Chapter 17

Special Interest Group Comments on the 2000 REIR/SEIS

TO AID, ENCOURAGE AND PROMOTE EFFICIENCY AND ECONOMY IN THE ADMINISTRATION OF GOVERNMENT

Alameda County Taxpayers Association, Inc.

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Incorporated
June 17, 1938

RSp1

October 17, 2000

Mr. Kurt Ladensack
Water Supply Improvements Div.
EBMUD
P. O. Box 24055
Oakland CA 94623

Mr. Robert Schroeder
U.S. Bureau of Reclamation
Central California Area Office
7794 Folsom Dam Road
Folsom CA 95630

Dear sirs:

Alameda County Taxpayers Association respectfully offers the following comments on the Draft REIR/SEIS concerning the EBMUD/USBR Supplemental Water Supply Project; as recirculated:

We continue, as we have for years, to recognize EBMUD's need for a reliable, high quality water supply to enhance the area's economy and public health, and a responsible method of meeting future needs of 1,200,000 customers and protecting against dry years.

Those objectives can best be met by taking water from the American River as EBMUD has contracted for, and for which the service area's taxpayers have paid $20,000,000 since 1970. This water supply would be compatible with the Mokelumne River water taken by EBMUD, and with its treatment facilities. We continue our support of Alternative 2, Nimbus. We could envision supporting taking from the lower American River, as in Alternatives 3 and 4. RSp1-1

Under no circumstance can we support taking water from the Sacramento River, Alternatives 5 through 8, since such degraded water is not compatible with the high quality of current EBMUD supplies, and is not what our taxpayers have been paying for. The excessive cost of treating Sacramento River or Delta water does not serve the economic interests of our taxpayers. RSp1-2

Sincerely,

Arthur B. Geen
Executive Vice President

Responses to Comments of the Alameda County Taxpayers Association, Inc.

RSp 1-1, Arthur B. Geen, Alameda County Taxpayers Association, Inc.

The commenter's support of alternatives involving delivery of water to EBMUD from the lower American River is noted.

RSp 1-2, Arthur B. Geen, Alameda County Taxpayers Association, Inc.

The commenter's opposition to alternatives involving delivery of water to EBMUD from the Sacramento River or the Delta is also noted.

RSp 2

Clean Water Action ♦ Clean Water Fund ♦ Friends of the River
Planning and Conservation League ♦ Save the American River Association
Sierra Club ♦ Save the Bay

October 19, 2000

Lester Snow
Director, Mid Pacific Region
US Bureau of Reclamation
Mid Pacific Regional Office
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Sacramento CA 95825

Dennis Diemer
General Manager
East Bay Municipal Utility District
PO Box 24055
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RE: SCH#1996022035 EBMUD Supplemental Water Supply Project

The above named organizations have undertaken a preliminary review of the draft EIS/EIR for EBMUD's supplemental water supply project and proposed amendments to EBMUD's water service contract. Given the long and contentious history of this issue, some important early observations are warranted.

A Preferred Alternative is not selected.
It is unfortunate that the Bureau and EBMUD have not selected a preferred alternative in this draft EIS/EIR. This is a reflection of the relatively superficial level of project analysis and alternative selection advanced in the document. Given the haste with which the parties plan to proceed to a record of decision, the absence of a preferred alternative and more comprehensive analysis, will, in our opinion, hinder public review, understanding and support for the project. RSp2-1

True costs of American River/Lake Natoma diversion are underestimated.
Cost estimates for the diversion alternatives from the lower American River and Lake Natoma Reservoir upstream, at best, dramatically underestimate their real cost. RSp2-2

1. The EIS/EIR does not include costs for necessary storage associated with these alternatives.
2. Institutional constraints for the protection of the environment (state and federal wild and scenic river acts, existing public trust judicial decisions, federal endangered species acts) may prohibit EBMUD from obtaining the water when it is needed in dryer years.

Fortunately, other sources of supply that can meet EBMUD's perceived needs (from conservation, reclamation, and downstream diversions) are available to EBMUD. Indeed, the EIS/EIR demonstrates that costs for Sacramento River and Delta sources of supply are competitive with upstream diversion sites.

Treatment technology options increase flexibility and reliability at comparable cost.
The EIS/EIR suggests EBMUD is interested and willing to adopt more "state of the art" water treatment technologies to ensure the safety of water it delivers to its customers. Such a program has important and positive implications for EBMUD's ability to utilize sources of supply that are actually available to meet its perceived supplemental supply requirements. Costs for treatment of Sacramento and even Delta supplies especially when taken in tandem with blending of Mokelumne supplies appear to provide customers with maximum reliability at a reasonable cost. RSp2-3

The EIS/EIR lacks a comprehensive analysis of supply needs and alternatives.
The analysis in the EIS/EIR highlights the need for further examination of demand and supplemental supply needs and constraints. Future per capita and drought year demand projections appear to be inconsistent with other major urban water users in the state, and hence may dramatically overstate actual supply needs and underestimate conservation potential. The draft also does not analyze any of the following important issues: RSp2-4

- Further investments in conservation/reclamation programs including tiered pricing,
- Optimum points of diversion within the Delta or lower Sacramento River to meet EBMUD's demands and environmental programs in the Delta,
- Opportunities to utilize delta (or other) sources for uses that do not require low salinities or extensive treatment, in order to stretch EBMUD's low salinity Mokelumne supply,
- Changes in the management of EBMUD'S Mokelumne River supply operations,
- Opportunities to increase supply reliability without sacrifices in quality that may be afforded by participation in the CALFED Bay Area regional water strategy.

We encourage the EBMUD Board and the Bureau of Reclamation to adopt a "none of the above" preferred alternative and to engage all stakeholders in a more thoughtful look at the best way to meet EBMUD's water supply reliability objectives. RSp2-5

On behalf of the undersigned,

Marguerite Young
California Director
Clean Water Action and Clean Water Fund

Mary Haake
Chair, Water Committee
Sierra Club Bay Chapter

Ronald Stork
Senior Policy Advocate
Friends of the River

Felix Smith
Save the American River

Cynthia Koehler
Staff Attorney
Save the Bay

Gerald Meral
Executive Director
Planning and Conservation League

Response to Comments of Clean Water Action and Clean Water Fund

RSp 2-1, Marguerite Young, Clean Water Action and Clean Water Fund
Reclamation has identified a preferred alternative in this final document.

RSp 2-2, Marguerite Young, Clean Water Action and Clean Water Fund
The alternatives included in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS are stand-alone projects that would meet all or most EBMUD's project objectives. These alternatives would provide additional benefits if a groundwater storage project were developed. However, as clearly described in Chapter 1 of the 1997 Draft EIR/EIS and Chapter 18 of the 2000 REIR/SEIS, no feasible groundwater storage project has been identified despite over a decade of effort by EBMUD. Should such a project be identified in the future, additional environmental documentation would be required at that time.

The status of the lower American River as a recreational river under the Wild and Scenic Rivers acts is recognized and was taken into account in the 1990 Hodge Decision. See also response to the "Project Segmentation/Piecemealing" major issue in Chapter 3 of this document.

RSp 2-3, Marguerite Young, Clean Water Action and Clean Water Fund
The commenter's opinions regarding reliability and costs are noted.

RSp 2-4, Marguerite Young, Clean Water Action and Clean Water Fund
As described extensively in Chapter 1 of the 1997 Draft EIR/EIS, EBMUD has aggressively pursued urban water conservation practices. The Updated WSMP EIR, completed in 1993 and incorporated by reference, describes these practices, different alternatives, and EBMUD's long-term conservation strategies. Detailed analysis of urban water conservation is outside the scope of the environmental analysis required for the Supplemental Water Supply Project. All of the alternatives described in this comment were evaluated in the Alternatives Screening Report (Appendix B to the 1997 Draft EIR/EIS) and were determined to be infeasible. Therefore, they were not carried forward into detailed analysis.

RSp 2-5, Marguerite Young, Clean Water Action and Clean Water Fund
Comment noted.

SAVE THE AMERICAN

SAVE THE AMERICAN RIVER ASSOCIATION, INC.
P.O. BOX 277638 - SACRAMENTO, CA 95827-7638 - (916) 387-1763

RSp 3

November 15, 2000

Mr. Kurt Ladensack
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Mr. Robert Schroeder - Environmental Specialist
Central California Area Office
U.S. Bureau of Reclamation
7794 Folsom Dam Road
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Dear Sirs:

Subject: Comments on the DRAFT REIR for East Bay Municipal Utility District's Supplemental Water Supply Project. DRAFT REIR cover letter dated Oct. 6, with material received Oct. 17, 2000.

The DRAFT REIS should be withdrawn until a real project with clear operating criteria meeting EBMUD's project needs has been identified as the preferred alternative. At that time, a revised DRAFT Recirculated Environmental Impact Statement should be submitted for public review and comment. RSp3-1

Whether or not the above occurs, please incorporate the following comments into the record regarding the RDEIR for EBMUD's Supplemental Water Supply Project.

Overall comments

We find the project descriptions and operational plans of East Bay Municipal Utility District (EBMUD) lacking or difficult to follow. Where is the preferred alternative carefully laid out and explained for all to review and make comments? The NO ACTION Alternative should be fully explained. The "No Action Alternative" is the baseline from which all impacts (beneficial and detrimental) are measured. New technology and treatment level needed to meet State and Federal EPA –1997 Drinking Water Standards may require changes (additional treatment costs) as a part of the "No Action Alternative." This information regarding treatment is now necessary for all alternatives in order for the public to make valid comparative costs evaluations. The treatment level required to protect public health also reduces the distinction of water source. RSp3-2

The Central Valley population of naturally spawning steelhead is listed as threatened under the Federal Endangered Species Act. The Central Valley population of naturally spawning Fall- Late-Fall run of Chinook salmon remains as a "candidate" species for reevaluation under the Federal Endangered Species Act. The Lower American River (LAR) is designated under the Federal Wild and Scenic River Act and contains critical habitat for naturally spawning Chinook salmon and steelhead trout. Of particular concern are extreme temperature conditions and fluctuating flows that limit natural spawning, rearing and juvenile production of Chinook salmon and steelhead. These species has been severely impacted by EBMUD's operation of its Mokelumne River facilities. The Lower Mokelumne River contains critical habitat for these species. In the past millions of Chinook salmon and steelhead eggs and fingerlings from the American River Salmon and Steelhead Hatchery were sent to the Mokelumne River Fish Hatchery so it could meet its mitigation obligation.

This transfer was necessary so the Mokelumne River Fish Hatchery would have a sufficient number of fish to release in order to help maintain the runs returning to the Mokelumne River. The primary project purpose is to meet an identified need, i.e., make water available during dry water years. The groundwater element is inadequate to do the job. The American River diversion does not meet the need. There is a RSp3-3

question whether the Sacramento River alternatives meet project needs. Therefore a Delta / Bixler / Clifton Court like facility at Orwood tract, is the most reliable and the most quickly doable. It provides flexibility in the source of available water supply, i.e. Shasta, Folsom and New Melones, blending of local and regional supplies and for purchasing water from any upstream source. It is also the only alternative that could have an overall positive benefit to improve Delta water quality; urban and agricultural supplies, fish resources and other public trust values.

