

DOWNEY BRAND LLP

1 CHARLES J. McKEE (Bar No. 152458)  
County Counsel  
2 IRVEN L. GRANT (Bar No. 068950)  
Deputy County Counsel  
3 County of Monterey  
168 W. Alisal Street, Third Floor  
4 Salinas, California 93901-2653  
Telephone: (831) 755-5045  
5 Facsimile: (831) 755-5283  
granti@co.monterey.ca.us  
6

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

7 DOWNEY BRAND LLP  
STEVEN P. SAXTON (Bar No. 116943)  
NICOLE E. GRANQUIST (Bar No. 199017)  
8 ELIZABETH B. STALLARD (Bar No. 221445)  
621 Capitol Mall, 18th Floor  
9 Sacramento, CA 95814-4731  
Telephone: (916) 444-1000  
10 Facsimile: (916) 444-2100  
ssaxton@downeybrand.com  
11 ngranquist@downeybrand.com  
estallard@downeybrand.com  
12

13 Attorneys for Respondent and Defendant  
Monterey County Water Resources Agency

14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF MONTEREY

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

18 Petitioner and Plaintiff,

19 v.

20 MONTEREY COUNTY WATER  
21 RESOURCES AGENCY, a public agency,  
22 Respondent and Defendant.

CASE NO. M 108858

**MONTEREY COUNTY WATER  
RESOURCES AGENCY'S NOTICE OF  
MOTION AND MOTION FOR STAY OF  
PROCEEDINGS**

Hearing Date: June 26, 2015  
Hearing Time: 9:00 a.m.  
The Honorable Thomas Wills

Action Filed: October 21, 2010

23  
24  
25  
26  
27  
28

DOWNEY BRAND LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

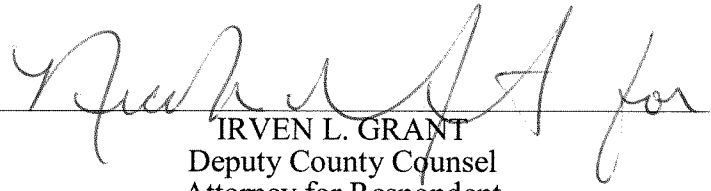
TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 26, 2015 at 9:00 a.m., or as soon thereafter as counsel may be heard, in Department 14 of the Monterey County Superior Court, located at 1200 Aguajito Road, Monterey, California, California, 95678, Respondent/Defendant MONTEREY COUNTY WATER RESOURCES AGENCY ("MCWRA") will and hereby does move this Court for a Stay of Proceedings.

This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities filed in support thereof, the proposed order filed herewith, the pleadings and documents on file in this matter, and on any other oral evidence that the Court may allow at the hearing on this matter.

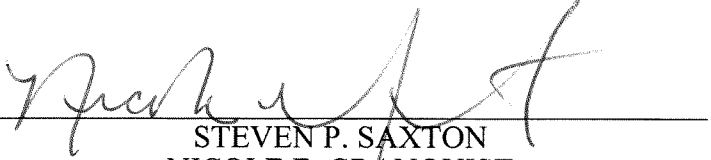
DATED: May 27, 2015

MONTEREY COUNTY COUNSEL

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

DATED: May 27, 2015

DOWNEY BRAND LLP

By:   
STEVEN P. SAXTON  
NICOLE E. GRANQUIST  
ELIZABETH B. STALLARD  
Attorneys for Respondent  
MONTEREY COUNTY WATER RESOURCES  
AGENCY

DOWNEY BRAND LLP

1 CHARLES J. McKEE (Bar No. 152458)  
County Counsel  
2 IRVEN L. GRANT (Bar No. 068950)  
Deputy County Counsel  
3 County of Monterey  
168 W. Alisal Street, Third Floor  
4 Salinas, California 93901-2653  
Telephone: (831) 755-5045  
5 Facsimile: (831) 755-5283  
granti@co.monterey.ca.us  
6

