July 1, 2015

National Oceanic and Atmospheric Administration
MBNMS Desalination Project Lead
99 Pacific Ave., Bldg. 455a
Monterey, CA 93940

ELECTRONIC SUBMISSION VIA FEDERAL E-RULEMAKING PORTAL

Re: Scoping Comments on Notice of Intent to Prepare Joint EIR/EIS for the Monterey Bay Regional Water Project

To Whom It May Concern:

The Surfrider Foundation Monterey Chapter appreciates this opportunity to provide public comments in response to the Notice of Intent to prepare a joint EIR/EIS on DeepWater Desal's proposed Monterey Bay Regional Water Project ("Project"). The Surfrider Foundation is a non-profit 501(c)(3) organization that is dedicated to the protection and enjoyment of oceans, waves and beaches through a powerful activist network. Towards this mission, and specifically in support of protecting water quality and marine ecosystems, the Surfrider Foundation Monterey Chapter has been very engaged in the effort to identify water supply and demand-offsetting solutions for peninsula cities, which will protect and preserve a healthy coastal environment.

The Surfrider Foundation Monterey Chapter ("Surfrider Foundation") hereby submits the following scoping comments on the draft EIR/EIS.

Legal Requirements Under NEPA and CEQA

NEPA

The National Environmental Policy Act of 1969 ("NEPA") establishes a policy to encourage a productive and enjoyable harmony between man and his environment, prevent or eliminate damage to the environment, and enrich the understanding of

the ecological systems and natural resources important to the nation. (42 USC § 4321). In furtherance of this policy, NEPA requires that the Federal government use all practicable means such that the Nation may, among other duties, fulfill its responsibilities as trustee of the environment for future generations; assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences; and enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. (42 USC § 4331(b)).

One of NEPA's key mandates requires Federal agencies, "to the fullest extent possible" to prepare a detailed Environmental Impact Statement ("EIS") for any major Federal action significantly affecting the environment, which addresses: (1) the environmental impact of the proposed action; (2) any adverse environmental effects which cannot be avoided if the proposal is implemented; (3) alternatives to the proposed action; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. (42 USC § 4332). The primary purpose of an EIS is to force the government to take a "hard look" at its proposed action, and to provide a full and fair discussion of significant environmental impacts and inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. (*Baltimore Gas and Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87 (1983); 40 C.F.R. § 1502.1)

To comply with NEPA, an EIS must describe the affected environment, that is, the area(s) to be affected by the proposed project. (40 C.F.R. § 1502.15.) Further, an EIS must fully and fairly discuss all significant environmental impacts of the project. (40 C.F.R. § 1502.1) All environmental consequences, including direct and indirect impacts; potential conflicts between the proposed action and other Federal, state, regional, or local land use plans or policies; and cumulative impacts must be addressed (40 C.F.R. §§ 1502.10(g), 1502.16(c), 1508.7, 1508.8.) An EIS must also address all reasonable alternatives that will avoid or minimize adverse effects to the environment; and the regulations describe this alternatives analysis as being the "heart of the [EIS]". (40 C.F.R. § 1502.14.) An EIS must also include mitigation measures. (40 C.F.R. § 1502.14(f), (h).)

To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders. (40 C.F.R. § 1502.25(a))

CEQA

Similarly, the California Environmental Quality Act ("CEQA") was enacted to further legislative policies including the maintenance of a quality environment for the people of California now and in the future, and preventing environmental damage. (Cal. Pub. Res. Code § 21000) CEQA further declares that policies of the State include: taking "all action necessary to protect, rehabilitate, and enhance the environmental quality of the state" (Cal. Pub. Res. Code § 21001(a)); taking all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities (Cal. Pub. Res. Code § 21001(b)); and preventing the elimination of fish or wildlife species due to man's activities, and insuring that fish and wildlife populations do not drop below self-perpetuating levels (Cal. Pub. Res. Code § 21001(c)).

