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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

MONTEREY COASTKEEPER, a project
of the Otter Project, a nonprofit
organization,

Petitioner and Plaintiff,

v.

MONTEREY COUNTY WATER
RESOURCES AGENCY, a public agency,

Respondent and Defendant.

**EXEMPT FROM
FILING FEES
GOV'T CODE §6103**

CASE NO. M 108858

**MONTEREY COUNTY WATER
RESOURCES AGENCY'S OBJECTIONS
TO INTENDED STATEMENT OF
DECISION; REQUEST FOR CONTINUED
STATUS CONFERENCE**

Action Filed: October 21, 2010

1 Respondent/Defendant Monterey County Water Resources Agency (“MCWRA”)
2 respectfully objects to the intended Statement of Decision, dated April 24, 2015, and served on
3 April 27, 2015 per the Clerk’s Certificate of Service by Mail. MCWRA makes these objections
4 pursuant to Rule of Court 3.1590(g), which allows any party affected by a judgment to serve and
5 file objections within 15 days after service of a proposed statement of decision and judgment.

6 As a threshold matter, and before explaining the bases for MCWRA’s objections,
7 MCWRA must also alert this Court to significant factual developments that unequivocally
8 support the conclusion that this Court should not finalize the intended Statement of Decision at
9 this time. MCWRA therefore requests that the Court postpone finalizing the Decision, and also
10 schedule a status conference to discuss the progress of a ground-breaking water recycling/reuse
11 project MCWRA has orchestrated with the appropriate parties. The project, as described in
12 greater detail below, is necessary to effectuate a solution to Coastkeeper’s complaints, and
13 involves the flows from the Blanco Drain and Reclamation Ditch. Notably, the Central Coast
14 Regional Water Quality Control Board (“Regional Water Board”) staff are extremely supportive
15 of the project as an alternative to the relief and regulatory burdens requested in this case, as
16 evidenced by the Regional Water Board’s May 11, 2015, correspondence filed concurrently with
17 these objections.

18 **I.**
19 **INTRODUCTION**

20 Pursuant to California Code of Civil Procedure section 632, a Court’s proposed Statement
21 of Decision must explain “the factual and legal basis for its decision as to each of the principal
22 controverted issues at trial” (Code Civ. Proc. § 632.) If the proposed statement of decision
23 does not resolve a controverted issue, or the statement is ambiguous, the appropriate way to
24 present such deficiencies to the Court is by filing an objection. (Code Civ. Proc. § 634; Cal. Rule
25 of Court Rule 3.1590(g).) Here, the intended Statement of Decision does not meet the standards
26 required by Code of Civil Procedure section 632, and must therefore be modified as explained
27 herein.

28 MCWRA’s objections are based on several grounds. First, the intended Statement of

1 Decision fails to resolve all controverted issues briefed or raised at the writ hearing. Specifically,
2 in several instances, the intended Statement of Decision reaches a conclusion with respect to a
3 vehemently contested issue, yet does so without addressing all of the evidence material to the
4 identified conclusion.

5 Second, and in the alternative, the intended Statement of Decision is ambiguous, as it is
6 unclear from a review of the Decision how the Court resolved several issues in Plaintiff/Petitioner
7 Monterey Coastkeeper's ("Coastkeeper") favor.

8 Third, to the extent the intended Statement of Decision relies upon facts or issues that
9 were not raised by Coastkeeper, such facts or issues cannot be a proper basis for the Court's
10 determinations. Coastkeeper's failure to assert these matters on its own behalf, whether in
11 briefing or at oral argument, constitutes a waiver with respect to each such matter. Moreover,
12 because MCWRA was not provided with notice and an opportunity to be heard with respect to
13 such matters, due process concerns require that MCWRA be given an opportunity to be heard
14 before a final Decision is rendered. Anything less would constitute substantial prejudice.

