



CLEAN WATER NOW

is an innovative, science-based organization committed to solution-oriented collaboration as a means of developing safe, sustainable water supplies and preserving healthy ecosystems.

To:
MWDOC Board c/o Ms. Maribeth Goldsby, Board Secretary
(mgoldsby@mwdoc.com)
MWDOC Staff GM Robert Hunter, Asst. GM Karl Seckel, Principal Engineer Charles Busslinger

CC:
SCWD Board c/o Ms. Jody Brennan, Board Secretary (jbrennan@scwd.org)
SCWD Staff GM Rick Shintaku

Re:
MWDOC BOD Meeting April 15, 2020 Action Item No. 9-5

Subject: Economic Benefit Studies to Support Decision-Making for Local Projects Serving Orange County

From: Roger E. Bütow, Founder & Executive Director **CLEAN WATER NOW**

Date: Transmitted electronically via email on April 14, 2020

MWDOC:

PREFACE

Clean Water Now (CWN) appreciates the opportunity to comment on this agenda item. We also wish to take this convenient moment to avail ourselves of the greater Orange County water utility audience regarding the **Doheny Desalination Project (DDP)** embedded in the action item.

In a sense, this document also serves as a memorialization, a de facto "**white paper**" which provides outstanding unresolved issues, briefly enumerates and edifies our formal position **re** the list of the DDP's numerous flawed elements during its progression thus far.

Myself, as a professional land use advisor/enviro compliance consultant, and the NGO I lead (CWN) are opposed to this project as presently proposed. FEIR certification by SCWD was fatally flawed and is vulnerable to multiple subsequent regulatory oversight hurdles and 3rd party litigation.

Though we have repeatedly, *ad nauseum*, made it crystal clear to others in the water industry here in SOC of our antipathy, especially and most notably while interfacing repeatedly with SCWD's Board, staff and vendors, we feel compelled to memorialize that aversion.

We offer a brief overview and supporting, specific input to re-establish our expertise, express a recital of assertions and offer a testimonial *re* our 3rd party rights that, if subsequent regulatory and/or legal challenges do emerge, we herein declare ourselves Interested Parties forthwith.

Birthered by MWDOC, abandoned like an orphan or bastard child on the metaphorical porch step of SCWD many years ago, CWN challenges your "dead beat Dad/Mom" agency to return. It's obvious that the former DDP partners followed your lead back then.

It's YOUR progeny, if you think it's so worthwhile, so perfect, the sole-sourced slant well technology you initiated and embraced so peerless, the hydro-geologic analyses performed by SCWD vendors so unassailable, indisputable, its soaring cost projections as more inspection takes place of little/no concern, then after leaving it with such a modest income foster parent to raise, please come pick up your love child *post haste*.

HISTORY

- A few years ago, I was appointed (representing CWN) and personally served on OCWD's *ad hoc* Citizen's Advisory Committee *re* The Poseidon Adventure in Huntington Beach. We have tracked this Project since ≈2005.
- CWN was at the initial concept launch of the Doheny Project by MWDOC back in the early 2000's. It was launched at the San Juan Watershed Management Study Group monthly meetings co-hosted by OC Watersheds and the USACE, held at the Dana Point Harbor Boathouse.

CWN Board members were the **ONLY** NGO reps in attendance at that launch. CWN has been tracking it constantly ever since, without a doubt has the highest NGO attendance record at all related meetings (SOCWA and SJBA) in addition to SCWD organized meetings/workshops on this topic subsequently.

CWN **did** write a letter of support circa 2010 that we subsequently rescinded (see next bullet point below) a few years later (2012-13). This was due to our increasing awareness of the proposal's seriously deficient fiscal and technical analyses, their disharmony and incongruencies with the SJBA/SMWD *sui generis*, peerless consulting firm, **Wildermuth Enviro Inc.** in collaboration with **Black & Veatch** plus **G3Soils (Ms. Cathrene Glick)**.

It was our conclusion that this vendor's product/outputs **re** the lower reaches of San Juan Creek (both surface hydrology and sub-surface hydro-geological conclusions) for the SJBA were in conflict, i.e., significantly different, alarmingly so vis-à-vis SCWD's DDP sole-source vendor, GeoScience.