CEQA requires the preparation of an Environmental Impact Report ("EIR") for projects that may have significant effect(s) on the environment, the purpose of which is "to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided." (Cal. Pub. Res. Code § 21002.1(a)) The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. (Cal. Pub. Res. Code § 21002.1(d)) Therefore, under CEQA, an EIR must consider all significant effects on the environment from the project, including any irreversible effects; any cumulative effects from the project; and any feasible mitigation measures to mitigate or avoid those effects. (Cal. Pub. Res. Code § 21100; 14 Cal. Code Regs. § 15130.) The EIR requirement is the heart of CEQA. (*County of Inyo v. Yorty,* 32 Cal. App. 3d 795.)

Any person may submit comments to the lead agency to assist in preparing the draft EIR, and the lead agency must consider all information and comments received. (14 Cal. Code Regs. § 15084).

Therefore, in conclusion, pursuant to NEPA and CEQA's mandates, the California State Lands Commission ("CSLC") and the National Oceanic and Atmospheric Association ("NOAA")/Monterey Bay National Marine Sanctuary ("MBNMS"), as lead agencies for the DeepWater Desal Project, must consider these comments submitted by the Surfrider Foundation on the joint EIR/EIS, and must prepare an EIR/EIS which considers the affected environment, all feasible project alternatives, all significant project impacts, including cumulative impacts, consistency with other laws, and all feasible mitigation measures.

Affected Environment

According to DeepWater Desal's Project website, the Project will be located on a 110-acre site located approximately 1.5 miles east of Moss Landing Harbor and consist of a seawater reverse osmosis desalination facility and co-located seawater-cooled computer data centers. The Project will include seawater intake and brine

discharge lines that will extend west from Moss Landing Harbor to the upper reaches of the submarine Monterey Canyon and the north shelf, respectively. Pipelines for the delivery of fresh water produced by the Project are proposed and will run northerly from the Project to Soquel, easterly to Castroville and Salinas, and southerly to Marina. Thus, in addition to considering all of the affected onshore land resources affected by the Project, including from the 110-acre facility site, and the distribution pipelines, the EIR/EIS must consider the affected Monterey Bay ocean environment, particularly all of the natural resources and species in the Monterey Bay National Marine Sanctuary. This ocean environment is home to numerous species of fish, marine mammals, and seabirds, as well as kelp, marine algae, and invertebrates, potential impacts to which must be analyzed in the EIR/EIS. Further, there must be definitive proposed locations of each of the project components, including the pipelines carrying water to and from the desalination plant, such that the EIR/EIS can adequately consider the entire affected environment, and all of impacts to that environment.

Additionally, due to the Project's location in and near the coast, the EIR/EIS must consider the potential for and effects of sea level rise, as well as other climate change-related effects, in the Project area, and the Project must be consistent with the California Coastal Act and the California Coastal Commission's Sea Level Rise Policy Guidance (available at: http://www.coastal.ca.gov/climate/slrguidance.html). Specifically, the Project – both in terms of infrastructure construction and operations - must minimize coastal hazard risks without the use of bluff retaining or shoreline protection devices that would substantially alter natural landforms, and must avoid or minimize impacts to coastal resources, including public access, recreation, marine resources, agricultural areas, sensitive habitats, archaeological resources, and scenic and visual resources in conformity with Coastal Act requirements.

Alternatives

The EIR/EIS must consider all feasible alternatives of and to the project. This should include considering a "no project alternative" and whether a smaller project, with fewer environmental impacts, can meet the project needs in lieu of the proposed 25,000 afy Project. This will require addressing several related questions. For instance, is there verifiable demand for all of the potable water that will be supplied by this desalination Project? How much water will be used for the data center, and how much will be used for potable supply? The EIR/EIS must consider and analyze how much need there is in light of other proposed projects in the region including the Pure Water Monterey Groundwater Replenishment Project, and the Cal Am Monterey Peninsula Water Supply Project

Additional alternatives with respect to certain Project attributes that must also be considered are discussed below.