15 All of these identified objections require a legal determination by the Court. Until these
16 objections are resolved, the Court's Intended Decision will remain incomplete and ambiguous.
17 Thus, and as explained herein, MCWRA's Objections must be considered, and the Intended
18 Decision modified accordingly. At a minimum, in the event the Court concludes that such
19 modifications are not possible without further examination or understanding of the facts –
20 including but not limited to an examination of the recent activities of the Regional Board –
21 MCWRA believes the only appropriate course is for this Court to stay this matter until the
22 Regional Board has completed its activities. If, as this Court has previously acknowledged – and
23 as the factual history undeniably confirms – the relief to be fashioned in this proceeding must
24 necessarily defer to the actions of the Regional Board, there is no other appropriate course to take.
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II.
RECENT, BENEFICIAL, REGIONAL BOARD SUPPORTED WATER QUALITY
 PROJECT DEVELOPMENTS MAY BE JEOPARDIZED IF THIS COURT FINALIZES
 ITS INTENDED STATEMENT OF DECISION

A. The Recent Memorandum of Understanding Executed by Necessary Watershed Stakeholders Obviates the Need for This Court to Act.

Throughout this litigation, MCWRA has always maintained it is not responsible, nor has legal control, over the various third-party discharges to the Reclamation Ditch and Blanco Drain that flow through those channels, to which MCWRA simply administers beneficial flood control activities.¹ Nonetheless, in an effort to pull together all the various stakeholders needed to appropriately address the water quality issues raised by Coastkeeper, and well before this Court issued its Intended Statement of Decision, MCWRA spearheaded a years-in-the-making effort, the result of which is a Memorandum of Understanding Regarding Source Waters and Water Recycling ("MOU") that will result in a ground-breaking project to beneficially reuse much of the flow in the Blanco Drain and Reclamation Ditch. *See* May 12, 2015 Declaration of Nicole E. Granquist In Support of MCWRA's Objections to intended Statement of Decision ("Granquist Declaration") at **Exhibit A**. The project is called the "Pure Water Monterey Groundwater Replenishment ('GWR') Project" and involves the advanced treatment and recycling of water, including flows from the Blanco Drain and Reclamation Ditch, for indirect potable reuse via groundwater recharge). *Id.* This carefully crafted MOU represents a delicate, negotiated balance between the legal dischargers of water (*e.g.*, agricultural growers (via funding mechanisms made possible through MCWRA) and the City of Salinas), the public agency that can effectuate advanced treatment of the Blanco Drain and Reclamation Ditch flows (*e.g.*, the Monterey Water Pollution Control Agency), and the end users (residential, commercial, and industrial consumers located in the Salinas Valley and the Monterey Peninsula (the latter via the Marina Coast Water District, a party to the MOU).

The intended Statement of Decision threatens to derail MOU-project related progress, as the intended Statement of Decision makes conclusions inconsistent with the MOU-parties'

¹ MCWRA maintains these activities do not implicate a discharge to waters of the State requiring waste discharge requirements pursuant to Water Code section 13260.

1 factual, legal, practical, and cost consideration assumptions made when entering into the MOU;
2 thus, the very foundation upon which the MOU is based may be weakened to the point of project
3 collapse. If the Court finalizes its intended Statement of Decision, MCWRA may be more
4 significantly burdened with the financial responsibility of the GWR Project implementation,
5 when those costs rightfully belong to other parties and/or public agencies (dischargers and/or end
6 users); this alone could prevent the project from moving forward.

7 The parties were intending to finalize negotiations regarding the Definitive Agreement
8 referenced on pages 7 and 8 of the MOU this summer (extension of the March 2015 MOU
9 expiration date set forth on page 8 of the MOU has been agreed to by the parties, and the current
10 goal for reaching agreement on the Definitive Agreement is now June 30, 2015); however, that
11 progress will be jeopardized if the Intended Statement of Decision is finalized, an outcome that
12 neither this Court nor Coastkeeper should support.