Some Background:

EBMUD has a water service contract with the Bureau for the delivery of up to 150,000 AF. EBMUD desires to use this contract water (it is not an entitlement as stated on S-1) to supplement its Mokelumne River supply. The storage capacity of EBMUD's facilities when at capacity is about 766,000 AF, with 151,000 AF in Service Area and 616,000 AF in its Mokelumne River facilities of Pardee and Camanche Reservoirs (DWR Water Supply Outlook, October 29, 1999). This same reference indicates that EBMUD's historical carryover storage for the end of September is 542,200 AF; with 241,800 AF in 1977; with 378,900 AF in 1992, and with 469,500 AF in 1994. The highest end of September carryover storage being 614,200 AF in 1997 followed closely by 604,400 AF in 1996. According to the State Board's EIR for the 1995 Water Quality Control Plan (Nov. 1999), EBMUD's cumulative diversion face value is 931,874 AF with 510,000 AF cumulative direct diversion and cumulative storage 562,950 AF. Points of diversion are Indian Slough and the Mokelumne River. The 510,000 AF cumulative direct diversion could be considered EBMUD's annual and cumulative depletion of flows from total Delta inflow with impacts to fishes, other aquatic life and water quality. RSp3-4

Some specific comments:

EBMUD wants to guarantee its customers a full water supply under drought hydrological condition as well as planned system outage or system failure. EBMUD wants to exercise its 1970 Bureau of Reclamation contract to take American River water. According to the FEIR for the Bay/Delta Water Quality Control Plan (SWRCB – Nov. 1999) enlarging Pardee Reservoir by 150,000 AF was feasible. Has EBMUD abandoned the option of maximizing its Mokelumne River source? Why hasn't the preferred alternative been selected? This failure does not inform the public of your action, but hides your actions and opens the door to political meddling and closed-door decision making. RSp3-5

The project alternatives (Chapter 2) are not clearly presented nor are their operational specific plans adequately explained and costs levels comparable. Simply stated, Alternative 1 is No Action. Please note that the "No Action Alternative" should be fully explained. The "No Action Alternative" is the baseline from which all impacts (beneficial and detrimental) are measured. New technology and treatment level needed to meet State and Federal EPA –1997 Drinking Water Standards may require changes (additional treatment costs) be a part of the "No Action Alternative". This information (additional treatment) is necessary for all alternatives in order for the public to make valid comparative costs evaluations. Alternative 2 is Folsom South Canal diversion and connection; Alternative 3 is a joint Sac. City/County/EBMUD project from the 1997 DEIS. This is not a viable option. Alternative 4 is an EBMUD only LAR diversion to Folsom South Canal and connection. To us this is not a viable option. Alternative 5 is a Sacramento River diversion point to Folsom South Canal and connection. Alternative 6 is Freeport diversion east to Folsom South Canal and connection. Alternative 7 is a Freeport diversion with a pipeline south to the Mokelumne Aqueduct and Alternative 8 is a Delta / Bixler point of diversion. RSp3-6

The operational plans (how much water to be diverted and when) and the treatment costs for each alternative should be spelled out for each water year type. The No Action base of treatment to met EPA water quality criteria is needed. All alternatives should meet the same treatment level. There was a significant increase in the treatment costs between the September 18, 2000 (Feinstein/Moran) draft and the October 6, 2000 official draft. Why? What changed in that short time? Also in some cases the treated supply is blended with existing supplies. In other cases the treated supply is not to be contaminated by RSp3-7

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blending it with Mokelumne River supplies. There must be clear operational criteria and cost analysis for all alternatives before an objective analysis can be made to select a preferred alternative. The document is lacking that respect.

The Hodge physical solution and especially the Central Valley Project Improvement Act's (CVPIA) Anadromous Fish Restoration Program (AFRP) flow schedule, put protecting the LAR public trust resources, uses and values first before EBMUD could take American River water. However the Hodge physical solution did not have temperature criteria for the LAR's Chinook salmon and steelhead trout life history needs.

RSp3-8

The Bureau has implemented the AFRP flow releases. Managing the cold water pool through temperature control devises (shutters) at the three powerhouse intakes is being accomplished by the Bureau's understanding of the problem and it ability to act according. A Temperature Control Device is now being installed on the Urban Water Intake. It is hoped that this structure will be operational by next spring. This year's call for water from Folsom Reservoir to meet Delta export needs and to meet Delta Water Quality Control Plan has exacerbated the management of the cold water pool and put young and juvenile steelhead in a very precarious position.

Conditions in the cold water pool have delayed Chinook salmon spawning because water temperature of 60 degrees or below was not available in the river or hatchery until the first full week of November. And this was a good water year with above average runoff and there still were flow and temperature problems in the LAR. Such reservoir and flow conditions would have been exacerbated by EBMUD demands at any diversion location except a Delta / Bixler diversion.

RSp3-9

EBMUD's LAR diversion point is not a real option. In addition, the use of the Folsom South Canal holds a gun on the LAR and Water Forum stakeholders. A question is -- Will the State Board approve a new point of diversion so EBMUD can take its water around the Delta in its own private peripheral canal?

RSp3-10

Chapter 3 - Hydrology, Water Supply and Power. This section presents data that is inconsistent with Water Forum data or is incomplete. For example, the demand on the American River is greater than 368,000 AF for year 2030. Up date information and clarification is needed. Tables 3-2 appears to be inconsistent with Water Forum developed data. Water Forum stakeholder water use is expected to be about 481,000 AF by 2030 up from present use of about 216,500 AF (WF-2000). Why is the REIR information different?

RSp3-11

During most years, the Bureau will make releases to the LAR to meet the AFRP flow requirements and downstream diversion demands. The plumbing proposed by EBMUD is its own peripheral canal transporting water from the American River, Sacramento River and Mokelumne River around the Delta to its Service area. How and what is EBMUD going to do to mitigate the adverse impacts to Delta water quality for agriculture, urban users, export supplies, fish resources and other trust interests by the addition to its already massive Delta depletion which could be up to 510,000 AF annually and impacts to Delta aquatic resources and water quality?

RSp3-12

It should be recognized that impacts resulting from the operation of EBMUD's Mokelumne River projects have not been corrected by an flow regimen or hatchery operations. For the years 1989 through 1999, millions of eyed Chinook salmon eggs of Feather River and American River origin were sent to the Mokelumne River Fish Hatchery for rearing and release so the Hatchery could fulfill its production and release goals. Also hundreds of thousands of eyed steelhead eggs and fingerlings of American River origin were transferred to the Mokelumne River Hatchery for rearing and release to help it meets its production and release goals. In some years 1988-1989, 1989-90, 1990-91 and 1992-93 steelhead eyed eggs and fingerlings were also received from the Feather River (Feather River Hatchery) and from Battle Creek origin (Coleman National Fish Hatchery).

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There have been periodic problems of low dissolved oxygen, heavy metal and high hydrogen sulfide at the Hatchery and in the Lower Mokelumne River. People believe that it is inappropriate for the other projects to mitigate for the impacts that are a responsibility of EBMUD's operations regarding instream flows and water quality in the lower Mokelumne River. EBMUD has touted the merits of it EBMUD/FWS/CDFG settlement. The Mokelumne River Settlement Agreement is not based on a State Board decision or an independent FERC ruling, but on a politically contrived decision that, we hope, gets exposed by a lawsuit with testimony and cross examination under oath.

A provision of the Settlement Agreement allows EBMUD wants to sell 40,000 AF to 80,000 AF of surplus Mokelumne River water to the Bureau / Fish and Wildlife Service as a part of the CVPIA's anadromous fish restoration program. Prices paid for water have ranged from $35.00 up to $100.00 an acre-foot. This water would help mitigate EBMUD's Mokelumne River project impacts as a way to restore public trust resources, uses and values of the Lower Mokelumne River and Delta. The funds for such a purpose would come from scarce public (restoration fund) dollars. Such a transaction may be in the parochial interest of EBMUD to help protect the resources of the Lower Mokelumne River.

Mitigation is the responsibility of EBMUD. The flow regimen needed to keep fish in good condition; to meet or protect Delta water quality for public trust purposes is a responsibility of EBMUD. In Audubon, the court ruled there is no taking issue when water is needed to protect the public trust interests involved. See National Audubon Society v. Superior court Alpine County, 33 Cal. 3d 419, 189 Cal. Rpt. 346 (1983), Racanelli, (United States v. State Water Resources Control Board, 227 Cal. Rpt. 161 - 1986) and Cal Trout v. State Water Resources Control Board, 207 Cal. App. 3d 585 (1989). There was no taking issue regarding inflows to Mono Lake according to the Audubon Court. What then is the rational for the public to pay for water (i.e. buy back its owned water) to protect public trust interests and to keep "in good condition" (CDFG Code Section 5937) the fish and other aquatic life of the lower Mokelumne River, the Delta and San Francisco Bay?

What is the Bureau's and EBMUD's rationale for using non-EBMUD funds (PUBLIC DOLLARS) to mitigate and / or help offset impacts to lower Mokelumne River fish resources and Delta water quality caused by the operations of EBMUD's Mokelumne River project? Has the Bureau of Reclamation knowingly bought into this scheme? If so, - What is the Bureau's rationale? The Bureau is opposed to the MOU endorsed by South-of-the Delta contractors that would force it to provide water to backstop the settlement Agreement (D-1641 at pages 57–62).

Judge Racanelli, in his 1986 decision, (U.S. v State Water Resources Control Board), commented on the duties of the State Board. He indicated that the State Board needs to consider the impacts of all upstream diversions and uses of water and that it is essential that it take a global perspective in carrying out its water quality-planning obligation. In Audubon, the court ruled there is no taking issue when public trust interests are involved. Racanelli ruling stated that each water right holder on each tributary would contribute its fair ecological share (flows) to protect instream resources, ecological uses and values, as well as provide Delta inflow to meets water quality standards and protect public trust interests. It is important that the global concept be applied to all streams and rivers of the Central Valley Basin.

The Hodge "physical solution" in Environmental Defense Fund v East Bay Municipal Utility District (EDF v EBMUD) (Sup. Ct. Alameda County No.425955, January 1990), was a contemporary response for protecting and restoring the Lower American River, its fish resources, a variety of other instream uses and ecological values. The Hodge "physical solution" placed an ecological perspective on the management of the Lower American River to protect a variety of public trust resources, uses and values (Sax -1993). The Hodge "physical solution" requires about 1.75 MAF to provide minimum instream flows necessary to protect in good condition the public trust resources, uses and values of the Lower American River and contribute to Delta inflow for water quality, fisheries protection and other beneficial uses. This 1.75 MAF is about 65 percent of the average annual runoff of the American River Basin.

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EBMUD, in its fisheries management plan for the Lower Mokelumne River provides for only about 85,000 AF (about 12 percent) of the average unimpaired Mokelumne River runoff of 730,000 AF. Such a release without water quality standards is supposed to protect the Lower Mokelumne River ecosystem, provide Delta inflow for water quality protection, for public trust uses and to contribute to Delta outflow and water quality standards. This was disputed by the Fish and Wildlife Service (FWS) and California Department of Fish and Game (CDFG) before the State Board. The FWS recommended 193,000 AF annually while the CDFG recommended 207,000 AF with 262,000 AF annually in above normal and wet runoff years for the protection and restoration of Chinook salmon and steelhead resources. Clearly Delta fish resources and water quality for urban and agricultural purposes and for export supply can not be sustained or protected if each Delta tributary contributed only about 12 percent of its annual runoff as the Mokelumne River does under EBMUD's Lower Mokelumne River Fish Management Plan. EBMUD by its present actions and Mokelumne River Settlement Agreement is not contributing its fair ecological share of instream flows to maintain the Delta pool, its quality or public trust interests.