In particular the obvious questionable optics **re** an inherent **Conflict Of Interest** (COI) **re** hydrogeology consultants GeoScience and the patent holder of said slant well technology patents, CEO of GeoScience Dennis Williams. CWN has repeatedly challenged SCWD's Board, GM and more importantly legal counsel Art Kidman to seek a way(s) to dispel, reject, rebut or refute our COI allegations and removal/exoneration of said suspicions.

≈6-7 years ago, contemporaneous with the previous Doheny Project partners (MWDOC, MNWD, LB County WD, cities/utilities of San Clemente and San Juan Capistrano) withdrawal, we also sensed that this proposal hadn't been thoroughly peer-reviewed by an independent 3rd party hydrogeology firm, nor did it pencil out financially. More like the infamous Bush-era "**voodoo math.**"

- Due to my personal professional portfolio and CWN's high profile, watchdog role in SOC, I was appointed as one of 6 at large members to SCWD's **ad hoc** sustainability/reliability committee 2 years ago.

To our dismay, SCWD's Public Information Officer Sonja Morgan (who attended said meetings and closely monitored input) subsequently and unjustly, incorrectly bundled us with the other members, as if we 6 were in 100% unanimity **re** unequivocal support and endorsement of the Doheny Project. Nothing could be further from the truth, CWN has been grossly misrepresented as an advocate the past 2 years.

CWN has falsely, knowingly been portrayed by SCWD's PIO as in lock-step where in fact, since ≈ 2012-13, we openly memorialized via written comments and oral testimony that we not only formally demanded a rescinding **re** our letter of tentative support years ago but had grievous concerns about what we felt and continue to feel is an unproven, experimental, not-ready-for-prime time, slant well extraction technology.

The SJBA study which was BTW FAF grant funded is **very** pertinent and prescient as well:

Technical Memorandum	
To:	SJBA Technical Advisory Committee Cathrene Glick, Program Manager
From:	Wildermuth Environmental Inc. (WEI) Black & Veatch
Date:	Draft Part 1: December 22, 2015 Draft Complete TM: January 2, 2016 Final: March 8, 2016
Subject:	Draft TM Summarizing the Work Products of Tasks 3.1, 3.2 and 3.3 of the San Juan Basin Groundwater and Desalination Optimization Program

There is no small irony that SCWD is not only a member of this JPA (SJBA), but was well aware of the less environmentally invasive, lower costs for both installation and O & M's. In addition, it reflects that this extraction strategy is less recreationally disruptive to beachgoers by proposing vertical wells placed modestly upstream of the San Juan Creek mouth (Doheny State Beach).

Per CEQA, alternatives that are economically competitive and technologically viable, perhaps superior and feasible, should have been included in the SCWD FEIR submission. This did not happen.

The SJBA strategy, via 6-8 vertical wells, was the use of an historically long-term, proven technology with successful antecedent analogues. A simple technology for placement upstream, pumped removal of far lower TDS **brackish, not ocean seawater** extraction seems far superior, obviously known to SCWD during the ≈ 2 years of the **SJBA's Technical Advisory Committee** (TAC) analyses, culminating in the SJBGDOP in 2016.

A simple choice:

- (A)** Experimental slant wells, with known difficulties **re** previous installations in freshwater or mining operations, still being questioned as reliable or appropriate (held up by the CCC in Monterey), using seawater extraction with ZERO track record for such sub-surface ocean intake, monolithic projects might need constant filter backwashing hence go offline, nebulous O&M territory, etc.? One test pilot/demo installation is **NOT** on par with, **NOT** the same as a 24/7/365 online array of multiple 5-10 mgd pumping stations and domestic production.