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

7 DOWNEY BRAND LLP  
STEVEN P. SAXTON (Bar No. 116943)  
NICOLE E. GRANQUIST (Bar No. 199017)  
8 ELIZABETH B. STALLARD (Bar No. 221445)  
621 Capitol Mall, 18th Floor  
9 Sacramento, CA 95814-4731  
Telephone: (916) 444-1000  
10 Facsimile: (916) 444-2100  
ssaxton@downeybrand.com  
11 ngranquist@downeybrand.com  
estallard@downeybrand.com  
12

Attorneys for Respondent and Defendant  
Monterey County Water Resources Agency

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MONTEREY

16 MONTEREY COASTKEEPER, a project  
17 of the Otter Project, a nonprofit  
18 organization,

Petitioner and Plaintiff,

v.

20 MONTEREY COUNTY WATER  
21 RESOURCES AGENCY, a public agency,

Respondent and Defendant.

CASE NO. M 108858

**MONTEREY COUNTY WATER  
RESOURCES AGENCY'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR STAY OF PROCEEDINGS**

Hearing Date: June 26, 2015  
Hearing Time: 9:00 a.m.  
The Honorable Thomas Wills

Action Filed: October 21, 2010

## I. INTRODUCTION

As addressed in Respondent/Defendant Monterey County Water Resources Agency's ("MCWRA") May 12, 2015 Objections to the Intended Statement of Decision, legal determinations that may soon be made by the Court in this action are likely to negatively impact the innovative, landmark "Pure Water Monterey Groundwater Replenishment ("GWR") Project," a voluntary regional water management project that, if allowed to proceed without undue hindrance, will largely address the concerns enunciated by Monterey Coastkeeper ("Coastkeeper") in its Complaint. More importantly, such legal determination by this Court will be contrary to recent statements/action by the Central Coast Regional Water Quality Control Board ("Regional Board") regarding appropriate regulation of MCWRA under the Porter-Cologne Water Quality Control Act. Accordingly, MCWRA requests that this action be stayed pending the outcome of upcoming GWR Project activities and associated regulatory actions the Regional Board is planning to implement in support thereof. The stay is particularly important since the Regional Board's regulatory steps are unlikely to include the submission of a report of waste discharge ("ROWD") by MCWRA, or waste discharge requirements ("WDRs") being issued pursuant to Water Code section 13260, as noted by Regional Board Executive Officer Ken Harris, in his May 11, 2015 correspondence described more fully below.

Given the time that has lapsed in this litigation already, and with a final regulatory resolution now imminent, there is no reason to rush a judicial decision that all indications suggest is likely to prejudice MCWRA and be directly contrary to the Regional Board's ultimate determinations. Further, the GWR Project is likely to provide Coastkeeper with far more relief regarding water quality improvements than will be obtained even if Coastkeeper's writ petition is granted; thus, judicial support of this effort is constructive. Moreover, as this Court has previously acknowledged – and as the factual history undeniably confirms – the relief to be fashioned in this proceeding must necessarily defer to the actions of the Regional Board. Basic legal principles – not to mention common sense – therefore require that the Court stay this proceeding in order to provide additional time to allow the appropriate Project and associated

1 regulatory actions to conclude.

2 **II.**  
**RELEVANT FACTUAL BACKGROUND**<sup>1</sup>

3 **A. The Memorandum of Understanding Executed by Necessary Watershed**  
 4 **Stakeholders Obviates the Need for This Court to Act, and May Be Negatively**  
 5 **Impacted by Court Action.**