During the 1992-93 State Board hearings on EBMUD'S Mokelumne River project, EBMUD representatives acknowledges that adequate Delta inflow is critical for maintaining the water quality necessary for agricultural, municipal and industrial purposes as well as maintaining public trust resources, uses and values. Under cross-examination of EBMUD folks, it was established that the Bixler facility is a viable solution for EBMUD to take some or all of its water because about 22 million Californians already do. Locally the Delta city of Pittsburg treats Delta water to a lower level of trihalomethanes than EBMUD's pure snow melt; Contra Costa W.D. diverts from the Delta and satisfactorily treats its water supply for municipal and industrial purposes. EBMUD representatives admitted that it could treat Delta water to the same drinking water standards as Pardee Reservoir water.

EBMUD with its own peripheral canal is clearly a contributor to the problem of water quality in the Delta. EBMUD by taking a major part of its supply at Bixler, would become part of the solution by protecting Delta water quality and other public trust interests. Alternative 8 is a Bixler point of diversion. This facility and point of diversion has been licensed/ permitted in the past and has been tested and was used in 1976 and again in 1977 (FWS info and EBMUD submittal to FERC and contained in FERC's DEIR on the EBMUD'S lower Mokelumne River hydro-project). RSp3-13

Did EBMUD or the Bureau attempt to work out an arrangement with DWR's State Water Project, to take water from Clifton Court Forebay? Has EBMUD or the Bureau investigated the possibilities of building an island reservoir (ala Clifton Court Forebay) at Orwood Tract for its use as temporary water storage and for blending purposes. If EBMUD was nice, there could be some cooperation with Contra Costa Water District for building such a facility. The construction and operation of such a facility would allow EBMUD to become part of the solution to Delta water quality/fisheries problems rather than continuing to exacerbate these problems. RSp3-14

The Bixler point of diversion(Orwood Tract forebay) is a must if protecting water quality of the Delta pool, protecting aquatic resources and other public trust interests are to be realized by those taking or who could take Central Valley Project (CVP) and State Water Project (SWP) deliveries from the Delta pool. Such a point of diversion would help CALFED's proposals for blending and sharing of local and regional supplies. The Bureau can help meet its Delta inflow and water quality objectives by making the point of delivery of EBMUD's contract water its Bixler facility. EBMUD can also help by taking a reasonable portion of its Mokelumne River supply released for public trust purposes at Bixler. RSp3-15

The list of environmental impacts is incomplete. The reader should determine the significance of the various impacts not EBMUD. There is considerable evidence that can illustrate that EBMUD's values are not the same as someone concerned about public trust interests, endangered species or selected species of anadromous fishes and Delta water quality. RSp3-16

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Several statements are made that mitigation measures are not required or not available. This puts protecting public trust interests on less than a co-equal footing with EBMUD's water diversion. Identifying impacts and formulating mitigation actions is a primary purpose of the National Environmental Policy Act.

Some of the impacts are:

Depletion of the cold water pool in Folsom Reservoir (all other things being equal) will result in increased temperature of the water released which would impact the LAR ecosystem and associated resources uses and values. Any sudden or abrupt changes in water temperature could disrupt holding, spawning of adults, incubation, rearing and out-migration.

Depletion of the cold water pool in Folsom Reservoir will increase mortality (through elevated temperature of the water supply) at the American River Trout Hatchery as well as the Nimbus Salmon and Steelhead Hatchery (NSSH). The NSSH was constructed and is operated to mitigate the loss of the upstream spawning and nursery areas once utilized by Chinook salmon and steelhead trout, but now blocked by Nimbus / Folsom dams.

Salmonid fishes just about cease growing at temperatures above 68 F because of increased metabolic rate. In addition increased water temperature has a synergistic effect on the several components of the aquatic ecosystem with signs of stress occurring below 68 F. This is especially so under hatchery conditions. For optimum aquatic ecosystem management, a reliable and safe water supply is required and must be assured. This includes water of acceptable quantity and quality including the range of temperature necessary for Chinook salmon and steelhead production (holding, spawning, incubation and growth) throughout the year. RSp3-17

Salmonid fishes are capable of sensing a temperature differential of less than .5 F degrees. Temperature increases of released flows because of reduced volume in cold water pool will impact summering over of juvenile steelhead and could impact Chinook salmon spawning conditions (delaying the spawning time could extend to delay out migration. Spawning was delayed this year until (November 2000). Reduced warmwater fish habitat in Folsom, Shasta and Trinity Reservoirs (water level fluctuations as water is stored and later released to provide Delta inflow. Impacts to American Shad spawning and out migration resulting from reduced stream flow and outflow.

Reduced coldwater fish habitat in Shasta and Trinity Reservoirs April thru October as increased releases are made necessary to provide water to the Delta to help maintain water quality for public trust uses and water export. These same releases could reduce coldwater needed for the winter-run Chinook salmon as well as impact fall-run Chinook salmon holding, spawning and egg survival in the upper Sacramento River. There could be similar impacts to fall-run Chinook salmon holding, spawning and egg survival in the Trinity River. RSp3-18

All diversions must be adequately screened. Such screening is to reduce the impact of diversion on all fish species not just those of special concern or considered threatened or endangered. If such protection is not provided all native fishes in the area could be listed or be considered as a candidate species under the FESA. In addition the wholesale loss of egg, larva and young of such high interest species as striped bass and American shad would not look good. RSp3-19

Construction of the intake as envisioned by EBMUD would be scab on the LAR scenic landscape. Any flow fluctuations which occur as a result of meeting EBMUD's on/off diversion demands will impact the wetted perimeter of the LAR ecosystem. These fluctuations are particularly adverse to the entire periphyton community of green algae, brown diatoms and the various developmental stages of aquatic insects and other invertebrates, basic food production. RSp3-20

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In addition at certain stream flow stages a change of .3 tenths of a foot as measured at the Fair Oaks USGS gage will result in impacts to the wetted perimeter (including dried out shallow areas and resultant heat buildup), to summer nursery and fall spawning conditions. These conditions will be magnified during periods of high air temperatures and especially so during years of below normal runoff. RSp3-21

All impacts should be identified. EBMUD must develop mitigation measures or actions and be ready to implement them upon contract signing. A monitoring program must be undertaken to determine if the mitigative measures or actions are doing what they were designed to do in an acceptable manner. If not, corrective action must be taken. There must be public oversight and evaluation of any mitigation measures or actions implemented. RSp3-22

Those impacts not mitigated or replaced in some way will constitute a subsidy to EBMUD so it can enhance its image and reduce its water costs. All this is at the expense of the public trust resources, uses and interests of the area of origin, such as Shasta and Trinity Lakes, Sacramento and Trinity Rivers, Folsom Reservoir and the Lower American River.

There is a sense that "the natural variation in hydrologic and water quality / quantity conditions are substantially larger than hydrologic changes which would result from the various EBMUD alternatives." Because of this situation environmental damage can not be demonstrated, therefore no mitigation required. The seemingly minor, less than significant impacts, attributable to this and other diversions will result in significant cumulative impacts to public trust interests of water quality and to aquatic resources of the LAR and Delta. Being bled by a 1000 cuts inflicted one at a time is still death. Is the statement damage cannot be demonstrated. EBMUD's and the Bureau's way of diminishing the impacts and dumbing its audience? It is this same natural variation in runoff conditions / water quality / quantity conditions that stimulated many Sacramento, Placer and El Dorado stakeholders of the Sacramento Water Forum to initiate groundwater management programs. These groundwater programs implemented during dry and less than normal runoff years will at the same time help protect fish, other aquatic resources and recreational values of the LAR. RSp3-23 RSp3-24

Where is the EBMUD groundwater management program? What is its dry year yield of the program? Where is it located? Is any part of that program in its service area? EBMUD indicated that mitigation measures are not required to offset or compensate for many project associated impacts or associated values, because it is proposing to contribute money to help support the Habitat Management Element (HME) of the Sacramento Water Forum Agreement.

Contributing funds to a program does not constitute mitigation, nor does the purchase of land. Mitigation is the continuing responsibility of the project sponsor and beneficiary. In this instance EBMUD is the responsible party. EBMUD must come up with mitigation actions to offset project occasioned impacts. EBMUD is the one accountable for mitigating the various impacts, either on site or in close proximity of the impact area, not at some location far removed from the impacts. RSp3-25

EBMUD in the conduct its overall water supply facilities (including Pardee Res.), manages its reservoirs for maximum storage carry over and recreational use (EBMUD FERC submittal). By not implementing mitigation actions, EBMUD will be short changing the areas of origin recreational opportunities, resources and uses (Shasta and Trinity Lakes, Trinity River, upper Sacramento River, Folsom Reservoir and the Lower American River, while building benefits in its own service area by maximizing the storage in its reservoirs.

Summary:

Much has happened since the original BR / EBMUD contract of 1970. In addition there is greater public awareness of the impacts to fish and wildlife resources, water supply, water quality for agricultural and urban uses affected by the construction and operation of the Central Valley Project and other similar RSp3-26

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projects. For Example: Several species of naturally produced fish dependent upon conditions of the Lower American River and the Bay/Delta system are now listed under the Federal Endangered Species Act and California Endangered Species Act. Species now listed under the Federal Endangered Species Act (FESA) include the winter-run Chinook salmon (endangered), Delta smelt (threatened), longfin smelt (endangered) and the Sacramento splittail (threatened) and the capabilities to meet Delta water quality standards. In addition the Central Valley natural spawning Fall / Late Fall-run Chinook salmon is a candidate species, the naturally spawning steelhead are now listed as threatened and the spring-run Chinook salmon is listed as threatened.

Stringent water quality standards have been established to protect Delta water quality and associated beneficial uses protected by the public trust doctrine will require increased flows through the Delta. The Bureau's Central Valley Project has an obligation to contribute tributary flows as well as the flows necessary for meeting the Delta water quality and outflow standards. RSp3-27

The Central Valley Project Improvement Act (CVPIA) commits additional water to protect instream ecosystems and associated trust purposes as well as to lands of the National Wildlife Refuge system. An over riding objective of the CVPIA is the equal priority for fish and wildlife (also water quality) with other beneficial uses (CVPIA Section 3406(a) (3)). CalFed was established, in part, to investigate water supply issues and make recommendation for providing additional water supply. RSp3-28

The Central Valley watershed has been determined to be significantly drier than what was understood in 1990. Treatment technologies have greatly improved and standards established by EPA (EPA-1997) to allow EBMUD to safely and economically process a Delta water supply, which is already being used by 20 to 22 million Californians. American River Basin area-of-origin stakeholders have signed the Water Forum Agreement. This Agreement is linked to two coequal objectives: RSp3-29

Provide a reliable and safe water supply for the region's economic health and planned development to the year 2030; and Preserve (provide a safe and reliable water supply for) the fishery, wildlife, recreational and aesthetic values of the Lower American River.

Conclusion:

In the California society in which we live, an EBMUD Delta / Bixler, Orwood Court / Indian Slough diversion point is the only Principled position for the Bureau to take.

It is Right because it helps protect the integrity of the "New" Bureau.

It is Right because it helps the "New" Bureau carry out its duties and responsibilities. RSp3-30

It is Right because it helps the Bureau protect the water supply and water quality of the agriculture and urban communities utilizing Delta and export supplies.

It is Right because it helps protect Delta-Bay resources, uses and values (public trust interests). It is Right because it is supported by the intent of Fish and Game Code Section 5937 and its in "good condition" for all aquatic life and life stages below a dam.

It is Right because it will help meet the objectives of the CVPIA's Anadromous Fish Restoration Program.

It is Right because it will help meet the objectives of the State's Delta Water Quality Control Plan.

Page 9

And it is Right because it is consistent with the purpose and intent of the Mono Lake and Racanelli decisions, therefore it is in the best overall interest of the people of California.