13 In short, the water quality improvements that Coastkeeper is seeking via this lawsuit are
14 already being implemented, with the consent of the relevant, necessary parties, and without the
15 need for any court order or report of waste discharge submitted to the Regional Board. For the
16 reasons set forth above, this Court should not finalize the intended Statement of Decision at this
17 time, as such action may interfere and further delay these improvements. MCWRA requests that
18 instead, a further status conference be scheduled in August 2015, to discuss at that time the
19 progress of the GWR Project, consistent with the Regional Board's supportive approach described
20 below; the Court can revisit whether a final Statement of Decision should be issued then, or
21 whether a different course of action should be pursued. Alternatively, and to ensure the record is
22 complete in this matter, MCWRA requests that this Court stay the writ proceedings, pending the
23 outcome of the upcoming MOU activities and finalization of the regulatory steps that the
24 Regional Board is planning to take to support the GWR Project (which, consequently, may not
25 include the submission of a report of waste discharge ("ROWD") by MCWRA, or waste
26 discharge requirements ("WDRs") being issued pursuant to Water Code section 13260, as noted
27 by Regional Board Executive Officer Ken Harris, in his May 11, 2015 correspondence described
28 more fully below). *See* Code Civ. Proc. § 128(a)(3); *see also Koch-Ash v. Sup. Ct.* (1986) 180

1 Cal.App.3d 689, fn. 4 (discussing trial courts' inherent power and authority to stay actions). To
2 properly effectuate this stay request, MCWRA plans to file a motion for stay within a short period
3 of time from the filing of these objections.

4 **B. Recent Regional Board Correspondence Supportive of the GWR Project Contradicts**
5 **the Conclusions Made in the Intended Statement of Decision; this Court Should Not**
6 **Interfere with the Ongoing Regulatory Process by Finalizing the Intended Statement**
7 **of Decision.**

8 As noted by MCWRA at the March 19, 2015 hearing on this matter, MCWRA planned to
9 meet with Executive-level Regional Board staff on April 28, 2015, to discuss regulatory issues
10 raised by the Coastkeeper case, the MOU, and the GWR Project. As evidenced by the Executive
11 Officer's May 11, 2015 meeting summary of that April 28, 2015 meeting, a copy of which is
12 attached to the Granquist Declaration, Regional Board staff are very supportive of the MOU and
13 the GWR Project, noting MCWRA's admirable efforts to "reach an agreement that many would
14 not have believed possible even a year ago." See May 12, 2015 Declaration of Nicole E.
15 Granquist In Support of MCWRA's Objections to intended Statement of Decision ("Granquist
16 Declaration") at **Exhibit B**.

17 Further, and more importantly, Regional Board staff continue to express a willingness to
18 work with the various stakeholders, including MCWRA, using tools other than ROWDs and
19 WDRs issued pursuant to Water Code section 13260 ("The MOU lays the foundation to make
20 significant progress and, without waiving the Central Coast Water Board's authority to pursue
21 other regulatory options, we are not opposed to considering a resolution with associated 13267
22 requirements for technical reports to document the agreement and set enforceable deadlines for
23 technical reports, plans, and engineering reports related to the MWWPCA groundwater
24 augmentation project"). (*Id.*) This position enunciated by Regional Board staff in the May 11,
25 2015 summary follows the Regional Board's similar position in its January 22, 2015 clarifying
26 email ("I understand that Monterey County Water Resources Agency has concerns about the
27 timing of filing a Report of Waste Discharge (ROWD) and the potential for violations under
28 Water Code section 13261. Please be advised that Regional Water Board's Executive Officer
does not construe the [January 7, 2015] letter to the court as a request for MCWRA to file an