6 Throughout this litigation, MCWRA has always maintained it is not responsible for, nor  
 7 has legal control over, the various third-party discharges to the Reclamation Ditch and Blanco  
 8 Drain that flow through those channels, to which MCWRA simply administers beneficial flood  
 9 control activities. Nonetheless, in an effort to pull together all the various stakeholders needed to  
 10 appropriately address the water quality issues raised by Coastkeeper, and well before this Court  
 11 issued its Intended Statement of Decision, MCWRA spearheaded a years-in-the-making effort,  
 12 the result of which is a Memorandum of Understanding Regarding Source Waters and Water  
 13 Recycling (“MOU”) that will result in a ground-breaking project to treat and beneficially reuse  
 14 much of the flow in the Blanco Drain and Reclamation Ditch, should all the MOU parties reach  
 15 final agreement on contract terms later this year. (*See* MOU attached as Exh. A to May 12, 2015  
 16 Declaration of Nicole E. Granquist In Support of MCWRA’s Objections to intended Statement of  
 17 Decision (“5/12/15 Granquist Declaration”).) The project is called the “Pure Water Monterey  
 18 Groundwater Replenishment (‘GWR’) Project,” and involves the advanced treatment and  
 19 recycling of water, including flows from the Blanco Drain and Reclamation Ditch, for indirect  
 20 potable reuse via groundwater recharge. (*Id.*) This carefully crafted MOU represents a delicate,  
 21 negotiated balance between the legal dischargers of water (*e.g.*, agricultural growers, the City of  
 22 Salinas), the public agency that can effectuate advanced treatment of the Blanco Drain and  
 23 Reclamation Ditch flows (*e.g.*, the Monterey Water Pollution Control Agency), and the end users  
 24 who will, in part, finance the Project (residential, commercial, and industrial/agricultural  
 25 consumers located in the Salinas Valley (with *MCWRA* acting as the water supply purveyor to  
 26 agricultural consumers), and the Monterey Peninsula (the latter via the Marina Coast Water

27 \_\_\_\_\_  
 28 <sup>1</sup> In the interest of efficiency, this background section only addresses the recent developments supporting MCWRA’s  
 request for a stay.

1 District, a party to the MOU)).

2 As already explained in MCWRA's previously-filed Objections to the Intended Statement  
3 of Decision, the intended Statement of Decision threatens to derail the GWR Project's progress,  
4 as the intended Statement of Decision makes conclusions inconsistent with the factual, legal,  
5 practical, and cost consideration assumptions made by the parties when entering into the MOU.  
6 Thus, the very foundation upon which the MOU is based may be weakened to the point of project  
7 collapse. At its most basic, if the action is not stayed, and the Court finalizes its intended  
8 Statement of Decision, MCWRA may be more significantly burdened with the financial  
9 responsibility of GWR Project implementation, when those costs rightfully belong to other parties  
10 and/or public agencies (dischargers and/or end users). This circumstance alone could prevent the  
11 project from moving forward.

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

18 In short, the water quality improvements that Coastkeeper seeks via this lawsuit are  
19 already being implemented, with the consent of the relevant, necessary parties, and without the  
20 need for any court order, or report of waste discharge being submitted to the Regional Board by  
21 MCWRA. If the action is not stayed, and instead proceeds to a final determination, that  
22 determination is likely to interfere with, and further delay, the very improvements that  
23 Coastkeeper has desired all along.

24 **B. Recent Regional Board Correspondence Supportive of the GWR Project Contradicts**  
25 **Conclusions Made in the Intended Statement of Decision, and Further Confirms**  
26 **That Relief That May be Awarded in This Action May Not Be Appropriate or**  
27 **Useful.**

28 As noted by MCWRA at the March 19, 2015 hearing on this matter, MCWRA planned to  
meet with Executive-level Regional Board staff on April 28, 2015, to discuss regulatory issues

1 raised by the Coastkeeper case, the MOU, and the GWR Project. As evidenced by the Executive  
 2 Officer's May 11, 2015 meeting summary of that April 28, 2015 meeting, a copy of which is  
 3 attached to the May 12, 2015 Granquist Declaration, Regional Board staff are very supportive of  
 4 the MOU and the GWR Project, noting MCWRA's admirable efforts to "reach an agreement that  
 5 many would not have believed possible even a year ago." (5/12/15 Granquist Declaration, Exh.  
 6 B.)

