh products shall be used in any erosion control materials. All plans shall show that sedimentation and erosion control measures are installed prior to any other ground disturbing work.

5. Hazardous Material Spill Prevention and Response.

(a) PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval a project-specific Hazardous Materials Spill Prevention and Response Plan that includes:

- an estimate of a reasonable worst case release of fuel or other hazardous materials onto the project site or into adjacent sensitive habitat areas or coastal waters resulting from project operations;
- all identified locations within the project footprint of known or suspected buried hazardous materials, including current or former underground storage tanks, septic systems, refuse disposal areas, and the like;
- specific protocols for monitoring and minimizing the use of fuel and hazardous materials during project operations, including Best Management Practices that will be implemented to ensure minimal impacts to the environment;
- a detailed response and clean-up plan in the event of a spill or accidental discharge or release of fuel or hazardous materials;
- a list of all spill prevention and response equipment that will be maintained on-site;
- the designation of the onsite person who will have responsibility for implementing the plan;
- a telephone contact list of all regulatory and public trustee agencies, including Coastal Commission staff, having authority over the development and/or the project site and its resources to be notified in the event of a spill or material release; and,
- a list of all fuels and hazardous materials that will be used or might be used during the proposed project, together with Material Safety Data Sheets for each of these materials.

The Permittee shall implement the Plan as approved by the Executive Director. The Permittee shall also ensure that all onsite project personnel participate in a training program that describes the above-referenced Plan, identifies the Plan's requirements for implementing Best Management Practices to prevent spills or releases, specifies the location of all clean-up materials and equipment available on site, and specifies the measures that are to be taken should a spill or release occur.

- (b) In the event that a spill or accidental discharge of fuel or hazardous materials occurs during project construction or operations, all non-essential project construction and/or operation shall cease and the Permittee shall implement spill response measures of the approved Plan, including notification of Commission staff. Project construction and/or operation shall not start again until authorized by Commission staff.
- (c) If project construction or operations result in a spill or accidental discharge that causes adverse effects to coastal water quality, ESHA, or other coastal resources, the Permittee shall submit an application to amend this permit, unless the Executive Director determines no amendment is required. The application shall identify proposed measures to prevent future spills or releases and shall include a proposed restoration plan for any coastal resources adversely affected by the spill or release.

The Permittee shall implement the Plan as approved by the Executive Director.

6. **Monitoring and Removal of Temporary Structures, Well Head Burial & Well Closure/Destruction.** The Permittee shall monitor beach erosion at least once per week over the duration of the project to ensure the slant well and monitoring wells remain covered. If the wellheads, linings, casings, or other project components become exposed due to erosion, shifting sand or other factors, the Permittee shall immediately take action to reduce any danger to the public or to marine life and shall submit within one week of detecting the exposed components a complete application for a new or amended permit to remedy the exposure.

Upon project completion, and no later than February 28, 2018, the Permittee shall cut off, cap, and bury the slant well head at least 40 feet below the ground surface, and shall completely remove all other temporary facilities approved by this coastal development permit. To ensure timely removal, the Permittee shall post the bond or other surety device as required by **Special Condition 17** to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.

7. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees:
- a. that the site may be subject to hazards from coastal erosion, storm conditions, wave uprush, and tsunami runup;
 - b. to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;
 - c. to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and
 - d. to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. **No Future Shoreline Protective Device.** By acceptance of this permit, the Permittee agrees, on behalf of itself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this permit, including the wells, supporting infrastructure, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the Permittee hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

By acceptance of this permit, the Permittee further agrees, on behalf of itself and all successors and assigns, that the Permittee shall remove the development authorized by this permit, including the wells, supporting infrastructure, and any future improvements, if any government agency with the requisite jurisdiction and authority has ordered, and the Executive Director has concurred, that the development is not to be used due to any of the hazards identified in **Special Condition 7**. In the event that portions of the development fall to the beach before they are removed, the Permittee shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

9. **Geology/Hazards.** The project shall be designed to meet or exceed all applicable requirements of the California Building Code. Project design and construction shall meet or exceed all applicable feasible conclusions and recommendations in the *Geotechnical Investigation for the California American Water Temporary Slant Test Well Project, Marina, Monterey County, California*, dated April 3, 2014 (GeoSoils 2014). Project components shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project.
10. **Visual Resources.** PRIOR TO PERMIT ISSUANCE, the Permittee shall submit for Executive Director review and approval a Lighting Plan prepared by a qualified engineer that includes the following:
- a. Identifies all lighting and associated infrastructure proposed for use during the test well project, such as towers, poles, electrical lines, etc. The Lighting Plan shall identify the locations, heights, dimensions, and intensity of the lighting and associated lighting infrastructure.
 - b. Evaluates the effects of project lighting and associated infrastructure on wildlife in the project area and describes proposed measures to avoid or minimize any adverse effects. These measures may include shielding project lighting from off-site locations, directing lighting downward, using the minimum amount of lighting necessary to ensure project safety, and other similar measures.
 - c. Affirms that all lighting structures and fixtures installed for use during the project and visible from public areas, including shoreline areas of Monterey Bay, will be painted or finished in neutral tones that minimize their visibility from those public areas.
- The Permittee shall implement the Lighting Plan as approved by the Executive Director.