Significant Environmental Impacts

The EIR/EIS must include all significant environmental impacts from the project. This project will likely have multiple significant impacts on precious natural resources due to its brine discharges, open ocean intake system, energy use, and greenhouse gas emissions. Thus, these impacts must be analyzed.

Brine Discharges

The EIR/EIS must adequately explain, clarify, and substantiate the method for brine discharge and dilution, the anticipated discharge volumes, and where the brine will be discharged. The potential volume of discharge and impacts should also be estimated and considered for any potential alternative project, which could be a downsized version of the proposed Project.

Elevated salinity and its impact on marine ecology, both within and outside of the zone of initial dilution, is one of the major concerns of ocean water desalination projects. Therefore, the EIR/EIS must further fully explain whether, how, and where this amount of brine will adequately dilute, how it will affect the area's water quality, and how it will affect the myriad marine species and resources in this area. Mobile fishes and invertebrates, such as prickly sharks and krill, have been found to aggregate in canyon heads and along canyon walls. Rocky outcrops along canyon walls are colonized by invertebrates - including feather stars, corals and tunicates - and provide shelter for a variety of rockfishes. Clams and worms burrow into canyon walls. The soft sediments on the canyon floor support a diverse community of invertebrates (e.g., sea pens, sea cucumbers, brittle stars, sea stars) and fishes (e.g., flatfishes, ratfishes, whiptails, grenadiers, sablefish, hake, thornyheads).[1] The required analysis must include brine impacts to the vicinity of the discharge, in the zone of initial dilution, and beyond. Not only must saline impacts be considered, but impacts due to the heated temperature of the discharge must be analyzed, as well as impacts from discharge of heavy metals and other potentially harmful discharge constituents. The risk of pollutant bioaccumulation is higher in submarine canyons than in surrounding waters because the flow of sediments and pollutants tends to be concentrated in canyons.[2]

Specifically, furthermore, the Project, and all associated brine discharges, must comply with the California Ocean Plan, and its recent amendments (*see* http://www.swrcb.ca.gov/water_issues/programs/ocean/desalination/docs/desalamend_050515.pdf), and the EIR/EIS must demonstrate said compliance. This must include, for example, compliance with the Ocean Plan's receiving water limitation for salinity, 2 parts per thousand ("ppt") above natural background salinity, as measured no further than 100 meters horizontally from each discharge point (or an

[1] *See* http://sanctuarysimon.org/monterey/sections/submarineCanyons/overview.php
[2] *Id.*

alternative limitation approved pursuant to the Ocean Plan). Additionally, the Project should comply with the recommendations of the Southern California Coastal Water Research Project, which recently produced a technical report on brine discharges to California's coastal waters for the State Water Resources Control Board, which recommends an incremental salinity limit at the mixing zone boundary of no more than 5% of that occurring naturally in the waters around the discharge.[3] Expressing the limit as a percentage increase allows for natural variability in the background waters, and for most California open coastal waters this increment will be about 1.7 ppt.[4] Thus, salinity levels at the zone of dilution boundary must be limited to an increase of either 2 ppt or 5% above ambient salinity levels, whichever is less.

The EIR/EIS must also adequately consider alternatives with respect to brine discharges, such as alternative mechanisms for diffusion, and should consider the preferred alternatives from the California Ocean Plan, such as (1) the potential for comingling brine with wastewater (e.g., agricultural, municipal, industrial, power plant cooling water, etc.) that would otherwise be discharged to the ocean; or (2) multiport diffusers, which are engineered to maximize dilution, minimize the size of the brine mixing zone, minimize the suspension of benthic sediments, and minimize the mortality of all forms of marine life. With regard to comingling brine with wastewater, the potential for future reclamation/use of any wastewater should be considered so that the discharge does not rely on wastewater for dilution.

To understand the potential impacts that the Project's brine discharge might have on this special ecosystem, CEQA requires an accurate description of the existing environmental baseline. (CEQA Guidelines § 15125(a); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713,722.) The EIR must describe "the physical environmental conditions in the vicinity of the project, *as they exist at the time the notice of preparation is published*." (CEQA Guidelines § 15125(a) (emphasis added).) This echoes the previously noted requirement to describe the "affected environment," and emphasizes its importance.