7 Further, and more importantly, Regional Board staff continue to express a willingness to  
 8 work with the various stakeholders, including MCWRA, *using tools other than ROWDs and*  
 9 *WDRs issued pursuant to Water Code section 13260:*

10 The MOU lays the foundation to make significant progress and,  
 11 without waiving the Central Coast Water Board's authority to  
 12 pursue other regulatory options, *we are not opposed to considering*  
 13 *a resolution with associated 13267 requirements for technical*  
 14 *reports to document the agreement and set enforceable deadlines*  
 15 *for technical reports, plans, and engineering reports related to the*  
 16 *MWWPCA groundwater augmentation project.*

17 (*Id.*) (emphasis added). This position, as enunciated by Regional Board staff in the May 11,  
 18 2015 meeting summary, is consistent with the Regional Board's position in its January 22, 2015  
 19 clarifying email to MCWRA's counsel, following the surprising January 7, 2015 response to this  
 20 Court's certified questions:

21 I understand that Monterey County Water Resources Agency has  
 22 concerns about the timing of filing a Report of Waste Discharge  
 23 (ROWD) and the potential for violations under Water Code section  
 24 13261. *Please be advised that Regional Water Board's Executive*  
 25 *Officer does not construe the [January 7, 2015] letter to the court*  
 26 *as a request for MCWRA to file an ROWD. The letter is not a board*  
 27 *order, and the Executive Officer did not intend it to be a request for*  
 28 *a ROWD under section 13261, subdivision (a). We anticipate using*  
 the proposed meeting with MCWRA as an opportunity to discuss  
 various potential regulatory tools, timing issues and identify  
 appropriate and/or potential dischargers who may be party to any  
 potential orders to address the Reclamation Ditch and Blanco  
 Drain.

(February 24, 2015 Declaration of Nicole E. Granquist re February 17, 2015 Status Conference,  
 Ex. A (emphasis added).) Of course, the Regional Board's May 11, 2015, statements are also  
 consistent with the Regional Board's February 27, 2015 letter to this Court, which explained that  
 "[t]he Central Coast Water Board has a variety of regulatory tools to address water quality issues,

1 including the use of waste discharge requirements; cleanup and abatement orders; *and oversight*  
 2 *of a voluntary process.*” (February 27, 2015 letter from Tamarin Austin, Staff Counsel for the  
 3 Regional Board, filed earlier with this Court (emphasis added).)

4 The Regional Board’s consistent statements in this regard, as reaffirmed in the May 11,  
 5 2015, correspondence, support the conclusion that the relief likely to be awarded in this action, an  
 6 order requiring that MCWRA file a ROWD because of a legal determination that MCWRA is a  
 7 “discharger” of waste requiring WDRs,<sup>2</sup> would be ineffectual for purposes of Coastkeeper’s  
 8 ultimate goals, yet nonetheless represent a significant interference with the ongoing and robust  
 9 regulatory actions of the agency with authority to regulate the issues about which Coastkeeper  
 10 complains (that may not include such a “discharger” determination or WDRs). Such a result  
 11 should certainly be avoided, particularly when all that is required is a brief stay to allow the GWR  
 12 Project and regulatory processes to proceed.

### 13 **III.** 14 **ARGUMENT**

#### 14 **A. Legal Standard**

15 The courts of this state have broad, inherent power to control, supervise, and administer  
 16 matters before them. (Code Civ. Proc., § 128, subd. (a)(3); *Bd. of Supervisors of Riverside*  
 17 *County v. Super. Ct. (Temecula Ranchos)* (1994) 23 Cal.App.4th 830, 847.) Although this power  
 18 is partially codified in Code of Civil Procedure section 128, it is not limited by the statute and  
 19 derives from the state Constitution, based upon the historic powers of the courts. (*Bd. of*  
 20 *Supervisors of Riverside County v. Super. Ct., supra*, 23 Cal.App.4th at pp. 847-848 [citing  
 21 *Bauguess v. Paine* (1978) 22 Cal.3d 626, 635-636].) Courts are thus authorized to fashion new  
 22 remedial procedures when it is advisable to do so, in order to deal with new issues or protect the  
 23 rights of the parties. (*Id.* at p. 848 [citing *Cottle v. Super. Ct.* (1992) 3 Cal. App.4th 1367, 1377].)  
 24 As part of this inherent authority, a trial court may order a stay of proceedings. (See generally  
 25 *Koch-Ash v. Sup. Ct.* (1986) 180 Cal.App.3d 689, fn. 4 [recognizing trial courts’ inherent power  
 26

---

27 <sup>2</sup> Further, this Court’s intended Statement of Decision relies too heavily upon the Regional Board’s January 7, 2015  
 28 response, which, since its submittal, has been repeatedly demonstrated not to be as finite or conclusive as this Court  
 may have originally believed via subsequent correspondence from the very same Regional Board.