11. Protection of Nearby Wells. PRIOR TO STARTING PROJECT-RELATED PUMP TESTS, the Permittee shall install monitoring devices a minimum of four wells on the CEMEX site, within 2000 feet of the test well, and one or more offsite wells to record water and salinity levels within the wells and shall provide to the Executive Director the baseline water and Total Dissolved Solids (“TDS”) levels in those wells prior to commencement of pumping from the test well. The Hydrogeology Working Group shall establish the baseline water and TDS levels for the monitoring wells. During the project pump tests, the Permittee shall, at least once per day, monitor water and TDS levels within those wells in person and/or with electronic logging devices. The Permittee shall post data collected from all monitoring wells on a publicly-available internet site at least once per week and shall provide all monitoring data to the Executive Director upon request. If water levels drop more than one-and-one-half foot, or if TDS levels increase more than two thousand parts per million from pre-pump test conditions, the Permittee shall immediately stop the pump test and inform the Executive Director. The Hydrogeology Working Group shall examine the data from Monitoring Well 4 if the test well is shut down due to either of these causes. The Hydrogeology Working Group shall determine whether the drop in water level or increase in TDS is from a cause or causes other than the test well, and it will submit its determination to the Executive Director. If the Executive Director agrees with the Hydrogeology Working Group that the cause of the drop in water level or increase in TDS was a source or sources other than the test well, then the Executive Director may allow testing to resume. If, however, the Executive Director determines that the drop in water level was caused at least in part by the test well, then the Permittee shall not re-start the pump test until receiving an amendment to this permit.

12. Protection of Biological Resources – Biological Monitor(s). PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall retain one or more qualified biologists approved by the Executive Director to ensure compliance with all relevant mitigation measures and Special Conditions. The approved biologist(s) shall conduct the required preconstruction surveys, implement ongoing monitoring and inspections, keep required records, and notify Commission staff and staff of other agencies as necessary regarding project conformity to these measures and Special Conditions.

The approved biologist(s) shall be present during daylight hours for all project construction and decommissioning activities and on a periodic basis when the biologist determines operational activities may affect areas previously undisturbed by project activities. The biologist(s) shall monitor construction equipment access and shall have authority to halt work activities, if the potential for impacts to special-status species or habitat is identified, until the issue can be resolved. The qualified biologist(s) shall immediately report any observations of significant adverse effects on special-status species to the Executive Director.

- 13. Protection of Biological Resources – Training of On-site Personnel.** Prior to starting construction and decommissioning activities, the approved biologist(s) shall conduct an environmental awareness training for all construction personnel that are on-site during activities. The training shall include, at a minimum, the following:
- Descriptions of the special-status species with potential to occur in the project area;
 - Habitat requirements and life histories of those species as they relate to the project;
 - Avoidance, minimization, and mitigation measures that will be implemented to avoid impacts to the species and their habitats;
 - Identification of the regulatory agencies and regulations that manage their protection; and,
 - Consequences that may result from unauthorized impacts or take of special-status species and their habitats.

The training shall include distribution of an environmental training brochure, and collection of signatures from all attendees acknowledging their participation in the training. Subsequent trainings shall be provided by the qualified biologist as needed for additional construction or operations workers through the life of the project.

14. Protection of Biological Resources – Pre-Construction and Pre-Disturbance

Surveys. The approved biologist(s) shall conduct pre-construction surveys for special-status species as described below:

- a. No more than 14 days before the start of onsite activities or any activities planned for areas previously undisturbed by project activities, the biologist(s) shall conduct a field evaluation of the nature and extent of Western snowy plover activity in the project area and shall identify measures needed to ensure construction activities minimize potential effects to the species. Those measures shall, at a minimum, meet the standards and requirements of the mitigation measures included in Exhibit 5 as well as those included in subsection (d) of this special condition. Those measures shall also be submitted for Executive Director review and approval at least five days before the start of construction activities. The Permittee shall implement the measures as approved by the Executive Director.
- b. Prior to construction or activities planned for areas previously undisturbed by project activities, the approved biologist(s) shall coordinate with construction crews to identify and mark the boundaries of project disturbance, locations of special-status species and suitable habitat, avoidance areas, and access routes. GPS data collected during preconstruction surveys completed in 2012, 2013, and 2014 shall be used to flag the known locations of Monterey spineflower and buckwheat for avoidance during construction. Avoidance buffers shall be established and flagged or fenced as necessary to avoid surface disturbance or vegetation removal. The monitoring biologist shall fit the placement of flags and fencing to minimize impacts to any sensitive resources. At a minimum, the biologist shall direct the placement of highly visible exclusion fencing (snow fence or similar) at the following locations:
 - around sensitive snowy plover habitat areas that do not require regular access;
 - areas along the northern edge of the CEMEX accessway in the vicinity of the settling ponds; and
 - between the work area and any identified occurrence of Monterey spineflower or buckwheat within 10 feet of the existing accessway or work area.