Please incorporate these comments into the record regarding the RDEIR for EBMUD's Supplemental Water Supply Project

Sincerely,

Alan D. Wade

Alan D. Wade, President
Save the American River Assn., Inc.

cc: The Bay Institute of San Francisco
California Sportfishing Alliance
Friends of the River
Committee to Save the Mokelumne River

Responses to Comments of the Save the American River Association, Inc. (November 15, 2000)

RSp 3-1, Alan D. Wade, Save the American River Association, Inc.
Reclamation has identified a preferred alternative in this final document. The alternatives considered in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS represent a reasonable range of alternatives to include in the environmental documentation for the project.

RSp 3-2, Alan D. Wade, Save the American River Association, Inc.
No preferred alternative had been identified as of the time of publication of the REIR/SEIS. The No-Action Alternative is fully described and defined in the 1997 Draft EIR/EIS. The 2000 REIR/SEIS is a recirculated/supplemental report. Under both CEQA and NEPA, a recirculated/supplemental report is required only to present new or updated information. For the Supplemental Water Supply Project, the primary new information relates to additional alternatives that are under consideration by EBMUD and Reclamation as part of the CEQA and NEPA processes. Therefore, the 2000 REIR/SEIS summarizes the more detailed descriptive information contained in Chapter 2 of the 1997 Draft EIR/EIS that applies equally to the additional alternatives considered. There is no information that suggests that EBMUD will be required to significantly upgrade its water treatment facilities in the near future. In addition, cost is only one of many factors considered in the selection of the preferred alternative.

RSp 3-3, Alan D. Wade, Save the American River Association, Inc.
The alternatives evaluated in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS meet all or most of the project objectives. Based on the available information, it is not clear that a Delta delivery alternative would have any benefit to Delta water quality, urban or agricultural supplies, fish resources, or other public trust values. Diversions from the Delta have essentially the same effect on Delta water quality as diversions upstream of the Delta. Under any of the alternatives, effects on water supplies are extremely small and essentially identical, regardless of the location of deliveries to EBMUD. With regard to fishery effects, the Delta supports large populations of resident fish species and provides migratory pathways for anadromous fish. Steelhead, spring-run and winter-run chinook salmon, delta smelt, and splittail all use the Delta during some or all of their life histories. Although comparison between different delivery locations is difficult (in part because it requires judgment as to the relative "value" of the various protected species), professional judgment and review of comments and requirements made on other water users would indicate that, in fact, a Delta delivery location would likely result in the greatest potential effects on sensitive fishery resources.

RSp 3-4, Alan D. Wade, Save the American River Association, Inc.
The issues addressed in this comment are outside the scope of the Supplemental Water Supply Project. The 1997 Draft EIR/EIS and the 2000 REIR/SEIS address the potential environmental impacts of alternatives to allow EBMUD to make use of its existing water supply contract with Reclamation.

RSp 3-5, Alan D. Wade, Save the American River Association, Inc.
EBMUD is not currently pursuing the enlargement of Pardee Reservoir. While potentially technically feasible, that project has substantial unresolved issues that may limit its implementability. A preferred alternative has been identified in this final document.

RSp 3-6, Alan D. Wade, Save the American River Association, Inc.
See response to Comment RSp 3-2 above.

RSp 3-7, Alan D. Wade, Save the American River Association, Inc.
The operations of the various alternatives are essentially identical to those described in Chapter 2 of the 1997 Draft EIR/EIS and shown in Figure 3-3 of that report. Cost information in previous administrative draft versions of the 2000 REIR/SEIS was preliminary and still under development. The information contained in the public REIR/SEIS represents the best information available at the time that the report was published. Comments received on the 1997 Draft EIR/EIS indicated that EBMUD should explore the implications of treatment options that meet regulatory requirements but that do not match current delivered water quality. Therefore, additional treatment options were incorporated into the alternatives considered in the 2000 REIR/SEIS. Because of these different treatment scenarios, specific operations vary somewhat between the alternatives. These operations are described in Chapter 2 of the 2000 REIR/SEIS, and the costs associated with each alternative and option are clearly displayed in Table 12 of Appendix B to the 2000 REIR/SEIS.

RSp 3-8, Alan D. Wade, Save the American River Association, Inc.
It is generally recognized that water temperatures are a key concern for the lower American River. Reclamation and others are taking significant actions to help improve these conditions. As noted in this comment, water temperature management on the lower American River is complex. While EBMUD deliveries would slightly increase overall Central Valley Project (CVP) demands, EBMUD demands would represent a very small proportion of overall CVP deliveries. In addition, EBMUD deliveries may not be additive to existing deliveries. Rather, deliveries to EBMUD might be supplied from slight increases in reservoir releases, slight decreases in Delta outflows, and/or slight decreases in deliveries to other CVP contractors. In any case, the effect of deliveries to EBMUD on water temperature conditions in the lower American River is not considered to be substantial nor would the location of such deliveries result in noticeably different temperature conditions, as described in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS.

RSp 3-9, Alan D. Wade, Save the American River Association, Inc.
EBMUD and Reclamation recognize that State Water Resources Control Board approval would be required to add a new point of diversion to Reclamation's existing water rights permits under some (Alternatives 3 and 4) of the alternatives considered in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS. Delivery to EBMUD via the Folsom South Canal would not require such an approval.

RSp 3-10, Alan D. Wade, Save the American River Association, Inc.
Demand projections are not precise predictions of future water use and are used as input to hydrological modeling processes. Reclamation and EBMUD have reviewed the relevant data and have determined that the information contained in Chapter 3 of the 2000 REIR/SEIS reasonably represents existing and projected future American River demands and is consistent with recent information from the Water Forum.

RSp 3-11, Alan D. Wade, Save the American River Association, Inc.
Based on information contained in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, the potential impacts of the Supplemental Water Supply Project alternatives on the resources described in this comment are less than significant (see Chapters 3-17 in both documents). CEQA and NEPA require agencies to assess the

environmental impacts of their proposed projects. Therefore, the 1997 Draft EIR/EIS and the 2000 REIR/SEIS describe the potential environmental impacts associated with the Supplemental Water Supply Project alternatives.

RSp 3-12, Alan D. Wade, Save the American River Association, Inc.
EBMUD has operated its Mokelumne River facilities in full compliance with all laws, regulations, and requirements. Since publication of the 1997 Draft EIR/EIS, the Federal Energy Regulatory Commission (FERC) approved a settlement agreement that results in increased flows in the Mokelumne River below EBMUD facilities. EBMUD is also participating in a variety of other activities that are intended to improve conditions for salmonid species in the Mokelumne River.

The Supplemental Water Supply Project alternatives are expected to have only beneficial effects on Mokelumne River resources. Therefore, the issues raised in this comment regarding ongoing Mokelumne River operations are outside the scope of the 1997 Draft EIR/EIS and the 2000 REIR/SEIS.

RSp 3-13, Alan D. Wade, Save the American River Association, Inc.
There is no clear evidence that a Bixler delivery alternative would result in any net improvement of Delta water quality. As described in Chapter 4 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, Delta water quality is largely a function of effective Delta outflow. Effective Delta outflow would be essentially identical regardless of whether water is delivered to EBMUD in the Delta or at a point upstream. Therefore, the water quality implications for Alternative 8 as described in the 2000 REIR/SEIS are considered to be the same as for Alternatives 3, 5, 6, and 7.

RSp 3-14, Alan D. Wade, Save the American River Association, Inc.
EBMUD and Reclamation examined numerous alternatives, as described in Appendix B to the 1997 Draft EIR/EIS. A delivery from Clifton Court Forebay was not specifically examined because it would not offer any measurable benefits as compared to a Bixler location and it would be considerably more expensive to EBMUD's ratepayers. EBMUD has, over a period of many years, held discussions with a wide range of Bay Area water users to explore opportunities for mutual benefit. These discussions are continuing, and if a feasible and implementable project is identified in the future, appropriate environmental documentation of such a project would be undertaken.

RSp 3-15, Alan D. Wade, Save the American River Association, Inc.
See response to Comment RSp 3-13 above. See also response to the "Relationship to CALFED" major issue in Chapter 3 of this document.

RSp 3-16, Alan D. Wade, Save the American River Association, Inc.
The 1997 Draft EIR/EIS and the 2000 REIR/SEIS are complete and have been prepared in full compliance with both CEQA and NEPA. CEQA and NEPA both require lead agencies to identify the significant impacts of their proposed actions and to provide this information for public review and comment. Mitigation measures have been identified, where feasible, for all significant environmental impacts.

RSp 3-17, Alan D. Wade, Save the American River Association, Inc.
The impact analysis contained in Chapters 3 and 5 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS addresses potential impacts on Folsom Reservoir storage and associated lower American River

temperatures. Deliveries to EBMUD would have only minimal effects on Folsom Reservoir storage and therefore could result in only very minor effects on lower American River temperatures. In addition, Reclamation operates Folsom Reservoir and is ultimately responsible for cold-water pool management. See response to Comment RSp 3-8 above. Impacts on American shad are fully discussed in Chapter 5 of the 1997 Draft EIR/EIS.

RSp 3-18, Alan D. Wade, Save the American River Association, Inc.
Potential impacts on Shasta and Trinity reservoirs are fully described in Chapter 5 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS. The potential impacts of the Supplemental Water Supply Project alternatives are less than significant.

RSp 3-19, Alan D. Wade, Save the American River Association, Inc.
As described in Chapter 2 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, Alternatives 3 through 8 include state-of-the-art fish screens in compliance with the requirements of the National Marine Fisheries Service, U.S. Fish and Wildlife Service, and California Department of Fish and Game.

RSp 3-20, Alan D. Wade, Save the American River Association, Inc.
Potential visual impacts of the new intake structures are described in Chapter 16 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS. Some locations would result in significant visual impacts. Impacts on the wetted perimeter would be extremely minor. River flow fluctuates daily or weekly, and the minor fluctuations that could conceivably result from an EBMUD delivery facility would not have any ecosystem effects.

RSp 3-21, Alan D. Wade, Save the American River Association, Inc.
As shown in Figure 3-15 of the 1997 Draft EIR/EIS, the maximum change in river stage at Sailor Bar attributable to EBMUD deliveries would be less than 0.03 feet. This equates to approximately one-third of an inch. In addition, these calculated changes are projected to occur during the months of November, December, January, and February, when flows are subject to substantial variation on a daily and weekly basis depending on flood control needs.

RSp 3-22, Alan D. Wade, Save the American River Association, Inc.
Together, the 1997 Draft EIR/EIS and the 2000 REIR/SEIS describe all of the environmental impacts associated with the Supplemental Water Supply Project alternatives. Pursuant to CEQA and NEPA, EBMUD and Reclamation will develop mitigation monitoring programs to ensure that mitigation measures adopted as part of any project approval are carried out in an appropriate manner. As public agencies responsible for environmental and regulatory compliance, EBMUD and Reclamation are open to public examination of their activities.

RSp 3-23, Alan D. Wade, Save the American River Association, Inc.
The acknowledgement in the 1997 Draft EIR/EIS and 2000 REIR/SEIS that there is substantial natural variation in hydrologic and water-quality conditions is not intended to imply that because changes attributable to the Supplemental Water Supply Project alternatives are less than the natural variation, all impacts are less than significant. Rather, the intent is to provide context for the changes that are typically measured against average monthly values. Both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS also acknowledge that several cumulative impacts are considered significant.

RSp 3-24, Alan D. Wade, Save the American River Association, Inc.
As described in Chapter 1 of the 1997 Draft EIR/EIS, EBMUD has attempted for many years to develop a groundwater management/banking program in San Joaquin County. EBMUD is also exploring groundwater storage opportunities in the East Bay Area. However, no groundwater storage project has yet been identified as feasible, and there are substantial regulatory, political, and institutional barriers to implementing such a program. Chapter 18 of the 2000 REIR/SEIS discusses the possible environmental impacts of a future groundwater management program.