1 to stay actions].) The decision to order a stay is addressed to the sound discretion of the trial  
 2 court. (*Thomson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 771.)

3 There are two independent and equally compelling reasons to stay this action now. The  
 4 Court should therefore exercise its inherent authority and do so.

5 **B. Without a Stay, the Beneficial GWR Project is in Jeopardy.**

6 As explained above, if the Court proceeds to finalize its Intended Statement of Decision,  
 7 the the very foundation upon which the MOU is based may be weakened to the point of project  
 8 collapse, precisely because the delicately negotiated allocations of legal and financial  
 9 responsibility at the heart of the MOU will undoubtedly be questioned in the event that there is  
 10 any determination by this Court suggesting that MCWRA has more responsibility in this arena  
 11 than it legally has. While MCWRA has the ability to appeal any decision from this Court, seeking  
 12 appellate vindication with respect to its legal obligations is not a swift process, and in the  
 13 meantime, this well-intended and important project will most certainly stall.

14 The MOU discussions are also at a critical point, with the current goal for reaching a  
 15 Definitive Agreement set for June 30, 2015. Throwing a wrench into the works now will only  
 16 delay the very thing Coastkeeper has purportedly sought all along, and that Coastkeeper has no  
 17 hope of obtaining soon, if at all, even if this Court orders the relief sought by the writ. These facts  
 18 clearly support the imposition of a stay, to avoid the certain interference and likely detriment any  
 19 final Court determination would cause.

20 **C. If the Court Does Not Stay This Action, There is a Very Real Risk That This Court**  
 21 **Will Improperly Interfere With The Actions and Authority of the Regional Board.**

22 Recent discussions with Regional Board staff, and their May 11, 2015, meeting summary,  
 23 along with the February 27, 2015, letter to this Court and their January 22, 2015, email  
 24 correspondence, all confirm that the Regional Board's initial January 7, 2015 response to this  
 25 Court's certified questions, upon which the Court relies substantially in the intended Statement of  
 26 Decision, does not represent a final determination as to the regulatory approach the Regional  
 27 Board may take with MCWRA. However, this Court has already indicated in its Intended  
 28 Statement of Decision that it believes the January 7, 2015 response is a "final agency action"

1 sufficient to determine that MCWRA is a “discharger” pursuant to Water Code section 13260.  
2 (*See, e.g.*, Intended Statement of Decision, pp. 16-17; 34, n. 6.)

3 As noted in the intended Statement of Decision, this Court is not inclined to “micro-  
4 manage the affairs of the Regional Board and in fact, has no authority to do so.” (*See* Intended  
5 Statement of Decision, p. 5.) However, if this Court proceeds to finalize the Intended Statement  
6 of Decision, this Court will necessarily engage in the very kind of micromanagement it has  
7 already acknowledged it must avoid. This micromanagement is of even greater concern since the  
8 Regional Board has given numerous indications that it would not proceed in the way that the  
9 Court is likely to require. Interfering with the operations of an agency with undeniable authority  
10 in the relevant arena sets a dangerous precedent indeed, and should be avoided if at all possible.

11 Moreover, if the Court proceeds to finalize its Intended Statement of Decision, it will  
12 force the Regional Board and MCWRA down a path that may yield wholly unfruitful results, and  
13 be irrelevant to the watershed water quality improvement projects that MCWRA, along with the  
14 actual dischargers and water treatment and recycling agencies, are seeking to implement.

