

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** August 14, 2018

**TO:** Honorable Mayor and Councilmembers

**FROM:** City Attorney

**SUBJECT:** Pipeline Alignment for the North City Pure Water Project – Phase I

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**INTRODUCTION**

Pure Water San Diego is the City of San Diego’s phased, multi-year program that is expected to provide one-third of San Diego’s water supply locally by 2035. The Pure Water Program will use proven water purification technology to clean recycled water to produce safe, high-quality drinking water. The program offers a cost-effective investment for the City’s water needs and will provide a reliable, sustainable water supply.

On April 10, 2018, the San Diego City Council (City Council) approved the North City Pure Water Project – Phase I (Project), which included discretionary land use approvals and an Environmental Impact Report (EIR). Pure Water Phase I includes expansion of the existing North City Water Reclamation Plant and construction of an Advanced Water Purification Facility with a purified water pipeline delivering 30 million gallons per day to Miramar Reservoir.<sup>1</sup>

The City anticipates presenting almost all of the construction contracts for the Project to the City Council for approval this October. This Office has been asked whether the pipeline alignment can still be changed even though the EIR is certified.

**QUESTION PRESENTED**

Can the pipeline alignment be changed now that the EIR has been certified?

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<sup>1</sup> On May 23, 2018, the University City Community Foundation (UCCF) served a Petition for Writ of Mandate under the California Environmental Quality Act (CEQA) on the City challenging the approval of the Pure Water Phase I Project and certification of the EIR. It is anticipated the matter will be scheduled for a hearing in May 2019.

## SHORT ANSWER

Yes. The approved pipeline alignment can be changed but, depending on the nature and scope of any changes, additional City approvals and environmental analysis may be required.

## ANALYSIS

### **I. THE APPROVED PIPELINE ALIGNMENT MAY BE CHANGED BUT ADDITIONAL PERMIT APPROVALS AND ENVIRONMENTAL ANALYSIS MAY BE NECESSARY**

The Project includes a new pure water facility, expanded water reclamation facility, and three pump stations. The pipelines between these new facilities will traverse a number of communities within the City of San Diego, as well as federal lands within the Marine Corps Air Station Miramar.

As part of the planning for the Project, numerous potential alignments were evaluated. The Public Utilities Department (PUD) looked at multiple ways to get wastewater from the Morena Pump Station to the North City Water Reclamation Plant. The PUD evaluated alignments using factors including utility conflicts, easements and property acquisitions, operational complexity, energy demand, schedule, risks, construction feasibility, and community and environmental impacts before selecting the proposed route.

The EIR for the Project evaluated three pipeline alternatives, including the No Project/No Action Alternative and two North City Project Alternatives: the Miramar Reservoir Alternative and the San Vicente Reservoir Alternative. There were also a number of different alignments proposed within each of the two main routes. The Miramar Reservoir Alternative was the Locally Preferred Alternative and the one approved by the City Council on April 10, 2018.

#### **A. If the Pipeline Alignment is Changed, Review of Project Approvals Will Be Necessary to Determine Whether Previous Project Approvals Need to be Modified or Additional Permits are Needed.**

Portions of the Project are within and adjacent to the Multiple Habitat Planning Area (MHPA) and Vernal Pools. A Site Development Permit is required for work within these environmentally sensitive lands.

Any changes or additions to the Project may require additional permits or approvals. For example, if the pipeline alignment is moved out of the public right-of-way and constructed through a canyon, additional grading permits may be required or the Site Development Permit approved for the Project may need to be amended. Also, if the new alignment is through or over lands owned by other agencies, further approvals or permission may be needed through those entities.

Once any specific changes to the Project have been identified, City staff would need to evaluate the potential need for additional permits or approvals.

**B. Where an EIR for a Project Has Been Certified, A Change in the Project Could Necessitate Additional Environmental Review.**

Under the California Environmental Quality Act (CEQA) (California Public Resources Code sections 21000-21189.57) and title 14, sections 15000 to 15387 of the California Code of Regulations (CEQA Guidelines), if a project changes after approval requiring a new discretionary action, additional environmental review is necessary. To evaluate the changes, staff would need to define and describe the changes to the project and highlight those changes with references to the original environmental document. Staff would then need to identify and describe the environmental circumstances that have changed and consider each environmental topic area in the Environmental Checklist Form. CEQA Guidelines, Appendix G.

After this is complete, staff can determine the proper supplemental review approach. Supplemental review can take the form of a Subsequent EIR or Supplemental EIR if new, significant environmental effects or a substantial increase in the severity of previously identified significant effects will occur based on changes in the project. If there is no substantial evidence that the changed Project may have a significant effect on the environment, staff can prepare a Consistency Review Analysis or an Addendum.<sup>2</sup>

For CEQA purposes, the required scope of environmental review is governed by Public Resources Code section 21166 and CEQA Guidelines sections 15162 and 15163. In summary, these provisions require assessment of substantial changes in the Project, substantial changes in circumstances, and new information of substantial importance which require major revisions of the certified EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects or mitigation measures or alternatives which are newly feasible or different from those analyzed in the EIR.

If further CEQA review is required under CEQA Guidelines section 15162, staff will need to prepare either a “subsequent EIR” or a “supplement to an EIR.” CEQA Guidelines § 15162. If changes in the project warrant a broad range of revisions in the EIR, a subsequent EIR should be prepared. If only minor additions or changes in documentation are needed, such as one or two impact issue areas, a supplement to an EIR is appropriate. Both a supplemental and subsequent EIR require public notice and recirculation for public comment.

If none of the conditions in CEQA Guidelines section 15162 or Public Resources Code section 21166 is met but some changes to the document are needed, an agency may proceed with an addendum. CEQA Guidelines section 15164 permits the use of an addendum, which does not require circulation for public review, where (a) some changes or additions are necessary to the

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<sup>2</sup> The Final Environmental Impact Report/ Environmental Impact Statement (EIR/EIS) for the Pure Water San Diego Program, North City Project was prepared by the City of San Diego Development Services Department and the Bureau of Reclamation under CEQA and the National Environmental Policy Act (NEPA). The NEPA standards and process for approval of a changed project are substantially similar to CEQA. This memorandum provides analysis under CEQA, and it is likely that this analysis will apply equally under NEPA.

previously certified EIR, but none of the section 15162 conditions exists, or (b) “minor technical changes or additions” are necessary to an adopted negative declaration, but none of the CEQA Guidelines section 15162 conditions exists. *Fund for Environmental Defense v. County of Orange*, 204 Cal. App. 3d 1538, 1553 (1988).

Preparation of a subsequent or supplemental EIR could delay the Project timeline. Depending on the Project changes, staff may need several months to test, study, and present analysis for any new or different environmental impacts. After the new analysis is complete, the EIR would need to be recirculated for public comment. When an EIR is recirculated, the review period must be at least 45 days. Additional time is also required to respond to public comments and to provide appropriate notice before the matter is scheduled before the City Council. Thus, even small changes to the Project could impact the construction schedule and any anticipated award of state and federal funding.

As set forth above, if there is a change to the approved pipeline alignment for the Project, staff would need to determine whether there would be new or substantially more severe impacts due to project changes to evaluate if, and what type of, additional environmental analysis review is necessary.

### CONCLUSION

The approved pipeline alignment can be changed but, depending on the nature and scope of any changes, additional City approvals and environmental analysis may be required.

If specific changes to the pipeline alignment are proposed, this Office is available to assist staff in evaluating whether the changes would require additional permit approvals or environmental review.

MARA W. ELLIOTT, CITY ATTORNEY

By           /s/ Christine M. Leone            
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