RSp 3-25, Alan D. Wade, Save the American River Association, Inc.
The environmental documentation for the project does not indicate that mitigation measures are not required because EBMUD is proposing to contribute money to help support a habitat management program. In terms of direct impacts on fishery, wildlife, and vegetation resources, the 1997 Draft EIR/EIS and the 2000 REIR/SEIS conclude that the delivery of water under the Supplemental Water Supply Project alternatives would not result in significant environmental impacts, and no mitigation is therefore required. However, the environmental documents indicate that significant cumulative impacts would result. The vast majority of responsibility for these cumulative impacts lies with those agencies proposing to significantly increase their diversions from the American River system, and these impacts would be essentially the same regardless of whether deliveries are made to EBMUD. Therefore, EBMUD has proposed to contribute a fair share of the costs to larger-scale mitigation efforts that may be implemented.

RSp 3-26, Alan D. Wade, Save the American River Association, Inc.
As described in Chapter 5 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, EBMUD and Reclamation fully acknowledge the current conditions with respect to species protected under the state and federal endangered species acts. The 1997 Draft EIR/EIS and 2000 REIR/SEIS fully describe the impacts on these species.

RSp 3-27, Alan D. Wade, Save the American River Association, Inc.
As described in Chapter 4 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, the Supplemental Water Supply Project alternatives would not result in violations of any water quality standards.

RSp 3-28, Alan D. Wade, Save the American River Association, Inc.
The Supplemental Water Supply Project is not inconsistent with any element of the Central Valley Project Improvement Act or CALFED. See also response to the "Relationship to CALFED" major issue in Chapter 3 of this document.

RSp 3-29, Alan D. Wade, Save the American River Association, Inc.
Each of the points made in this comment is addressed, as appropriate, in the 1997 Draft EIR/EIS, the 2000 REIR/SEIS, and this final document. See Appendix B to this document and Appendix B to the 2000 REIR/SEIS.

RSp 3-30, Alan D. Wade, Save the American River Association, Inc.
The commenter's opinion regarding a preferred alternative is noted.

RSp 4

SAVE THE AMERICAN

SAVE THE AMERICAN RIVER ASSOCIATION, INC.
P.O. BOX 277638 - SACRAMENTO, CA 95827-7638 - (916) 387-1763

November 16, 2000

Mr. Kurt Ladensack
East Bay Municipal Utility District
c/o Water Supply Improvement Div., MS#305
P.O. Box 24055
Oakland, CA 94623-1055

Dear Mr. Ladensack:

While we would have welcomed the opportunity to respond to the Draft REIR/SEIS of October 2000 within the time frame originally proposed, our response must be offered under protest for the reasons stated in our letter to Mr. Schroeder, sent to him by certified mail on November 14, 2000.

Most of the comments of our Association have been transmitted in Felix E. Smith's letter of November 14, 2000. Mr. Smith, as a member of SARA's Board of Directors, and his detailed and thoughtful statement represents the position of our Board. We are enclosing a slightly edited copy of the Smith letter for your attention and review.

SARA's comments and concerns relate to both procedure and substance. Since your draft report offers no preferred alternative, our comments cannot be as directed and focused as they might otherwise have been. Also, your draft has so many errors of omission that we are led to believe that it was prepared in unseemly and unwarranted haste, as if done in reaction to extreme political pressure.

Among our major substantive concerns are these:

- your report fails to adequately take into account the status of the Lower American River as a Federally designated Wild and Scenic River; RSp4-1
- the groundwater element proposed falls short of alleged need; RSp4-2
- project alternatives are neither clearly presented nor are cost levels comparable among them; RSp4-3
- despite EBMUD's objections, water from sources other than the Nimbus site can be treated and effectively brought up to standard; RSp4-4
- EBMUD's values are so seriously truncated as to have excluded from the Report very important issues of Public Trust. RSp4-5

The above and other issues are dealt with in varying detail in the attached document. We shall appreciate your incorporating our observations into the record regarding the REIR for EBMUD's supplemental water supply project.

Please note once more that SARA's comments are offered under protest, because we were denied due process in terms of the time period provided for response.

Sincerely,

Alan D. Wade

Alan Wade, President
Save the American River Assn., Inc.

cc: Mr. Robert Schroeder, U.S. Bureau of Reclamation
SARA Board of Directors

Response to Comments of Save the American River Association (November 16, 2000)

RSp 4-1, Alan D. Wade, Save the American River Association, Inc.
Reclamation and EBMUD recognize the status of the lower American River as a recreational river under the Wild and Scenic Rivers Act. While certain of the alternatives (Alternatives 3 and 4, specifically) may require legislative action before they can be implemented, the Supplemental Water Supply Project alternatives are not considered to be inconsistent with the act.

RSp 4-2, Alan D. Wade, Save the American River Association, Inc.
As described in Chapter 1 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, as well as Chapter 18 of the 2000 REIR/SEIS, EBMUD has engaged in substantial attempts to develop a groundwater-banking program. However, no such program is currently considered to be feasible. The Supplemental Water Supply Project alternatives achieve all or most of the project objectives, which include reducing customer deficiencies.

RSp 4-3, Alan D. Wade, Save the American River Association, Inc.
The project alternatives are described in Chapter 2 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS. The most up-to-date cost information for the various alternatives and treatment options is contained in Table 12 of Appendix B to the 2000 REIR/SEIS.

RSp 4-4, Alan D. Wade, Save the American River Association, Inc.
While it is true that any of the water sources considered in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS can be treated to achieve drinking water standards, as a water supplier to over 1.2 million Californians, EBMUD has a responsibility to obtain the highest quality drinking water source possible for its customers. This responsibility was confirmed in the 1990 Hodge Decision. See also the response to "Alternatives Considered" in Chapter 3 of this document.

RSp 4-5, Alan D. Wade, Save the American River Association, Inc.
Public trust issues are addressed throughout the 1997 Draft EIR/EIS and the 2000 REIR/SEIS and were a major focus of the 1990 Hodge Decision. The Hodge Decision affirmed EBMUD's right to take delivery of American River water subject to certain public trust resource protections. All of the alternatives considered as part of the Supplemental Water Supply Project are consistent with the Hodge Decision.

e

environmental defense

finding the ways that work

November 20, 2000

Rob Schroeder
U.S. Bureau of Reclamation
Central California Office
7794 Folsom Dam Road, CA 95630
Folsom, CA 95630

Kurt Ladensack
Water Supply Improvements Division
East Bay Municipal Utilities District
P.O. Box 24055
Oakland, CA 94623

Re: Environmental Defense Comments on Draft Recirculated Environmental Impact Report/Supplemental Environmental Impact Statement for East Bay Municipal Utility District Supplemental Water Supply Project (SCH# 1996022035)

Dear Messrs. Schroeder and Ladensack:

Environmental Defense finds that the Draft Recirculated EIR/EIS, recently circulated by USBR and EBMUD, as comprised by the original draft document issued in 1997 and its supplement issued in 2000, does not consider a reasonable range of alternatives to meet water supply and quality objectives for EBMUD. The documents do not address alternatives that not only may well be both cheaper and more reliable than the projects considered, but also would not diminish the environmental resources on the Wild and Scenic American River.

The Supplemental Draft EIR/EIS does address some of the issues that Environmental Defense raised with respect to the 1997 DEIR/EIS. In particular, the revised PROSIM modeling reflects an improved characterization of projected water project operations and now reasonably reflects fishery and water supply operations on the lower American River, as well as in the interconnected CVP-SWP-Bay/Delta system.[1] In addition, in response to our request, EBMUD recently scheduled a meeting for Environmental Defense and others in the environmental community that specifically responded to issues that EDF raised as comments on the 1997 DEIR/EIS.[2] At this meeting, EBMUD staff provided a plethora of interesting information about its planning and conservation programs. In particular, the material presented was persuasive that it was appropriate for EBMUD to consider hydrological conditions that are more adverse than any that occurred in the twentieth century. The DEIR/EIS and the supplemental information provided to Environmental Defense do not, however, support the conclusion that any of EBMUD's proposed alternatives for a Supplemental Water Supply Project is reasonable or prudent.

[1] PROSIM modeling studies were provided by EBMUD to Environmental Defense on November 2, 2000.
[2] This meeting, chaired by EBMUD's John Skinner, took place on November 15, 2000.

RSp 5

RSp5-1

As EDF commented on the 1997 DEIR/EIS, consideration of the proposed diversion projects on the American River should be integrated with the hydrologic and demand issues identified above, as well as with other supply alternatives including groundwater development and interconnection to other local systems. An American River project should be selected only if it can be shown that it compares favorably to other alternatives in terms of addressing water supply reliability objectives while minimizing environmental and economic impacts. The DEIR/EIS barely addresses groundwater as a potential solution, in whole or in part, for meeting EBMUD's water supply objectives. Chapter 18 does address a potential joint Groundwater Program, but does not provide any specific information that would be necessary to assess whether it alone, or integrated with a surface project, might be a viable option for EBMUD. It is particularly noteworthy that the DEIR/EIS does not address any of the other specific groundwater projects that EBMUD is currently investigating elsewhere, including those at Bayside, Bixler and Diablo. RSp5-2

EBMUD has also not investigated whether interconnection, even if only on an emergency basis, with Contra Costa Water District might be beneficial. CCWD gets its water from the broader Central Valley Project, which comes primarily from the Sacramento River system. Hydrologic projections indicate that CCWD's CVP supplies would be most greatly threatened during a prolonged drought, such as occurred in 1928-1934 or 1987-1992. EBMUD's primary source of supply is the Mokelumne River, where shorter but more severe droughts, such as occurred in 1976-1977, are the most problematic. When considering future need during drought periods, EBMUD should, at a minimum, consider a physical connection and institutional agreement with CCWD. Such an arrangement could likely benefit CCWD as well, and could increase the reliability of both systems. (CALFED will shortly be addressing such an interconnection, along with others, in its "Bay Area Blending" investigation.) RSp5-3

The DEIR/EIS, however, does not consider a range of alternatives, but focuses only on large-scale projects on the American River (or "around the corner" on the Sacramento River). While these projects would provide an annual increase in supply to EBMUD of only 2 to 7 thousand acre-feet (TAF) of water per year, the annual diversions would be as high as 136 TAF.[3] Under any of the alternatives considered, lower carryover storage levels at Folsom Reservoir would, in some years, trigger reductions in the Department of the Interior's protective flow objectives under its Anadromous Fish Restoration Program (AFRP). EBMUD's modeling projects that these AFRP flows, for both the attraction of adult salmon and the outmigration of juvenile salmon, would be diminished by as much as 750 cubic feet per second due to the lower storage levels. In addition, the lower storage levels would result in higher temperatures in the American River affecting all life stages for salmon and steelhead. RSp5-4

[3] Comparison of PROSIM study pnaa_07z (No Action) with studies alt2_03k (Nimbus diversion) and alt4_01j (downstream diversion, EBMUD only). PROSIM projections indicate that EBMUD's American River diversions, averaging 21-27 TAF/year, would be mostly offset by reduced diversions from the Mokelumne River of 14-25 TAF/year.

