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November 21, 2019

City of Marina  
Brian McMinn, Public Works Director  
211 Hillcrest Avenue  
Marina, CA 93933

Via email only to: [bmcminn@cityofmarina.org](mailto:bmcminn@cityofmarina.org)

**RE: Comments on City of Marina Groundwater Sustainability Plan**

Dear Mr. McMinn:

This office represents RMC Pacific Materials, LLC ("CEMEX") and I have been asked to provide comment on the City of Marina's ("City") groundwater sustainability plan (the "GSP") for the 180/400 Foot Aquifer Sub-basin (the "Basin"), which was released for comment on October 7, 2019.

CEMEX  
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At the outset, I note that the City filed its notification of intent to serve as the groundwater sustainability agency ("GSA") for a portion of the Basin on April 26, 2018, which is almost a full year after the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA") had filed its intent to serve as the GSA for the entire Basin on April 27, 2017. Water Code § 10723.8 (c) states that if an agency desires to serve as a GSA for the same basin as another agency, the second agency must file its notice of intent to do so within 90 days of the first agency filing its notice of intent. The City missed this deadline by about 275 days. While the Department of Water Resources may have accepted the City's notice, we do not, and urge the City to withdraw its GSP. Should the City persist, CEMEX reserves, and does not waive, any rights to challenge the City's GSP, as warranted. Subject to the foregoing, CEMEX submits the following additional comments.

We understand that the Hydrogeologic Working Group has submitted technical comments on the GSP, which comments we join and support, so we focus our comments primarily on legal issues associated with the City's GSP.

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On various pages throughout the GSP, the City mischaracterizes the settlement agreement between CEMEX and the California Coastal Commission. For example, on pages xi, 3-69, 4-4, and 4-20, the City states that pumping at the CEMEX well will cease at the end of 2020. This not only misstates the terms of the settlement agreement, but also is of no import. The shutdown of CEMEX's well, regardless of timing, cannot be expected to have any effect on inland brackish water areas as conceded by the City and noted more fully below. We encourage the City to either correct or remove these misstatements from the GSP, as the minuscule amount of water that has been and continues to be pumped by CEMEX is not responsible for the groundwater impacts at issue in this Basin.

We also note that the parcels potentially subject to the City's GSP are not consistently described. The

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City's resolution forming its groundwater sustainability agency (Resolution 2018-25) limits application of the new agency to APNs 203-011-001, -011, -019, and -020, but the City's GSP purports to expand application beyond what was authorized by resolution to include also APNs 203-011-023, 175-011-046, and 175-011-031, which are not even contiguous to the previously identified parcels. We also note that the depictions of the GSP area contained in the GSP do not appear to include all the parcels included in the initial resolution. Instead, they seem to depict only CEMEX property.

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This selective and inconsistent identification of parcels subject to the GSP is concerning because it supports our overall concern with the GSP, which is that the City is not really interested in managing groundwater in the Basin; it is primarily interested in the control of certain landowners only, otherwise it would have selected all of the land that overlies the Basin, would have included the Deep Aquifer as a managed basin, and would not have selected just a few landowners who pump brackish water that is not a source of drinking water for the City.

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Thus, the idea that the City's GSP is capable of bringing the Basin into sustainability appears to be a charade, as the City's own GSP admits that the Basin "is subject to significant and unreasonable seawater intrusion due largely to long-term groundwater extraction in the inland portions of the Subbasin in excess of the sustainable yield."<sup>1</sup> This seawater intrusion is acknowledged to have traveled as far as 7 miles inland.<sup>2</sup> And yet the City's GSP only applies to CEMEX's properties, and a couple other properties for reasons not provided in the GSP. The irony of including just these properties is evident from the City's open admission in the GSP that pumping from CEMEX's well "is therefore sustainable relative to SGMA's 2015 baseline"<sup>3</sup>, and "the CEMEX well pumping has not resulted in significant and unreasonable seawater intrusion or low-TDS water depletion."<sup>4</sup> Since CEMEX's wells are not responsible for seawater intrusion 7 miles inland, this begs the question of whose wells are responsible, and why aren't those wells responsible for the seawater intrusion subject to the City's GSP? The answer is the wells responsible for the seawater intrusion are very likely the wells that supply the City with its own water (i.e. Marina Coast Water District wells), and the City very much does not want its own wells to be subject to its GSP. This conclusion is supported by the fact that the City chose to *not* include the Deep Aquifer as a groundwater basin managed by its GSA.