Open Ocean Intake System

According to the DeepWater Desal Project website, DeepWater intends to locate a screened, deep water intake at the head of the Monterey Submarine Canyon off of Moss Landing in approximately 100 feet of water. While the project proponents claim that the deep nature of the ocean intake pipe significantly reduces the number of juvenile fish and other planktonic animals that are at risk from a seawater intake, an open ocean intake system inherently poses major risk of impingement and entrainment of marine species, including fish, planktonic animals, and benthic

[3] *See* http://ftp.sccwrp.org/pub/download/DOCUMENTS/TechnicalReports/694_BrinePanelReport.pdf, at iii.
[4] *Id*.

species. The deep sea environment of the underwater Monterey canyon is populated by a wide array of animals that are specially adapted to live under the water pressure and low oxygen level of this environment.[5] This raises the risk of mortality to species, which risks changing the area's entire marine ecosystem, and entrainment of species can lead to dead marine life matter being a part of the brine discharge, which may attract an uncommon and undesirable congregation of filter feeders and other scavengers. In short, an open ocean intake risks disrupting the entire ecological balance in the area. All of these potential impacts must be considered in the EIR/EIS.

Specifically, with regard to the study and analysis of impacts to species, to adequately gauge potential impacts, such studies must look at impacts to species known or believed to be present within and in the vicinity of the proposed discharge area. Both direct mortality and indirect mortality resulting from impingement and entrainment should be considered. Additionally, impacts to total numbers and proportional numbers (i.e. proportion of population) should be considered and used to determine the significance of the impact of impingement and entrainment.

Further, the EIR/EIS must describe the proposed ocean intake pipe, including the location, design, and compliance with the California Ocean Plan. Specifically, the Ocean Plan requires determining whether a subsurface intake pipe is feasible, and *only allows surface water intakes where a subsurface intake pipe is determined to be infeasible*. (Ocean Plan, chapter III.M, (2)(d)(1)(a)(i).) If identified as the best available technology, any surface water intake must be designed to minimize harm to species, and screened with a 1.0 mm (0.04 in) or smaller slot size screen when the desalination facility is withdrawing seawater, and in order to minimize impingement, through-screen velocity at the intake shall not exceed 0.15 meters per second (0.5 feet per second) (*Id.*, at (2)(d)(1)(c).) If the project proposes to use multiple large mesh screens and/or intakes, the impact of multiple co-located screen structures would need to be evaluated.

With respect to the feasibility of subsurface intakes, geotechnical data, hydrogeology, benthic topography, oceanographic conditions, presence of sensitive habitats, presence of sensitive species, energy use for the entire facility, design constraints (engineering, constructability), and project life cycle costs must be considered. *Subsurface intakes shall not be determined to be economically infeasible solely because subsurface intakes may be more expensive than surface intakes*. (*Id.*, at (2)(d)(1)(a)(i).) Further, if the regional water board determines that subsurface intakes are not feasible for the proposed intake design capacity, it shall determine whether subsurface intakes are feasible for a reasonable range of alternative intake design capacities, and therefore could require utilizing a downsized Project. (*Id.*, at (2)(d)(1)(a)(ii).)

[5] *See* http://sanctuarysimon.org/monterey/sections/deepSea/overview.php

Energy Use / Greenhouse gas emissions

The EIR/EIS must determine the Project's net energy consumption and resulting greenhouse gas ("GHG") emissions (i.e. the amount of energy consumption and GHG's which are new, or increased above baseline conditions). This calculation must take into account that the Project creates a new need for energy, particularly the data center, and that desalination process itself is very energy intensive. The EIR/EIS must determine whether these impacts are significant, and analyze specific mitigation measures to address them. Precise greenhouse gas mitigation measures must be incorporated into the EIR/EIS and may not be deferred to a later date. This could include development of a conservation plan, determination as to whether and how much renewable energy will be available, and the production of a clear menu of options and a calculation of potential emissions reductions from each option.