1 ROWD. The letter is not a board order, and the Executive Officer did not intend it to be a request
2 for a ROWD under section 13261, subdivision (a). We anticipate using the proposed meeting
3 with MCWRA as an opportunity to discuss various potential regulatory tools, timing issues and
4 identify appropriate and/or potential dischargers who may be party to any potential orders to
5 address the Reclamation Ditch and Blanco Drain.”), and in its February 27, 2015 letter to this
6 Court (“The Central Coast Water Board has a variety of regulatory tools to address water quality
7 issues, including the use of waste discharge requirements; cleanup and abatement orders; *and*
8 *oversight of a voluntary process.*”) (emphasis added). See January 22, 2015 electronic message
9 from Tamarin Austin, Staff Counsel for the Regional Board, to MCWRA’s counsel, attached as
10 Exhibit A to the February 24, 2015 Declaration of Nicole E. Granquist re February 17, 2015
11 Status Conference filed previously with this Court; see also February 27, 2015 letter from
12 Tamarin Austin, Staff Counsel for the Regional Board, filed earlier with this Court.

13 The recent discussions with Regional Board staff, and their May 11, 2015 meeting
14 summary, along with the February 27, 2015 letter to this Court, indicate that the January 7, 2015
15 initial response to this Court’s certified questions, upon which the Court relies substantially in the
16 intended Statement of Decision, does not represent a final determination as to the regulatory
17 approach the Regional Board may take with MCWRA. For this reason, this Court should not
18 finalize its Statement of Decision, in which the Court relies on that January 7, 2015 response as a
19 “final agency action” type basis to determine that MCWRA is a “discharger” pursuant to Water
20 Code section 13260. As noted in the intended Statement of Decision, this Court is not inclined to
21 “micro-manage the affairs of the Regional Board and in fact, has no authority to do so.” See
22 intended Statement of Decision at page 5. By finalizing the intended Statement of Decision, this
23 Court will force the Regional Board and MCWRA down a path that may yield wholly unfruitful
24 results, and be irrelevant to the watershed water quality improvement projects that MCWRA,
25 along with the actual dischargers and water treatment and recycling agencies, are seeking to
26 implement. Finally, the intended Statement of Decision may be improperly used as precedent in
27 this and other cases, to force unnecessary and nonsensical results, a result that should be avoided.

28 For this reason, MCWRA requests this Court to not finalize the intended Statement of

1 Decision, and to schedule a status conference instead in August 2015, so as to preserve the
 2 likelihood of a stakeholder driven, watershed solution becoming a reality in the Blanco Drain and
 3 Reclamation Ditch. At that time, MCWRA can discuss with this Court the progress of the GWR
 4 Project, consistent with the timeline enunciated in the Regional Board's May 11, 2015 meeting
 5 summary, and the Court can determine whether a final Statement of Decision should be issued or
 6 a different course of action pursued. Alternatively, MCWRA requests a stay of the instant
 7 litigation proceedings to allow the MOU and regulatory processes to unfold.

8
 9 **III.**
OBJECTIONS TO INTENDED DECISION

10 **A. The Court Failed To Resolve All Controverted Issues Briefed or Raised at The Writ**
Hearing.

11 Objections to a Statement of Decision are an appropriate way “to identify issues presented
 12 during the trial which are not addressed in the decision.” *See Heaps v. Heaps* (2004) 21 Cal. Rptr.
 13 3d 239, 244. There are numerous instances where the intended Statement of Decision does not
 14 address issues presented during the trial, necessarily requiring that the Intended Decision be
 15 modified.

16 For example, throughout the intended Statement of Decision, the Court references the
 17 Regional Board’s January 7, 2015 response as a final determination of whether MCWRA is a
 18 “discharger” of “waste” that must file a report of waste discharge pursuant to Water Code section
 19 13260. *See, e.g.*, intended Statement of Decision at pages 5, 17, 39-40. Referencing only that
 20 response fails to contextualize and consider the entirety of the Regional Board’s position, as
 21 enunciated in the January 22, 2015 email from Regional Board counsel to MCWRA’s counsel
 22 and the February 27, 2015 letter to this Court, both described above, and the recently provided
 23 May 11, 2015 meeting summary. This renders the Court’s current intended Statement of
 24 Decision flawed and improperly based; had the Court properly considered all evidence presented
 25 on this topic, the Court may not have made the same conclusions as are currently presented.