EBMUD's proposed diversion at Nimbus would be of little use to its customers. Under the prevailing legal authority governing EBMUD's operations to which it agreed in 1990 (the Hodge Decision), water from this project would be available only during wet years. Figure 3-1 of the Supplemental Draft EIR/EIS illustrates the modeling results, using EBMUD's own assumptions, that under this alternative no water would be available when EBMUD would need it most (a repeat of the dry hydrology of 1976-1977, followed by a third dry year). RSp5-5

In conclusion, the alternatives to divert water from the American River (or even from the Sacramento River) would not only have significant environmental impacts on the Wild and Scenic section of the American River and its fisheries but would also be very costly for EBMUD's customers, as no existing infrastructure is available to deliver this water to the East Bay. EBMUD's projected needs are relatively small on average and mostly limited to very dry years. Its supplies on the Mokelumne River are generally adequate to meet future needs and are projected to be insufficient only under very dry hydrologic conditions. EBMUD should investigate alternatives that are better targeted to meet these specific needs. RSp5-6

Sincerely,

Spreck Rosekrans
Senior Analyst

Response to Comments of Environmental Defense

RSp 5-1, Spreck Rosekrans, Environmental Defense
See response to the "Alternatives Considered" major issue in Chapter 3 of this document.

RSp 5-2, Spreck Rosekrans, Environmental Defense
See response to the "San Joaquin County Conjunctive Storage" major issue in Chapter 3 of this document. EBMUD is continually evaluating alternatives to increase available long-term storage. However, despite significant efforts and expenditures by EBMUD, no such feasible project has been identified.

RSp 5-3, Spreck Rosekrans, Environmental Defense
EBMUD and Contra Costa Water District (CCWD) have been engaged in ongoing discussions regarding potential options for providing mutual water-supply and water-quality benefits. At this time, however, no concrete proposal has been identified that can be pursued or implemented. EBMUD will continue these discussions with CCWD and others as appropriate. Should a feasible project be identified at some future date, project-specific environmental documentation would be required at that time.

RSp 5-4, Spreck Rosekrans, Environmental Defense
The 1997 Draft EIR/EIS and the 2000 REIR/SEIS consider a wide range of alternatives for meeting EBMUD's project objectives. Annual average deliveries to EBMUD would range from approximately 15,000 acre-feet per year to approximately 27,000 acre-feet per year. As shown in Table 3-3 of the 2000 REIR/SEIS, average annual decreases in Folsom Reservoir storage would be 5,000 acre-feet under Alternative 4 and 1,000 acre-feet under Alternatives 5-8. These figures represent a reduction in Folsom Reservoir storage of 0.5 to 0.1 percent. The environmental impacts associated with these minor decreases in storage are fully described in Chapter 5 of the 2000 REIR/SEIS and have been determined to be less than significant.

RSp 5-5, Spreck Rosekrans, Environmental Defense
EBMUD's operations under Alternative 2 would be constrained by the terms of the Hodge Decision. This alternative would meet EBMUD's project objectives but would not meet its full need for water.

RSp 5-6, Spreck Rosekrans, Environmental Defense
As stated in Chapter 5 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, the Supplemental Water Supply Project alternatives are not considered to result in significant project-level impacts on fishery resources in the lower American River. The cost associated with each of the alternatives is described in Appendix B to the 2000 REIR/SEIS. The alternatives considered in these documents are appropriate and meet all or most of EBMUD's project objectives.

FRIENDS OF THE RIVER

RSp 6

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November 20, 2000

Kurt Ladensack
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Additional Comments on Draft Recirculated Environmental Impact Report/Supplemental Environmental Impact Statement, East Bay Municipal Utility District, Supplemental Water Supply Project, Sch#1996022035

Friends of the River would like to supplement its comments submitted orally on October 17 and in writing on October 19 at public hearings in Sacramento and Oakland.

Friends of the River was (and remains) a strong proponent of additional work to augment, correct, and refine the 1997 Supplemental Water Supply Project draft EIR/EIS. That document failed to examine a set of alternatives now regarded as more capable of meeting EBMUD's and Reclamation's project and contract objectives. In addition, the analysis and conclusions reached in the draft document were widely criticized and not generally accepted by most reviewers.

Three Key draft EIR/EIS Findings

The 2000 Recirculated EIR/Supplemental EIS makes progress in developing a presentation to provide needed information to EBMUD and Federal decision makers. Although there are major (indeed fatal) problems with the 2000 dEIR/EIS, the document (and associated documents

RSp6-1

developed to prepare or describe the dEIR/EIS) makes it possible to draw at least one important conclusion — alternatives analyzed in this dEIR/EIS involving points of diversion from the American River or upstream reservoirs *do not meet EBMUD's objective* to secure a supplemental dry year water supply to its existing Mokelumne River system. This is a major contribution to over 30 years of public discourse on this controversial contract.[1] Although this finding is obscurely documented, (Figure 3-1, "Annual Deliveries for Alternative 4," must be consulted and the reader must have a knowledge of EBMUD's stated requirements for deliveries in individual drought years — data not displayed in the document) the renewed insight it provides to decision makers should not be underestimated.[2]

The second key finding is the similar raw water quality, treatment requirements, and treated water quality of American River/Nimbus and Sacramento River sources.[3] RSp6-2

The third key finding is the roughly similar costs of supplemental diversions from American River/Nimbus, Sacramento River, and delta sources treated to primary (health) and secondary (aesthetic) drinking water standards.[4] RSp6-3

Additional Comments

Legal Circumstances

[1] Nothing is completely new under the sun. (*See discussion in Ecclesiates*) The failure of American River diversions to meet EBMUD dry year yield objectives played a major role in last summer's decision by the EBMUD Board of Directors to *reject* the Modified Proposal, examined as Alternative 4 in the supplemental dEIR/EIS.

[2] Delta and Sacramento River CVP EBMUD contract deliveries are not expected to suffer from these deficiencies. Again, a comparison of supplemental dEIR/EIS figures 3-1 and 3-2 show the modeled absence of deliveries from American River/Nimbus alternatives and the presence of substantial deliveries from Sacramento River/Delta alternatives during target dry years important to EBMUD planners and customers.

[3] See Table 1 Appendix B — particularly as modified by 50 percentile data provided in the City County of Sacramento comments, and table on page 30 of EBMUD September 26 Board Workshop presentation on the about to be published EIR conclusions. 50 percentile data is more representative of actual diversion conditions in dry-year supplemental supply operations.

[4] Present value costs for delta diversion facilities and operational costs are displayed at $264 to $392 million ($941 with a fresh water desalination option), and $358 to $441 million for Sacramento River costs. Costs for an alternative which *provides little to no* supplemental dry year water (a Nimbus diversion under the present contract) are $310 to $371 million dollars. Costs for American river diversions (all currently prohibited by law) range from $323 to $409 million dollars. A graphic presentation of these costs was also presented to the EBMUD Board of Directors on pages 32 to 35 at their September 26 Workshop. These cost estimates are likely to be sharpened further in the fEIS/EIR.

The supplemental dEIR/EIS fails to provide decision makers with any discussion, analysis, or conclusions about the ability to implement various alternatives under state and federal law. Given the extensive history of litigation concerning American River diversions, this is surprising, and a major deficiency in a decision document that is meant to provide guidance to EBMUD and federal decision makers.

This undescribed legal framework is most clearly relevant to American River and Nimbus diversion alternatives assessed in the dEIR/EIS. For example, Alternatives 3 and 4 *are illegal* under state law — a fact not mentioned in document. The Lower American River was added to the State Wild and Scenic Rivers System in 1972. §5093.55 of the State Wild & Scenic Rivers Act prohibits new diversion facilities for out of county diverters such as EBMUD.[5]

Diversions from Lake Natoma (formed by Nimbus Dam) *upstream* of the designated reach of the Lower American River are also affected by state wild and scenic river laws and the state public trust doctrine. How these state laws affect diversions upstream of the American River is the subject of settled litigation (the decade old Hodge decision) that essentially prevents the East Bay Municipal Utility District from utilizing this point of diversion as a dry year supplemental water supply.

In these circumstances, the Hodge court found it possible to integrate state wild & scenic river law and the public trust doctrine.[6] The public trust minimum stream-flow limitations on diversions and other conditions imposed by the Hodge Court on potential East Bay Municipal Utility District diversions were assumed to be consistent with the State Wild & Scenic Rivers Act — which also controls the actions of state agencies and regulators.[7] (The decision dealt with the special case of a contemplated new use by a political subdivision of the State of California of an existing federal diversion facility upstream of a designated river under the authority of a federal water supply contract that predates the inclusion of the river in the state and federal wild & scenic river systems.)

[5] "...[N]o dam, reservoir, diversion or other water impoundment facility...shall be constructed on any river designated [as a component of the California wild and scenic river system], nor shall any water diversion facility be constructed on any river unless and until the secretary determines that such facility is needed to supply domestic water to the residents of the county or counties through which the river flows, and unless and until the secretary determines that facility will not adversely affect its free-flowing condition"

[6] The California Wild & Scenic Rivers Act is "intended as a directive to preserve public trust values and is thus a codification of the State's public trust authority." (p.44, Hodge decision)

[7] § 5093.56 prohibits state government cooperation in projects adversely affecting rivers in the state system (including upstream or downstream projects).

> ...[N]o department or agency of the state shall assist or cooperate, whether by loan, grant, license, or otherwise with any department or agency of the federal, state, or local government, in the planning or construction of any dam, reservoir, diversion, or other water impoundment facility that could have an adverse effect on free-flowing condition and natural character of the river segments designated in [the state w&s system].

RSp6-4

In spite of the extensive material submitted to Reclamation concerning this subject, the supplemental dEIR/EIS does not discuss these matters. Furthermore, it is difficult or impossible to determine how EBMUD (and/or Reclamation) intends to determine the details of potential future compliance with the Hodge Court decision — implementation matters which may restrict the already sharply limited usefulness of alternatives with diversion sites limited by the Hodge Court.[8]

A major thrust of our comments on the 1997 draft EIS/EIR concerned the Reclamation's obligations and responsibilities under Federal law. The U.S. Supreme Court's New Melones decision established a conditional obligation of Federal water authorities to comply with California law. The Central Valley Improvement Act reaffirmed the requirement of Reclamation to comply with State law. However, the contract planning documents are silent on Reclamation's perspectives on how a potential contracting action and other subsequent actions will implement this Federal requirement to comply with State law.

Just as importantly, this document does not discuss or establish any protocols for how Reclamation and Federal regulatory agencies such as the Corps of Engineers intends to comply with Federal law in the selection of diversion sites, siting of pipelines, and accompanying operational protocols.

For example, since 1982 the Lower American River has been a component of the Federal Wild and Scenic River system. This statute imposed obligations on Federal agencies that are similar to those imposed on State agencies under the State Wild and Scenic Rivers Act.[9]

The supplemental dEIR/EIS neither recognizes nor develops any legal perspective on whether or how potential contracting actions will comply with the Federal Wild and Scenic Rivers Act. We believe that the statute does not permit construction of major new diversions on federal wild and scenic rivers — a legal perspective made even stronger when more functional alternatives are

[8] Diversions to ground water storage or to third parties are not permitted under the Hodge decision, yet the supplemental dEIR/EIS purports to programmatically assess groundwater storage as a dry year yield component of Hodge constrained diversions, again without discussing these legal constraints. In addition, the Hodge Court has not established the operational details of how limitations on diversions are to be coordinated with Folsom Reservoir storage and operations, or the Hodge reservoir reserve storage requirement.