Measures such as requiring installation of solar photovoltaic panels throughout the site, use of the most energy efficient technologies and engineering processes for the Project's operation, use of low or zero-emission construction vehicles, and ride sharing programs and employee shuttle programs to and from the Project site are potential measures that could be incorporated. Numerous agencies and organizations have documented feasible and effective greenhouse gas mitigation options. The lead agencies must consider all of the applicable measures listed in the following documents, and must adopt *all* feasible measures to reduce the Project's impacts. "[A]gencies should not approve projects as proposed if there are . . . feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." (Cal. Pub. Res. Code § 21002.)

- Governor's Office of Planning and Research. 2008. Technical Advisory. CEQA and Climate Change: Addressing Climate Change through California Environmental Quality Act (CEQA) Review. See Attachment 3, "Examples of GHG Reduction Measures." Available: http://www.opr.ca.gov/docs/june08-ceqa.pdf

- California Air Pollution Control Officers Association (CAPCOA). 2008 (January). CEQA & Climate Change. Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act. See page 79, "Mitigation Strategies for GHG." Available: http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf.

- California Air Pollution Control Officers Association (CAPCOA). 2010 (August). Quantifying Greenhouse Gas Mitigation Measures. A Resource for Local Government to Assess Emission Reduction from Greenhouse Gas Mitigation Measures. Available: http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.

- ❖ Attorney General of the State of California. 2008 (December). The California Environmental Quality Act. Addressing Global Warming Impacts at the Local Agency Level. Available: http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf.

Cumulative Impacts

As provided above, CEQA requires an EIR to fully disclose and analyze a project's cumulative impacts. CEQA defines "cumulative impacts" as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines § 15355(a)) "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." *Id*. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (CEQA Guidelines § 15355(b)) The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." (*Whitman v. Bd. of Supervisors* (1979) 88 Cal. App. 3d 397, 408.)

Therefore, this EIR/EIS must thoroughly discuss any other potential projects and existing facilities, and their effects, which, when considered with this Project's impacts, will be significant. Surfrider Foundation is presently aware of several other desalination projects, and projects with brine discharges, being considered in the Monterey Bay area, including the Pure Water Monterey Groundwater Replenishment Project, the Cal Am Monterey Peninsula Water Supply Project, People's Moss Landing Desalination Project, and new desalination facilities approved by the Marina Coast Water District. These projects, and any other potential or existing projects and facilities which will have effects on the Monterey Bay region, including those with potential brine discharge effects, or other effects due to ocean water intake pipelines or water supply transport pipelines, must be included and their impacts analyzed in conjunction with those associated with the proposed Project in the EIR/EIS.

Project Segmentation

It is not clear that the product water delivery pipelines are included as part of this Project. If they are not, they should be, and must be analyzed as part of this Project's EIR/EIS. Under CEQA, a "Project" means the *whole* of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines §15378) A public agency may not divide a single project into smaller individual projects in order to avoid its responsibility to consider the environmental impacts of the project as a whole. (*Orinda Assn. v. Board of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171.)

If the desalination facility is being built to deliver potable water to municipalities, then all physical aspects of the Project associated with creating and delivering this water are part of the "Project" and must be included and analyzed in the EIR/EIS.

Further, without certain knowledge of which areas this project will serve, we are unable to appropriately identify the scope and location of impacts. The areas the project plans to serve, including the volume of product water demanded by each area, must be included in the EIR/EIS.

Feasible Mitigation Measures

The EIR/EIS must consider and fully analyze all mitigation measures, and the Project must include all feasible measures to mitigate impacts. (14 Cal. Code Regs. §15021(a)(2); 40 CFR 1500.2(f).) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors. (Cal. Pub. Res. Code § 21061.1). The required mitigation measures must "minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." (Cal. Pub. Res. Code § 21100(b)(3).) A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (14 Cal. Code Regs. §15021, citing *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard*, (1994) 512 U.S. 374, *Ehrlich v. City of Culver City*, (1996) 12 Cal. 4th 854.)