26 Similarly, the Court makes the same mistake when referencing the Regional Board’s April
 27 18, 2012 initial demand letter to MCWRA, which references the submission of a ROWD, as a
 28 basis for granting the writ on the issue of whether a ROWD is currently needed pursuant to Water

1 Code section 13260. *See, e.g.*, intended Statement of Decision at p. 16. The Regional Board
2 clearly and unequivocally rescinded that initial demand letter in subsequent correspondence that
3 very same year. *See* PET 000072 (August 3, 2012 letter rescinding April 18, 2012 request for a
4 ROWD, *see* page 1, first paragraph). Thus, reference to the April 18, 2012 letter as a meaningful
5 regulatory document upon which to base the intended Statement of Decision is incorrect, and
6 should be rectified.

7 Additionally, because it appears the Court imported Petitioner’s earlier briefs to explain
8 certain facts about MCWRA and MCWRA’s activities, the intended Statement of Decision also
9 suffers from gross factual inaccuracies that appear in Petitioner’s papers. For example, on page
10 11 of the intended Statement of Decision, it appears the Court cites operation of the Blanco Drain
11 pump system as a basis to find that MCWRA “discharges” to the Salinas River. However, as
12 corrected in earlier briefing by MCWRA, much of the function of the Blanco Drain pump system
13 is to reverse pump Salinas River away from entering and traversing upstream into the Blanco
14 Drain (during periods of high Salinas River flows, or stagnant flows due to the rubber dam
15 operated during the summer months downstream of the confluence of the Blanco Drain and
16 Salinas River, the Salinas River can enter the Blanco Drain), not to “discharge” into the Salinas
17 River. *See* MCWRA’s August 4, 2014 Points and Authorities in Opposition of Petitioner’s Writ
18 of Mandate at page 26, fn. 22.

19 Other examples abound (*e.g.*, on page 9, the Court states that MCWRA is “responsible for
20 managing waterways throughout the County,” an assertion repeatedly made by Petitioner, but one
21 that is not supported by MCWRA’s enabling statute or by on-the-ground activities that appear in
22 the administrative record, and is contradicted even within the intended Statement of Decision
23 (*see, e.g.*, page 10)). Also on page 13, the recitation of MCWRA’s current operations, as
24 provided for in Petitioner’s pleadings, is unsupported insofar as the Court is making any findings
25 in the second full paragraph that MCWRA engages in any in-stream vegetation management via
26 application of pesticides (no in-stream spraying has ever occurred, the off-channel vegetation
27 maintenance, which has no bearing on Petitioner’s claims as such actions do not involve waters of
28 the State, involved off-channel spraying in the Blanco Drain until 2010, at which time ALL

1 spraying ceased in that watershed). *See* intended Statement of Decision at p. 13.

2 Other recitations throughout the intended Statement of Decision, about the effects of
 3 agricultural discharges on the watershed, to which MCWRA has no direct involvement or control,
 4 and that are already regulated by the Regional Board via the various Conditional Waivers, further
 5 solidifies MCWRA's belief that this Court continues to fundamentally misunderstand the factual
 6 and legal setting at issue in the case (due, in large part, to the misleading briefs and arguments
 7 submitted by Petitioner). *See, e.g.*, intended Statement of Decision at 12-16. This renders the
 8 intended Statement of Decision infirm. Contrary to the position the Court enunciates in footnote
 9 3, MCWRA never argued that the Conditional Waivers referenced therein regulate any of
 10 MCWRA's activities (they do not); MCWRA was arguing that the discharges and contaminants
 11 the Petitioner is unhappy about are non-MCWRA, agricultural operator flows that the Regional
 12 Board is already substantially regulating via the Conditional Waivers, and for that reason,
 13 Petitioner's writ is unfounded as against MCWRA, and should be dismissed. MCWRA requests
 14 that these errors be corrected, in favor of MCWRA. *Id.* at p. 17.

