

AS PREPARED TESTIMONY
NAHC MEETING MAY 5, 2023, ITEM #5 CORONA WRF LIFT STATION NO. 3 PROJECT

Good Morning/Afternoon, Courtney Coyle, outside counsel for Pechanga updating the Commission and staff on how things have been proceeding since your last meeting.

Pechanga and Soboba continue to endeavor to work together with all to ensure the care of the Ancestors.

As described in the City update letter dated May 3, weekly site checks have continued and the Conex box has been replaced, albeit after 5 months of coordination.

However, the co-MLD recommendation regarding security cameras remains an open issue with the City, as indicated in Pechanga's and Soboba's joint letter of May 3.

Acting on the Commission's recommendation - in person and Zoom meetings occurred between all three co-MLDs. These meetings focused on the City's proposal to rebury the Ancestors onsite in the existing open trench before determining a path forward on the Project. Together, the three co-MLDs reviewed the information recently provided by the City. Ultimately, Kizh Nation declined to join the joint letter submitted by Pechanga and Soboba. In spite of this, Pechanga remains committed to trying to find a path forward that is both culturally appropriate and minimizes treatment costs and time for the City.

Progress has been slow with the City in developing alternative designs or locations for the Project. There remains substantial information gaps and unanswered questions from the City that could influence both any reburial or design processes as laid out in the joint letter of May 3.

Further, while the three co-MLDs asked the City at the February 6 meeting to communicate with them at the same time on reburial, alternatives, and site checks to promote efficiencies and transparency, communication remains a problem with folks being dropped off of emails and apparent sidebar meetings or communications occurring on these topics.

Pechanga asks the following three questions:

1. What is holding up a potential reburial process?

The area recently depicted for reburial and avoidance by the City is unreasonably small and incomplete. No explanation for its size was shared by the City.

On May 17, 2022, Pechanga, in its initial MLD recommendations letter, requested that the culturally appropriate protected area extend 100 feet around the site of the discovery. Upon questioning by the City in the meeting on December 5, 2022, Pechanga described the sensitive area as the Project parcel.

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Contrary to the City's May 3 letter to you, on April 7, the day after receiving the graphic, I responded to the City and the entire email string that the co-MLDs likely would have serious concerns with the proposed avoidance area.

A confidential graphic has been distributed to the Commission to depict how far apart Pechanga and the City are on this issue.

The City's proposal:

- Does not appear to fully include the Ancestor in the sidewall (the proposed area is about 4 feet wide, 20 feet long, and 18 feet deep).
- Does not address all the soil piles (+/- 4,500 cubic feet of excess soil) despite Pechanga's observation that these are cultural soils that have cultural materials in them.
- Does not provide a buffer from Project development.
- Does not take into account the possibility of multiple human remains (in the soil piles or buried in the ground) as is required by Public Resources Code 5097.98(b). (Along these lines, Pechanga also remains concerned that the City continues to refer to "Ancestor" remains - in the singular – discounting tribal expertise).
- Does not account for the current Project design which shows a road and generator pad/generator on or immediately adjacent to the proposed avoidance area in contravention of Public Resources Code section 5097.98(d).

In short, the City proposal is a nonstarter.

Moreover, given the depths and probable instability of the trenches, any reburial will require safety and engineering solutions, logistics and equipment. Protection of the reburial area during any potential future construction, operations, maintenance, and emergencies will also require such expertise and City input as indicated in the Pechanga/Soboba joint letter of May 3.

At the City co-MLD meeting on February 6, the City raised the issue of reburial before determining a revised Project design. The co-MLDs agreed to look at it to see IF this would even be possible. Given the gaps in information described in the joint letter it is premature to know IF reburial could proceed before Project redesign.

2. What is holding up the alternatives study?

When the City and three co-MLDs met on February 6, without agreeing to an alternative, the three co-MLDs agreed that Alternatives 1, 2a, 2b, and 5 (within plant footprint) could be studied further by the City; Alternatives 3, 4, and 5 (outside plant footprint) were rejected for future study.

The City told the three co-MLDs on March 22 that it may not know until September 2023 what the design options are for the above ground piping alternatives (Alternatives 2a and 2b). This

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appears to be an unreasonable amount of time to come up with concept, schematic, or preliminary drawings for the tribes to assess whether the associated level of disturbance would be acceptable. Complete, engineered designs and work plans were not requested of the City. It also remains important to know how the City might use the site in any potential onsite Project design because it could impact the avoidance area.

Meanwhile, no further information was provided by the City to the three co-MLDs about Alternatives 1 or 5 which would not need to utilize the lift station or Project parcel. That the City is investing no apparent effort in studying off site solutions leaves us to think that the City has no interest in actually considering off site alternatives to avoid impacts to the area Pechanga has identified as a cemetery.

Putting it bluntly: the City has requested a reburial plan without providing the very information prerequisite to the creation of that plan. Therefore, the City's claim to want to return the Ancestors is irreconcilable with its current actions and could in fact result in the City sidestepping meaningful Project redesign.

3. Why is there a hold up in the tribes getting requested information?

It has been difficult to get certain information relevant to the three co-MLD discussions. For example, it took the City months to locate its 2008 Predesign Report for the Wastewater Treatment Plant 3 Upgrade. The Tribes were just provided that on April 6.

Then, when we reviewed the information, it raised additional questions, particularly related to alternatives. These questions are contained in the joint letter of May 3 and include:

- Why wasn't the lift station placed on the treatment plant site? (The difference in elevation is not significant).
- What transpired between the 2005 adopted sewer master plan and the 2008 design study to justify abandoning the treatment plant? (We have not been provided any amendment to the 2005 master plan to explain why the City went forward with the pump station and to abandon their newest treatment plant).
- Where did the fill soil onsite come from, is its coverage of uniform depth across the site, and were any soils exported from the site including during Project construction?
- Is all the mechanical and electrical equipment already installed in the lift station building? (This building was built and outfitted when Pechanga and Soboba had been told by the City that work had stopped; equipment may be salvageable if off site alternatives are explored).

In conclusion, Pechanga has not received any further communication from the City about the potential for private (or any other kind of) mediation, despite the City's communications at your January meeting.

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We disagree with the City's assertions in its May 3 letter that it has complied with addressing all the NAHC's recommendations: specifically, number 8 in the October 29 letter and items 1 and 2 from the February letter. In addition to mediation, the NAHC could open an investigation pursuant to Public Resources Code section 5097.97.

Given the seriousness of these issues, we respectfully ask the Commission to continue to engage in an effort to move us towards faster resolutions, promote accountability from all the parties, and keep this matter as an action item at upcoming Commission meetings.

Thank you. We are available for questions.