These measures cannot be duplicative of another project's mitigation measures which are already required, or current marine life protection measures already in place in the region, but must be new measures to mitigate the Project's environmental impacts to less than significant levels.

Compliance With Existing Law

The Project must be consistent with all existing laws, and the EIR/EIS must address the Project's consistency. Specifically, the EIR/EIS must address how this Project will be consistent with the Marine Life Protection Act, and related Marine Protected Area regulations; the National Marine Sanctuaries Act of 1972, and related Monterey Bay National Marine Sanctuary (MBNMS) regulations; laws applicable to the Elkhorn Slough National Estuarine Research Reserve; and the California Ocean Plan.

These laws include, but are not limited to, the following:

- **Marine Protected Area regulations** – The Project is proposed to be located partially in or near the Elkhorn Slough State Marine Reserve and Elkhorn Slough State Marine Conservation Area. As to the Reserve, the "take" (i.e.

killing) of any living marine resource is prohibited; and as to the Conservation Area, the take of all living marine resources is prohibited except the recreational catch of finfish by hook and line only, and limited taking of clams.[6]

- **Federal legislation and regulations applicable to the Elkhorn Slough National Estuarine Research Reserve** - The Project is proposed to be located in or near this 1700 acre Reserve, which is one of 28 National Estuarine Research Reserves established nationwide as a field laboratory for scientific research and estuarine education.[7] (*See*, e.g. U.S. Code, Title 16, Section 1461, National Estuarine Research Reserve System; and 15 C.F.R. § 951.)[8] The EIR/EIS must illustrate that the Project is consistent with the Management Plan for the Elkhorn Slough Reserve, which broadly focuses on the protection, restoration, and conservation of the estuarine habitat of the watershed (*see* http://coast.noaa.gov/data/docs/nerrs/Reserves_ELK_MgmtPlan.pdf)

- **MBNMS regulations** – These regulations prohibit drilling, dredging, or altering submerged lands within the Monterey Bay National Marine Sanctuary; prohibit discharging or depositing any material or matter within or into the sanctuary or from outside the boundaries of the sanctuary if it subsequently enters and injures the sanctuary; and prohibit disturbing, taking or possessing any marine mammal, sea turtle or bird within or above the sanctuary (*see* http://montereybay.noaa.gov/resourcepro/prohibitions.html)

- **California Ocean Plan, including the new Desalination Amendment** – contains requirements with respect to brine discharges, intake structures, etc., which the Project must comply with. Further, specifically, the Desalination Amendment requires that intake and discharge structures not be located within a Marine Protected Area (MPA) or in a California State Water Quality Protection Area (SWQPA) (except for intakes structures that do not have marine life mortality associated with the construction, operation, and maintenance of the intake structures), and discharges shall be sited at a sufficient distance from an MPA or SWPQA such that the salinity within the boundaries of the MPA or SWPQA does not exceed natural background salinity. To the extent feasible, surface intakes must be sited at a maximum distance from an MPA or SWPQA. (Ocean Plan, chapter III.M, (2)(b)(7).)

Conclusion

[6] *See* http://www.dfg.ca.gov/marine/mpa/mpa_summary.asp#rules
[7] *See* http://www.elkhornslough.org/esnerr/
[8] *See* http://www.nerrs.noaa.gov/about/legislation.html

The Surfrider Foundation Monterey Chapter appreciates the opportunity to provide these comments. The foregoing matters are significant issues, which warrant inclusion and in-depth analysis in the Draft EIR/EIS. This Project must be carried out such that our ocean and coastal resources are protected to the maximum extent possible for generations to come, and NEPA and CEQA demand that all feasible alternatives, impacts, cumulative impacts, and mitigation measures be considered with respect to this DeepWater Desal Monterey Bay Regional Water Project.

Sincerely,

Staley Prom, Esq.
Legal Associate
Surfrider Foundation