15 **B. In the Alternative, the Intended Decision is Ambiguous Because It Does Not Explain**
 16 **How Certain Issues Were Resolved in Coastkeeper's Favor.**

17 In the event that this Court concludes that it did in fact resolve all controverted issues
 18 before it, the intended Statement of Decision is nonetheless objectionable because statements
 19 within it appear incomplete and/or contradictory, rendering the intended Statement of Decision
 20 ambiguous. These ambiguities must be addressed and resolved before the Decision is finalized.²
 21 *See* Code Civ. Proc. § 634.

22 For example, the Court's recitation of whether Petitioner has a plain, speedy, and adequate
 23 remedy at law at pages 23 – 26 contains a variety of factual and legal errors regarding the very

24 ² MCWRA identified a number of purported "facts" the Court used throughout its intended Statement of Decision
 25 that demonstrates the need for the intended Statement of Decision to be revised, some of which have been
 26 specifically referenced herein. The identified examples are not intended to be an exclusive list of the facts MCWRA
 27 finds objectionable. Rather, the examples are provided to illustrate why the intended Statement of Decision appears at
 28 a minimum ambiguous, and most likely, incomplete. *See, e.g.*, additional areas of objection at pages 40-41, where the
 Court's entire justification for finding MCWRA to be a "discharger" of "waste" that requires the filing of a ROWD is
 Petitioner's own language in its briefs, citation to MCWRA documents using the word "discharge" in a different
 capacity, and language from non-specific reports that generally describe the potential impacts from activities, such as
 vegetation clearing, but contains no specific analysis of MCWRA's activities at issue here.

1 clear administrative and judicial review processes available to Petitioner outside of a CCP 1085
2 writ challenge against MCWRA that render the intended Statement of Decision incomplete and/or
3 contradictory, and therefore, ambiguous. Petitioner's tortured interpretation has created confusion
4 as to the clear rules set forth in Title 23 of the Cal. Code of Regulations and Water Code sections
5 13320 and 13330, which MCWRA assumes was Petitioner's goal. The Court's intended
6 Statement of Decision inaccurately assumes and/or asserts that Petitioner's remedy appears
7 limited to asking the Regional Board to take enforcement action (Petitioner wants this Court to
8 believe this line of reasoning, so Petitioner can inappropriately cite cases on the unreviewable
9 enforcement discretion of administrative agencies, in hopes this Court is convinced Petitioner has
10 no where to turn). This is not the process clearly laid out in the relevant statutes and regulations;
11 Petitioner is entitled to request action, and if the Regional Board fails to take the requested action
12 within a very short timeframe (60 days, per Water Code section 13320), *Petitioner* may file a
13 Petition for Review with the State Board to force such action (there is no waiting around for the
14 Regional Board to exercise its discretion), and/or a petition for writ of mandate thereafter (per
15 Water Code section 13330 and CCP section 1094.5). Nothing at issue in this case involves the
16 prosecutorial enforcement discretion of the Regional Board (that is implicated when the Regional
17 Board considers taking formal enforcement action against a person pursuant to other Water Code
18 provisions, such as Water Code sections 13300-13304, 13323, 13350, and/or 13385), and
19 Petitioner clearly has a plain, speedy, and adequate remedy at law. As provided to this Court at
20 an earlier hearing, third party groups similar in nature to Coastkeeper avail themselves of the
21 Legislature's prescribed procedure described by MCWRA above; they do not proceed against
22 public agencies under the guise of a general CCP section 1085 writ of mandate, and this Court
23 should not open the door to do so. *See* November 14, 2014 Supplemental Request for Judicial
24 Notice, at Exhibits A and B, provided to this Court and Coastkeeper at the initial hearing, a
25 courtesy copy of which is also attached as **Exhibit C** to the Granquist Declaration.