The only reason the California Coastal Commission and NGOs like Surfrider and CoastKeeper have telegraphed support is because slant wells, *prima facie*, appear to be **less objectionable** than open ocean intakes like The Poseidon Adventure in HB. "**Least Objectionable**" seems a poor bottom line standard or metric when in this case, the fact is there's a vastly superior vertical well option. **Least Objectionable ≠ Best Alternative.**

(B) Why not state of the art, tried and true, known time-tested vertical well technologies? To CWN's consternation and distress, SCWD summarily dismissed, blatantly refused to follow CEQA guidelines by only committing to slant well extraction variations embedded in the FEIR.

Over our objections, citing its process rights, SCWD intentionally omitted, failed to include vertical well implementation as a viable legitimate, candidate/alternative. CWN contends therefore that SCWD's certification of the FEIR was in violation of CEQA guidelines and requisites regarding inclusion and consideration of alternatives.

CWN confronted Mr. Andrew Brunhart, now deceased former GM of SCWD repeatedly at hearings and in its submissions, but typical Naval Commander, **re** slant wells and only slant wells considered, it was "**my way or the highway,**" a singular choice, "**Full speed ahead and damn the torpedoes.**"

Refusing to consider vertical wells, basically all that SCWD's Board approved in the FEIR, is a 100% commitment to one relatively untested seawater extraction technology but with gradient potential. Think cars: The same vehicle but in different, calibrated sizes.

Tasks 3.1, 3.2 and 3.3 from **APPENDIX C** of the **Groundwater/Desalination Optimization Plan Final Draft** was inserted above. MWDOC should make reading this section carefully mandatory, it sustains our contentions **re** our prioritized laundry list of objections. Obviously, brackish water can contain nearly 10 times lower TDS concentrations, hence the affordability of building, O&M, energy costs for domestic supplies, far more attractive, significantly reduced.

CONCLUSION

CWN realizes that under **CWC Section 71000** as integrated into this agenda item discussion (the DDP conundrum), MWDOC seems to be telegraphing consideration of a possible re-visit, a potential returning role in this: Well, take it, take it all, you can have it. "As is," CWN considers it irreparably broken, damaged goods anyway.

§71000 leads CWN to conclude that your power **is** plenary, absolute, and we spent a lot of time researching legal challenges over the decades post legislative creation: All of which have ultimately failed in the court system since inception.

WHEREAS, pursuant to Water Code sections 71610, 71614 and 71616, the Municipal Water District of Orange County ("MWDOC") is authorized to:

- **Establish** water rates and charges for water which will result in revenues sufficient to meet the operating expenses of the District;
- **Acquire, control**, distribute, store, spread, sink, treat, purify, recycle, recapture, and salvage any water, including sewage and storm waters, for the beneficial use or uses of the District, its inhabitants, or the owners of rights to water in the District;
- **Provide** for repairs and depreciation of works, provide a reasonable surplus for improvements, extensions and enlargements, and cover principal and interest payments and costs associated with bonded debt;

After online perusal and research of archives, of legal test cases over many years **re** the §§ listed above, perhaps MWDOC could insist, could intervene and/or re-assert/insinuate itself back into the Doheny Project picture? See **Acquire & Control** above.

Regardless, we challenge not only MWDOC and SCWD, but any other potential participants/partners/purchasers that until the following outstanding and as yet unaddressed CWN issues are resolved we remain vehemently opposed. We've had it with deferred, "**off-ramped & parked**" responses, i.e., TBD, TBA, "**we'll get back to you, can we circle back**" basically stall tactic IOUs, etc.

MWDOC and Co. can also consider this document as a warning: If any agency or coalition/consortium of agencies attempts to move forward, begin permitting applications, CWN is prepared to legally initiate, object and assert its 3rd party rights until the following issues are resolved:

- An independent, disinterested 3rd party peer review of what we believe has been only a cursory examination of the actual costs. This should include not only construction but ongoing, post-construction O&Ms, including humungous ratepayer/debt service burden increases.

Thus far, our perception is that fiscal projections bear an uncomfortable resemblance to the aforementioned "**voodoo math**," so far unchallenged. It needs mentioning that every time this topic is openly discussed, the stakeholders experience a "**creepiness**," i.e., rate increases and projected costs/expenses **creeping steadily upward**.