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Not having its own wells subject to its own GSP has allowed the City to propose an incredibly stringent definition of a "significant and unreasonable reduction in groundwater storage," as follows<sup>5</sup>:

- A depletion of the amount of low-TDS groundwater in storage in the DSA, 180-Foot Aquifer and 400-Foot Aquifer in and near the MGSA Area resulting from groundwater extraction in the MGSA Area;
- A depletion of the amount of low-TDS groundwater in storage that adversely impacts groundwater right holders; or
- An imbalance in the amount of low-TDS groundwater and denser saline water that leads to further seawater intrusion.

Each of these standards belies the City's stated intent in adopting its GSP. With regard to the first, we

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<sup>1</sup> Page 3-1, 3-72, 4-1.

<sup>2</sup> Page i, 4-1.

<sup>3</sup> Page 3-73.

<sup>4</sup> Page 4-4, 4-20.

<sup>5</sup> Page 4-20.

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note that only groundwater extraction from within the City's GSA (i.e. essentially from within the CEMEX properties) that results in a depletion in the amount of low-TDS water is considered to be a "significant and unreasonable reduction in groundwater storage;" yet if groundwater pumping from any area that is *not within* the City's GSA results in the same or a similar depletion, or that results in a depletion of groundwater from within the Deep Aquifer, then the City has no issue with such depletion. Thus, the City's GSP proposes to only regulate and penalize pumping from within properties cherry-picked for the GSA and to disregard all of the wells that serve the City and its inhabitants.

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With regard to the second and third bulleted standards, due to the incredibly small number of properties subject to the jurisdiction of the GSA and the standards set in the GSP, there is no feasible way to enforce either of these standards if they occur outside the jurisdiction of the GSA. Since the GSA only covers a handful of properties, any activities that trigger either of these standards which are outside of the City's GSA are beyond the reach of the City's GSA and can operate with impunity. In sum, these standards are largely meaningless to the broader problem and only affect actions within the GSA boundaries.

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This is arbitrary, capricious, and a gross abuse of the City's authorities. It is arbitrary and capricious because the City's own GSP acknowledges that pumping from within the GSA boundaries has not caused the 7 miles of seawater intrusion, yet it proposes to address seawater intrusion by ignoring the actual problem wells that are farther inland. Thus, the GSP is not reasonably related to ensure the public welfare as it does not address, at all, the known causes.<sup>6</sup> Indeed, the GSP boundaries were drawn in such a manner as to avoid them. It is an abuse of authority because it is designed to penalize and ultimately saddle one private property owner or a few with the cost of administering the GSP while allowing those who have caused the problem to operate free of regulation, control, and cost, even though they will exacerbate the problem with seawater intrusion.<sup>7</sup>

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We encourage the City to withdraw its notice of intent to serve as the GSA and withdraw its proposed GSP. The SVBGSA was timely filed, its GSP appears to treat groundwater users fairly and spread the cost of a new agency across the Basin, rather than unfairly and abusively targeting a single or even a few groundwater users.

Very truly yours,



Jesse W. Barton

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<sup>6</sup> *Euclid v. Amber Co.* (1926) 272 U.S. 365.

<sup>7</sup> See GSP page xix. It is impermissible to permit development on one parcel and deny it as to another for the purpose of unreasonably regulating development activities. *Hernandez v. City of Hanford* (2007) 41 Cal. 4th 279, 294.