26 Finally, the "indefinite suspension of admin appeals" referenced by this Court on page 25
27 further illustrates Petitioner's misleading argument and the Court's confusion on this point. 23
28 Cal. Code Regs., section 2050.5(d), allows the *Petitioner* to request that no action be taken on a

1 Petition for Review – which would be Coastkeeper under the law cited above, so Coastkeeper is
2 only subjected to delay at the State Board if Coastkeeper specifically seeks such delay so as to
3 possess additional time (beyond the 90-day administrative review period at the State Board
4 prescribed by 23 Cal. Code Regs. Section 2050.5(e)) to informally resolve its Petition for Review.

5 **C. The Court’s Reliance on Facts and Arguments That Were Not Raised By**
6 **Coastkeeper Disregards Basic Tenets of Due Process.**

7 The “Administrative Record” in this proceeding appears to include everything submitted
8 to this Court by the parties over the course of this five-year litigation. Although the Court heard
9 argument from the parties on several days, the arguments addressed by the parties during the trial
10 did not touch upon every sentence of every document previously submitted to this Court. In fact,
11 as the writ proceeding progressed, the discussion became much narrower, focusing on specific
12 questions raised by the Court, or by the parties in their respective papers. This certainly is not
13 surprising, as it stands to reason that only those facts and arguments that appeared material to the
14 Court’s determination would be proffered, or refuted, during the trial.

15 However, there are facts included in the intended Statement of Decision that were never
16 mentioned by the parties – let alone argued or verified – during the trial. As an example, the
17 Court relies upon declarations submitted by Coastkeeper’s retained experts to recite facts and
18 justify the position taken in the intended Statement of Decision. (*See, e.g.*, intended Statement of
19 Decision at pp. 9, 10, 14.) To the extent the Court finds such facts material, as must be the case
20 for the facts to be cited in its intended Statement of Decision, the absence of any meaningful
21 opportunity for MCWRA to respond to or challenge such facts during the trial is an independent
22 basis to revise the intended Statement of Decision.

23 As an initial matter, since these facts were not offered by Coastkeeper during the trial, it is
24 MCWRA’s position that any reliance upon them by Coastkeeper has been waived, and they
25 consequently cannot be relied upon by the Court now. *City of Lincoln v. Barringer* (2002) 126
26 Cal. Rptr. 2d 178, 199 (parties waived contention on appeal by failing to provide specific
27 citations to record supporting their position).

28 In addition, if the Court finalizes the intended Statement of Decision without providing

1 MCWRA notice of, or an opportunity to respond to and defend against, such facts, MCWRA will
 2 necessarily be deprived of due process and significantly prejudiced. *See* Cal. Const., art. 1, § 7;
 3 *Monarch Healthcare v. Superior Court* (2000) 78 Cal.App.4th 1282, 1286 (“fundamental
 4 principles of due process also call for those with an interest in the matter to have notice and the
 5 opportunity to be heard, so that the ensuing order does not issue like a ‘bolt from the blue out of
 6 the trial court’s chambers.’ [Citation],”) *italics added*; *Tokio Marine & Fire Ins. Corp. v. Western*
 7 *Pacific Roofing Co.* (1999) 75 Cal.App.4th 110, 121 (“notice and a chance to be heard are
 8 essential components to the trial court’s jurisdiction and for due process.”); *Andre v. Superior Ct.*
 9 (1991) 2 Cal.App.4th 11, 19 (right to due process had been violated when party was not given
 10 opportunity to respond). If the Court concludes that such facts may be properly relied upon by
 11 Coastkeeper at this point in the litigation, MCWRA must be given an opportunity to respond to
 12 them at trial.

13 **IV.**
 14 **CONCLUSION**

15 MCWRA respectfully requests that its objections to the Intended Decision be sustained,
 16 and that the Intended Decision be modified as stated herein.

17 DATED: May 12, 2015

MONTEREY COUNTY COUNSEL

18
 19 By: 

IRVEN L. GRANT
 Deputy County Counsel
 Attorney for Respondent
 MONTEREY COUNTY WATER RESOURCES
 AGENCY

20
 21 DATED: May 12, 2015

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