All delineated areas of temporary fencing shall be shown on grading plans and shall remain in place and functional throughout the duration of construction and decommissioning activities.

- c. The approved biologist(s) shall conduct surveys for Monterey spineflower and buckwheat (host plant for Smith's blue butterfly) within all project disturbance areas and within 20 feet of project boundaries during the blooming period for the spineflower (April-June) to identify and record the most current known locations of these species in the project vicinity. Surveys shall be conducted by a qualified botanist, and shall include collection of Global Positioning System (GPS) data points for use during flagging of sensitive plant species locations and avoidance buffers prior to construction.
- d. Starting no later than February 1 of each year of project construction, operation, and decommissioning, the approved biologist(s) shall conduct breeding and nesting surveys of sensitive avian species within 500 feet of the project footprint. The approved biologist(s) shall continue those surveys at least once per week during periods of project construction, well re-packing, and decommissioning that occur between February 1 and October 1 each year.

In the event that any sensitive species are present in the project area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the qualified biologist shall either: (1) initiate a salvage and relocation program prior to any excavation/maintenance activities to move sensitive species by hand to safe locations elsewhere along the project reach or (2) as appropriate, implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The Permittee shall also immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Department of Fish and Game, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received and also authorizes construction to proceed.

If an active nest of a federally or state-listed threatened or endangered species, species of special concern, or any species of raptor or heron is found, the Permittee shall notify the appropriate State and Federal wildlife agencies within 24 hours, and shall develop an appropriate action specific to each incident. The Permittee shall notify the California Coastal Commission in writing by facsimile or e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.

If the biologist(s) identify an active nest of any federally- or state-listed threatened or endangered species, species of special concern, or any species of raptor or heron within 300 feet of construction activities (500 feet for raptors), the biologist(s) shall monitor bird behavior and construction noise levels. The biologist(s) shall be present at all relevant construction meetings and during all significant construction activities

(those with potential noise impacts) to ensure that nesting birds are not disturbed by construction-related noise. The biologist(s) shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site. If construction noise exceeds a peak level of 65 dB at the nest(s) site, sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 ft. (500 ft. for raptors) of the nesting areas shall cease and shall not re-start until either new sound mitigation can be employed or nesting is complete.

If active plover nests are located within 300 feet of the project or access routes, avoidance buffers shall be established to minimize potential disturbance of nesting activity, and the biologist shall coordinate with and accompany the Permittee's operational staff as necessary during the nesting season to guide access and activities to avoid impacts to nesting plovers. The biologist shall contact the USFWS and CDFW immediately if a nest is found in areas near the wellhead that could be affected by project operations. Operations shall be immediately suspended until the Permittee submits to the Executive Director written authorization to proceed from the USFWS.

If, after starting project activities, the Permittee must stop construction due to the presence of sensitive species or due to the lack of necessary approvals or permits (e.g., a lease from the State Lands Commission), the Permittee shall remove and properly store all project-related equipment and vehicles away from the project site in a manner that does not adversely affect sensitive species.

- 15. Project Area Restoration.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall prepare a Restoration Plan for review and approval by the Executive Director that is consistent with the City of Marina restoration requirements as codified in Municipal Code Section 17.41.100. The Plan shall include, at a minimum:
- a. a description of the habitat characteristics and extent of the area to be restored, which shall include, at a minimum, all areas of temporary disturbance in the project footprint other than those areas actively in use by CEMEX for mining purposes;
 - b. performance standards and success criteria to be used;
 - c. a minimum 3:1 ratio of native plants to be replaced within the affected area;
 - d. an invasive species control program to be implemented for the duration of the project;
 - e. the timing of proposed restoration activities;
 - f. proposed methods to monitor restoration performance and success for at least five years following initiation of the Plan; and
 - g. identification of all relevant conditions, requirements, and approvals by regulatory agencies needed to implement the Plan.

The Permittee shall implement the Plan: (1) during and immediately following construction and prior to operation of the test well, and (2) during and immediately following decommissioning activities.

Success criteria will include plant cover and species composition/diversity, which shall meet or exceed adjacent undisturbed dune habitat on the CEMEX parcel as determined by the biological monitor. Success criteria shall, at a minimum, be consistent with the requirements of the existing Lapis Revegetation Plan prepared for the RMC Lonestar Lapis Sand Plant (25 percent average vegetative cover and species diversity of all species listed in Group A of the Plan present and providing at least 1 percent cover).

16. **Invasive Species Control.** The Permittee shall remove and properly dispose of at a certified landfill all invasive or exotic plants disturbed or removed during project activities. The Permittee shall use existing on-site soils for fill material to the extent feasible. If the use of imported fill material is necessary, the imported material must be obtained from a source that is known to be free of invasive plant species, or the material must consist of purchased clean material.

17. **Posting of Bond.** To ensure timely removal, PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Commission a surety bond or similar security device acceptable to the Executive Director for \$1,000,000 (one million dollars), and naming the Coastal Commission as the assured, to guarantee the Permittee's compliance with Special Conditions 6 and 15. The surety bond or other security device shall be maintained in full force and effect at all times until Special Conditions 6 and 15 have been met.