[9] It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in *free-flowing condition*, so that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. §1(b) ' "Free-flowing," as applied to any river or section of a river, means existing or flowing in natural condition without impoundment, *diversion*, straightening, rip-rapping, or other modification of the waterway. §16(b). (*Emphasis added*) The obligations of Federal agencies to implement the Federal Wild and Scenic Rivers Act in this circumstance are outlined in sections 7, 10, & 12 of the Federal Act.

available at similar costs. We believe that potential federal contract amendments for upstream (Nimbus) diversions must undergo a rigorous wild and scenic rivers act §7 decision review by Interior similar to the decision review under state law by Judge Hodge.

The supplemental dEIR/EIS does not undertake such a review. Similarly, a federal work product of any such review, such as the draft amendatory contract developed pursuant to the 1997 contracting dEIS, bears no indication that it has been shaped by any such statutorily required review.

Clearly, the ability to implement alternatives 2,3, & 4 is most severely impaired by the operation of the Federal (and State) wild and scenic rivers acts. Downstream diversions with state-of-the-art fish screens and with appropriate limitation on diversions procedures to allocate CVP shortages or meet delta water quality and fishery requirements are unlikely to result in an unfavorable §7 review.

Implications of Functional Diversion and Conveyance Facilities for EBMUD

Reclamation's July 26, 2000 publication "Water Needs Assessment, CVP Long-Term Contract Renewals, Focus on EBMUD's Assessment" developed for the potential EBMUD contract amendment and/or renewal (but unfortunately not included in the supplemental dEIR/EIS) highlights an important issue not well confronted in this dEIR/EIS — a decision by Reclamation and EBMUD to construct diversion, treatment, and conveyance facilities could result in providing a Bureau water contractor with a substantial surplus of water in many years. In the words of Reclamation's spreadsheet, in a future average water year EBMUD will have an unmet demand of *negative* 256,300 acre feet — in plain words, a quarter million acre feet of surplus Mokelumne and CVP water would theoretically be available to EBMUD in a typical year.

RSp6-5

Given Reclamation's important responsibilities to protect flow dependent Delta public trust resources and the recognition that EBMUD deliveries represent potential depletions from a somewhat fixed CVP yield, it would seem important for the dEIR/EIS to recognize, discuss, and adopt some contract or other strategies to ensure that legitimate public interests are protected.

The supplemental dEIR/EIS does not appear to accomplish this task. This task is particularly relevant if a diversion site(s) unconstrained by the Hodge decision is implemented.[10] Important questions such as the purpose and beneficiaries of contract deliveries, the effect on existing and contemplated programs to conserve and reclaim water in and near the EBMUD service area, and a realistic assessment of projected need, need to be satisfactorily addressed in the contract amendment planning documents.

Reclamation Project Objectives

RSp6-6

[10] Again, the Hodge decision dramatically limits dry year diversions, prevents diversions to groundwater storage, and limits the purpose of diversions to use by EBMUD.

The supplemental dEIR/EIS identifies EBMUD planning objectives, but fails to identify the Reclamation's objectives. It seems prudent to attempt to attempt to define these objectives. The list might include: comply with state and federal law and Reclamation's public trust responsibilities; minimize adverse impact of contract implementation on other CVP contractors, maximize opportunities for contract implementation to achieve CalFed goals, assure that contract implementation meets contractor's realistic goals and need for a supplemental dry year water supply from CVP yield.

EBMUD Project Objectives

Some of the historic controversy associated with EBMUD programs to secure a dry year supplemental water supply has centered around point of diversion issues. EBMUD's perspective has been well summarized in the April 22, 1997 Policy #81:

> Protect the public health of its customers by serving high quality water from the best available source in preference to reliance on additional treatment.

The insights developed in the supplemental dEIR/EIS may have made this policy less relevant to EBMUD decision making. RSp6-7

According to this document, Delta, Sacramento and American River supplies all require (and could benefit from) treatment facilities significantly more capable than the treatment systems now used by the District to treat its Mokelumne River supply. It has been widely noted that other water utilities have demonstrated the ability to successfully treat and use these sources of supply.

The District's Mokelumne River "[i]n line filtration is not considered an 'approved' technology in California and the in-line filtration plants are operated under a permit that is specific for the high quality Mokelumne River sources water."[11] Apparently not only will additional treatment be needed if any non-Mokelumne supplies are introduced into the EBMUD system, but perhaps EBMUD and is customers may find someday wish to invest in additional treatment infrastructure so its Mokelumne supply can benefit from "approved" technologies and no longer rely on special permit exemptions.
Again, not discussed in the supplemental dEIS/EIR is the observation by many that increased investments in treatment promise higher quality water from EBMUD terminal reservoirs — and. enhance system reliability for the District as a consequence..

Finally, note that American River/Nimbus supplies are either *not available* at all or *not available* for making deliveries when most needed by the District. No feasible storage options have been RSp6-8

[11] *Draft Recirculated EIR, Supplemental EIS*, Appendix B, Technical Memorandum, p. 2.

identified that can confidently be implemented by the District to meet its identified dry year supplemental needs from Hodge constrained sources in the foreseeable future.

Detailed Comments

We have worked with the City and County of Sacramento to help prepare their comprehensive and detailed comments submitted on this dEIR/EIS. We generally associate ourselves with their detailed review and comments. RSp6-9

Sincerely yours,

Ronald Stork

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Response to Comments of Friends of the River

RSp 6-1, Ronald Stork, Friends of the River
As listed on page 2-1 of both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS, EBMUD's project objective is to "make use of its water service contract with Reclamation for delivery of American River water consistent with the conditions set forth in the Hodge Decision" so as to achieve several purposes, one of which is to "reduce customer deficiencies." EBMUD's project objectives do not require an alternative to fully meet EBMUD's dry-year need for water in order for an alternative to be considered feasible.

RSp 6-2, Ronald Stork, Friends of the River
As described in Appendix B to the 2000 REIR/SEIS, there are substantial differences in the quality of the various water sources considered. In addition to water quality constituents, the Sacramento River and the Delta are at considerably greater risk of contamination than is the American River, as described in Table 2 of Appendix B to the 2000 REIR/SEIS.

RSp 6-3, Ronald Stork, Friends of the River
As shown in Tables 11 and 12 of Appendix B to the 2000 REIR/SEIS, there are substantial cost differentials associated with the various alternatives and treatment options. One key issue is that Alternatives 2 and 3 are the only alternatives that would provide a maximum delivery capacity to EBMUD of 350 cubic feet per second (cfs) to meet EBMUD's planned/emergency outage need. In addition, all treatment options for alternatives involving delivery from the American River provide water quality similar to EBMUD's current finished water quality, whereas substantial additional costs would be required to provide such quality from a Sacramento River delivery location.

RSp 6-4, Ronald Stork, Friends of the River
The comments regarding the applicability of the Wild and Scenic Rivers Act to Alternatives 3 and 4 are noted. These alternatives may require legislative action before they can be implemented. See response to Comment RS 1-1 regarding the applicability of the Wild and Scenic Rivers Act to Alternative 2 and its relationship to the Hodge Decision.

RSp 6-5, Ronald Stork, Friends of the River
As noted in this comment, Reclamation has determined that EBMUD's need for a supplemental water supply is well founded and consistent with other CVP contractors' needs for water (see Appendix C to this document). The fact that EBMUD's (as well as many other water purveyors') existing water supply system has surplus water in average years does not affect EBMUD's need for water during drought conditions.

RSp 6-6, Ronald Stork, Friends of the River
The purpose and need for the project are described on page 1-2 of the 1997 Draft EIR/EIS. It is important to recognize that EBMUD has an existing contract with Reclamation. EBMUD is considering alternative methods to make use of that contractual water supply, some of which would require an amendment to the existing contract. Should Reclamation choose to adopt the No-Action Alternative, the existing contract would remain in place.

RSp 6-7, Ronald Stork, Friends of the River
Appendix B to the 2000 REIR/SEIS describes in detail the water quality and treatment issues related to the alternatives considered in both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS. The water treatment provided as part of the Supplemental Water Supply Project alternatives would not noticeably alter EBMUD's terminal reservoir water quality nor, by itself, enhance EMBUD system reliability. Additionally, increasing treatment capabilities at

EBMUD's existing facilities would not meet the project objectives as described in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS.

RSp 6-8, Ronald Stork, Friends of the River
The alternatives described in the 1997 Draft EIR/EIS and the 2000 REIR/SEIS meet all or most of the project objectives. A storage component is not an integral element of the project alternatives, although such a component could enhance the ability of Alternatives 2 and 4 to fully meet EBMUD's dry-year water needs.

RSp 6-9, Ronald Stork, Friends of the River
See responses to comments of the County of Sacramento (Letter RL 14) and the City of Sacramento (Letter RL 13) in this document.

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November 20, 2000

Mr. Kurt Ladensack
Water Supply Improvements Division
East Bay Municipal Utilities District
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Dear Mr. Ladensack:

The League of Women Voters of California and the League of Women Voters of the Bay Area submit these comments concerning the Recirculated Environmental Impact Report/Supplemental Environmental Impact Statement to the 1997 draft EIS/EIR on the EBMUD Supplemental Water Supply Project. We note the introduction's statement concerning the purpose of the supplement: " . . . Emphasis is directed toward potential effects related to American River fisheries, endangered species, CVP water users, pipeline construction, and biological resources in the EBMUD service area . . . ."

The League commends you for expanding your analysis of alternatives and including extensive review of possible water quality treatment scenarios and projected costs in Appendix B. However, we question whether the supplement as presently written fulfills all the goals stated above. We agree with the comments submitted by several environmental organizations, dated Oct. 19, 2000, and have attached them to this letter. The following are further questions for evaluation in the final document.

Alternative # 9: Include an analysis on increased conservation and recycled water use. The League asks that the final supplement include an alternative # 9 that would analyze increasing conservation and recycled water use, over and above the level of conservation and reclamation included in EBMUD's present Integrated Resources Plan. Could this save much more of the high quality Mokelumne River water for consumer use in dry years? While we recognize the many ambitious programs now underway in the EBMUD area, increasing conservation and recycled water programs could mean less reliance on and development of new surface supplies as proposed. RSp7-1

What are the costs for aggressively expanding these programs?
Would this result in lower supplemental diversions than the amount projected in the alternatives?
Would the net supplemental water supply costs be less because of lower costs for conservation programs?
How would increasing conservation and recycled water use affect the water quality for EBMUD's customers?
And how would this affect supplies in drought years?