15 Finally, if the Court does not stay the action, and instead moves forward with finalizing its  
16 Intended Statement of Decision, the Decision may be improperly used as precedent in this and  
17 other cases to force unnecessary and nonsensical results, a result that must also be avoided.

18 Each of these reasons also support the imposition of a stay, to avoid the known  
19 consequences of the Court issuing a determination now with respect to a matter that is squarely  
20 within the Regional Board’s authority, and for which there is no legitimate basis to interfere.

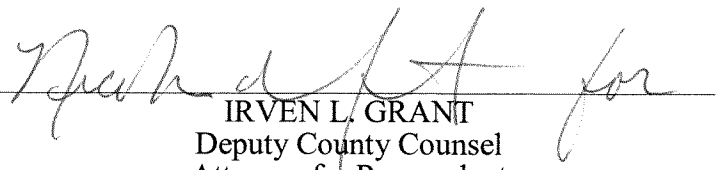
21 **IV.**  
22 **CONCLUSION**

23 There is no reason to rush to judgment here, particularly when the consequences of doing  
24 so are so high for the parties, for future entities subject to Regional Board regulation, and for the  
25 environment. For the reasons explained herein, MCWRA respectfully requests that this action be  
26 stayed to allow the MOU and pending regulatory activities to unfold and conclude, so that the  
27 ultimately determination in this action may be based on a complete and correct understanding of  
28 the likely outcome.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

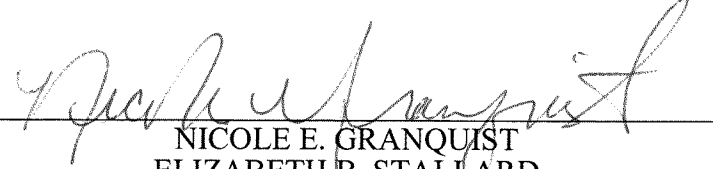
DATED: May 27, 2015

MONTEREY COUNTY COUNSEL

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

DATED: May 27, 2015

DOWNEY BRAND LLP

By:   
NICOLE E. GRANQUIST  
ELIZABETH B. STALLARD  
Attorneys for Respondent  
MONTEREY COUNTY WATER RESOURCES  
AGENCY

DOWNEY BRAND LLP

DOWNNEY BRAND LLP

1 CHARLES J. McKEE (Bar No. 152458)  
County Counsel  
2 IRVEN L. GRANT (Bar No. 068950)  
Deputy County Counsel  
3 County of Monterey  
168 W. Alisal Street, Third Floor  
4 Salinas, California 93901-2653  
Telephone: (831) 755-5045  
5 Facsimile: (831) 755-5283  
granti@co.monterey.ca.us  
6

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

7 DOWNEY BRAND LLP  
STEVEN P. SAXTON (Bar No. 116943)  
NICOLE E. GRANQUIST (Bar No. 199017)  
8 ELIZABETH B. STALLARD (Bar No. 221445)  
621 Capitol Mall, 18th Floor  
9 Sacramento, CA 95814-4731  
Telephone: (916) 444-1000  
10 Facsimile: (916) 444-2100  
ssaxton@downeybrand.com  
11 ngranquist@downeybrand.com  
estallard@downeybrand.com  
12

13 Attorneys for Respondent and Defendant  
Monterey County Water Resources Agency

14 SUPERIOR COURT OF CALIFORNIA  
15 COUNTY OF MONTEREY

16 MONTEREY COASTKEEPER, a project  
17 of the Otter Project, a nonprofit  
18 organization,

19 Petitioner and Plaintiff,

20 v.

21 MONTEREY COUNTY WATER  
RESOURCES AGENCY, a public agency,

22 Respondent and Defendant.

CASE NO. M 108858

**[PROPOSED] ORDER GRANTING  
MONTEREY COUNTY WATER  
RESOURCES AGENCY'S MOTION FOR  
STAY OF PROCEEDINGS**

Hearing Date: June 26, 2015  
Hearing Time: 9:00 a.m.  
The Honorable Thomas Wills

Action Filed: October 21, 2010