A good timely example is that SCWD's Board this week is on the verge of yet another round of "**key, strategic stakeholder engagements,**" i.e., yet another redundant iteration of "**dog & pony show power points,**" apparently having failed to find adequate traction.

Another expenditure in a growing liturgy and legacy of refined scrutiny **re** fiduciary abuse of discretionary powers: Blowing another \$77,500 of ratepayer funds with a repeat of the constant PR flack "**wash, rinse, spin**" cycle to re-acquire receding, increasingly diminished community support.

It's an inadvertent unmasking, a thinly veiled admission of marketing, bogus value-ad sales failure, a repetition of a quasi, faux computational procedure applied to the result of multiple, previous failed attempts. It's apparent that this is another predictably typical damage control tactic.

Another round of boring, pre-disposed (not objective) workshops and propagandistic meetings wasting paper reproductions as a means of converting disbelievers and skeptics. PR lobbying that desires obtaining successively closer approximations to the solution of a self-inflicted problem.

How can SCWD convince the public, after adverse and cynical media coverage coupled with multiple stakeholder challenges and precise, focused criticism, that the DDP has no imperfections, disparities or deficiencies?

- An independent, disinterested 3rd party in-depth technical engineering analysis, one that peer reviews, that honestly, objectively investigates, weighs the slant well vs. vertical well alternatives in this location.
- An independent, disinterested 3rd party reassessment and comparison of the hydro-geologic science **re** the lower reach of San Juan Creek, not Pollyanna speculation **re** these 2 extraction options and their site installation impacts.

In reality, CWN has been one of the few NGOs to open support/endorse desalination as a reliability portfolio supplement. At present, one of the ironies is that the advent, the auspice of **Direct Potable Reuse** (DPR) is imminent, hence the extended duration of the DDP processing might have undermined success.

The potential for a multi-million \$\$\$ stranded asset should be a realistic planning concern. It might not be "**Build it and the other SOC utilities will subsidize.**"

Maybe they won't, by that time the DDP will have been superseded, surpassed by eventual regulatory intervention (DPR), several major SOC players having converted and upgraded their treatment plants.

CWN is perplexed by MWDOC's attitude in this matter and our former respect for your agency has waned significantly these past 7 years since you bailed.

Previously confident while **YOU** were providing strong leadership, (extending the metaphor) wealthy, deep pocket parents, you unconscionably left the DDP in the hands of a relatively small water district with modest fiscal potential to complete the facility solo.

Many industry insiders believe that this "**savior scenario**," dropping out years ago only to return as if the US Cavalry coming over the hill to save the wagon train (DDP), rescue a small district already awash in red ink, was repugnantly, reprehensibly the original, deceptive intent.

ALL of the heavy lifting, marketing, risks and analyses performed, broad-based public support locked in, FEIR certified, basically setting the table for you to insinuate your agency and impose your will, dominate SOC supplies.

Don't be surprised if CWN does not grovel and act grateful. **YOU** brought the ill-fated, controversial slant well technology into the mix when a relatively uncomplex, simple vertical well technology might have the DDP online today or on the verge of same.

If the DDP were a poker table, you got up and volitionally surrendered your seat. Please come back, resume total responsibility, then leave with it "**as is**," take the chairs and table with you, enjoy yourselves, and BTW? Don't let the screen door hit your backsides on the way out of an increasingly frustrated SOC.

Pull the trigger, poop or get off of the pot. To paraphrase standup comedian Henny Youngman: "**Take this desalination project.....please. Pick up where you left off, resume adult-themed responsibility. After all, it's your kid.**"

From the desk of:

Roger E. Bütow

Founder & Executive Director **Clean Water Now**

Mailing Address: P.O. Box 4711 Laguna Beach CA 92652

Direct landline: (949) 715.1912 (VM **after** 6 rings/No TM)

Cell: (949) 280.2225 (VM/TM)

Linkedin CV: <https://www.linkedin.com>

Email: rogerbutow@clean-water-now.org

Website: www.clean-water-now.org

CLEAN WATER NOW (est. 1998) *is an innovative, science-based organization committed to solution-oriented collaboration as a means of developing safe, sustainable water supplies while preserving healthy ecosystems.*