Fishery and Habitat Impacts: Include additional information for each alternative in relation to reduced flows, habitat changes and the presence of endangered and other special species affected by each alternative. The League's basic concern is the report's assumption that a 10% or less impact is insignificant, thus not requiring mitigation, as stated under Significance Criteria, page 5-9. We question whether this is "reasonable" as stated in the report. *What is the scientific basis for choosing this 10% figure?* We look forward to a greater evaluation in the final document and submit the following questions, raised by League members, that relate to this issue. RSp7-2

Where does the supplement or the Draft EIR/EIS consider the cumulative impacts on fisheries and their habitat from all proposed diversions in the area? For example, the discussion on page 5-10 indicates that changes in American River flows, based on modeling for alternatives 4 through 8, are well below the "significant threshold." But by itself each alternative does not provide a complete analysis because the impact is presented as an isolated change from current conditions. RSp7-3

The League requests that the supplement include a list of American River water supply diversions, both existing ones now in operation and contracts that have not yet been approved for operation. A project's impacts should be analyzed together with impacts of all other diversions that are taking place. The EIR/EIS should consider the project impacts together with all of the other diversions. RSp7-4

What are the cumulative impacts on fisheries and their habitat from reduced flows? What certainty is there that a +/- 2% change in flows would not be significant? We question this because of former reduced flows that have impacted the river. The report states (p. 5-3) "the aquatic environment and fish fauna of the lower American River have (already) been altered substantially . . . including construction of early dams at various points along the river . . . ." RSp7-5

How will implementation of the CalFed Record of Decision impact fisheries in this area? Will CalFed's projects have any impact on the Hodge Decision and/or the endangered species act? The report only states that for purposes of this project evaluation (p. 3-5) (among other parameters) instream flow requirements will stay the same. RSp7-6

What are the potential and combined impacts of the alternatives on all endangered and threatened fisheries? The report lists three additional listings since 1997 (page 5-1) and states that impacts for spring run chinook salmon and for steelhead were covered in the 1997 draft. Also, winter run Chinook was reported as threatened. The supplement's discussion on endangered species seems skimpy. We are concerned there may have been additional changes with fisheries that were analyzed in the 1997 draft, almost four years ago. RSp7-7

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What are the impacts on suitable fisheries habitat from increases in water temperature in the lower American River? Again, we are concerned with the cumulative impact and would like this issue addressed. The report states that current modeling shows there would be increases in water temperature of 0.1° F in March, July and October. *What evidence is there that even this apparently small increase would not be lethal or harm species of concern?* RSp7-8

What is your rationale for claiming that a mortality increase of 1-3% is insignificant for endangered and other special status species in the Sacramento, Shasta and Trinity Lakes? The discussion indicates that for Alternative 2, the mortality for spring run would increase by about 1.7%, for Alternative 3 by about 3% and for other species by about 1%. Please explain why this is not significant. RSp7-9

Should the number of species be the sole criterion for measuring the loss of fish in the Fish Exclusion Facility? The discussion indicates that alternatives 5-8 would have more significant impacts because there are a greater number of protected species in the Delta. *Should the report also evaluate which alternative would produce the greatest number of eggs, larvae and juveniles during allowed pumping periods?* RSp7-10

Would Alternative #8 result in an increase in reverse flows since it is situated in the Delta? RSp7-11

Water Quality: Elaborate further on long range water quality issues and future regulations in relation to the alternatives.
Water quality, including drinking water, is a very real concern to League members living in the Bay Area and throughout the state. The supplement's analysis is presented primarily in Appendix B, and treatment alternatives considered for an American River diversion are identical to those considered for the Sacramento River.

As stated, Scenario B for all alternatives seeks to ". . . comply with all drinking water regulations, and reasonably match current finished water quality . . ." within the EBMUD service area (page 13). It also states that ". . . new more stringent pathogen control requirements will soon be required by impending regulation . . ." These are the Long Term-2 Surface Water Treatment Rule and the Stage 2 D/DBP rule mandated by federal law concerning disinfectants and their byproducts. Because of these factors, it appears that under Scenario B all alternatives proposed for both the American and Sacramento Rivers can be treated to reasonably meet a water quality equivalent to EBMUD's current supplies as well as meet pending regulations. While American River water would have slightly less salinity depending on the diversion point, its treatment would require clarification, disinfection and the same level of pretreatment described for the Sacramento River diversions because of pathogenic risks posed by municipal wastewater discharges and agricultural run off (page 14). Based on figures presented in Table 11, it appears that the capital costs differences of Alternatives 4 (American River) and 5, 6, 7 (Sacramento RSp7-12

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River) range between a high of $ 80 mil. to a lower figure of $32 mil. with greater costs projected for Alternative # 8 (Delta). (Table 11, page 32)

What are your basic assumptions behind the cost calculations for each alternative? Do you use the same assumptions and calculations for all alternatives in the supplement? (We refer to the attached Oct 19, 2000, letter from environmental organizations that suggests the true costs of American River/Lake Natoma diversion are underestimated). What would be the average capital, and operation and maintenance cost increases to EBMUD customers, both residential and industrial, for each of the alternatives mentioned above? Are the "O and M" costs listed in Table 11 based on the same assumptions? And what costs would EBMUD have to incur to upgrade existing treatment facilities in order to meet pending drinking water standards without including the costs of a supplemental water supply project? Would reverse osmosis be as effective as ultra violet disinfection as a treatment for alternatives proposed?

The League has long advocated the reserve of stream flows for protection of fish and wildlife habitat and other instream uses We support the management of water as a resource with an emphasis on conservation and on high standards of water quality. Our positions, too, wish to minimize the reliance of water exported through or around the Delta. Rsp7-13

We thank you for listening to the League's point of view and for responding to our questions.

Sincerely,

Gail D. Dryden, President
League of Women Voters of California

Tamra Hege, President
League of Women Voters of the Bay Area

Enclosure

4

Response to Comments of the League of Women Voters of California

RSp 7-1, Gail D. Dryden and Tamra Hege, League of Women Voters of California
As described extensively in Chapter 1 of the 1997 Draft EIR/EIS, EBMUD has aggressively pursued urban water conservation practices. The Updated WSMP EIR, completed in 1993 and incorporated by reference, describes these practices, different alternatives, and EBMUD's long-term conservation strategies. Detailed analysis of urban water conservation is outside the scope of the environmental analysis required for the Supplemental Water Supply Project. All of the alternatives described in this comment were evaluated in the Alternatives Screening Report (Appendix B to the 1997 Draft EIR/EIS) and were determined to be infeasible. Therefore, they were not carried forward into detailed analysis.

RSp 7-2, Gail D. Dryden and Tamra Hege, League of Women Voters of California
As stated in Chapter 5 of both the 1997 Draft EIR/EIS and 2000 REIR/SEIS, the 10 percent criterion for significance was considered reasonable for discerning potential real impacts from those attributable to modeling technicalities. It should also be recognized that this significance criterion was applied to changes in the environmental variables, not changes in fish abundance or survival. Furthermore, the predicted increases in the frequency of flows and water temperatures above specific thresholds for proposed or listed species were much smaller than 10 percent (typically 0-1 percent and not exceeding 4 percent). Thus, even a 5 percent significance criterion would have resulted in the same impact conclusions for these species.

RSp 7-3, Gail D. Dryden and Tamra Hege, League of Women Voters of California
As noted on page 1-2 of the 2000 REIR/SEIS, the cumulative impact analysis presented in the 1997 Draft EIR/EIS is representative of cumulative effects that would be anticipated under the alternatives considered in the 2000 REIR/SEIS. Please refer to Chapter 5 of the 1997 Draft EIR/EIS for a full discussion of cumulative effects on fisheries. Since publication of the 1997 Draft EIR/EIS, the Sacramento Water Forum final EIR has been published. In that document, an additional cumulative analysis was conducted that included an EBMUD delivery from the Folsom South Canal. That final EIR concluded that cumulative effects would be essentially identical regardless of whether deliveries were made to EBMUD at an upstream location.

RSp 7-4, Gail D. Dryden and Tamra Hege, League of Women Voters of California
Table 3-2 in the 2000 REIR/SEIS and Table 3-3 in the 1997 Draft EIR/EIS provide a reasonable estimate of future water demands on the lower American River and include all major diversions of water. These demands were used in all of the hydrologic modeling conducted for the Supplemental Water Supply Project and are consistent with other recent studies.

RSp 7-5, Gail D. Dryden and Tamra Hege, League of Women Voters of California
See response to Comment RSp 7-3 above.

RSp 7-6, Gail D. Dryden and Tamra Hege, League of Women Voters of California
See response to the "Relationship to CALFED" major issue in Chapter 3 of this document.

RSp 7-7, Gail D. Dryden and Tamra Hege, League of Women Voters of California
Both the 1997 Draft EIR/EIS and the 2000 REIR/SEIS fully evaluated project-related and cumulative impacts on fish species, including those previously and more recently listed under the state and federal endangered species acts. These effects were determined to be less than significant at a project level and significant at a cumulative level. Reclamation is in formal consultation with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service, as required by the Endangered Species Act.

RSp 7-8, Gail D. Dryden and Tamra Hege, League of Women Voters of California
Based on professional judgment, a model-predicted average temperature increase in March, July, and October of 0.1°F would not result in identifiable impacts on fish. As noted in the 1997 Draft EIR/EIS, such an increase is considered to contribute to cumulative impacts on fishery resources.

RSp 7-9, Gail D. Dryden and Tamra Hege, League of Women Voters of California
The Reclamation Salmon Mortality model is not intended to precisely represent the overall population effects of changes in CVP operations. Rather, it is a comparative model of potential temperature effects on early life stage survival. Therefore, a model-predicted slight increase in mortality during early life stages cannot be used to accurately represent survival in other life stages. In addition, survival is high under both the no-project and with-project condition. Further, the model cannot reflect the real-time operations and flexibility of the CVP to manage situations where potential effects may occur. Therefore, slight increases in mortality are not considered to be significant.

RSp 7-10, Gail D. Dryden and Tamra Hege, League of Women Voters of California
Prevailing professional judgment indicates that a Delta diversion would likely have the greatest impact on fish resources for the following reasons:

- A greater number of fish species and populations inhabit or pass through the Delta than the Sacramento or American Rivers.
- The species of concern generally spawn upstream of or in the Delta, and the eggs, larvae, and young of these species typically remain in or disperse downstream into the Delta.
- One of the key reasons cited for the decline of salmon population relates to the movement of these species into the central Delta because of water diversions in the central and south Delta. Therefore, increasing diversions from this location would result in proportionally greater effects.

RSp 7-11, Gail D. Dryden and Tamra Hege, League of Women Voters of California
Alternative 8 could contribute slightly to reverse flow conditions if such conditions were already occurring.

RSp 7-12, Gail D. Dryden and Tamra Hege, League of Women Voters of California
The cost estimates presented in the 2000 REIR/SEIS were based on the description of alternatives included in Chapter 2 of treatment options were included in Tables 11 and 12 of Appendix B to allow the public and decision-makers to better understand the economic impact of a wider range of alternatives. Common fundamental assumptions were made. Unit costs for labor, power, and chemicals were common to all alternatives. Construction costs for conveyance facilities were based on detail estimates prepared for Alternatives 2 and 3. For the other alternatives, these base

construction cost estimates were adjusted to account for different lengths of pipeline, type of terrain crossed, and capacity. The treatment capital costs were developed for each alternative based on the selected process configuration and required capacity. Operating costs considered the volume of water delivered under each alternative. These volumes, listed below, were determined by reservoir operations modeling described in Chapter 3 of the REIR/SEIS.

Alternative	Capacity, cfs	Average Delivery, AF/yr
2	350	27.0
2, 4	155	15.1
3, 5, 6, 7	350	21.3
5, 6, 7, 8	155	21.3

Approximately $60 M dollars of capital expense for a District supplemental supply project will increase EBMUD customer rates by 1 percent. Therefore, as an example, a project with a capital cost of $300 M would raise customer rates by approximately 5 percent.

The District has adopted a budget of $27 M for improvements at its treatment plants in the next five years. These projects include changes to comply with regulatory requirements, as well as improvements to operating efficiency, performance effectiveness, and reliability. The current budget for plant improvements does not reflect any changes that might be associated with a supplemental supply project.

The purpose of ultraviolet disinfection is to inactivate pathogens. Reverse osmosis would also disinfect, not by inactivating pathogens, but by removing them. In addition, reverse osmosis would remove salinity and organic material. However, reverse osmosis is much more expensive and creates a brine that is difficult to dispose of.

RSp 7-13, Gail D. Dryden and Tamra Hege, League of Women Voters of California

The commenter's position regarding water management is noted.

Via Email and US Mail
November 20, 2000

Rob Schroeder
U.S. Bureau of Reclamation
Central California Office
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Folsom, CA 95630

Kurt Ladensack
Watersupply Improvements Division
East Bay Municipal Utility District
P.O. Box 24055
Oakland, CA 94623

Comments on Draft Recirculated EIR/Supplemental EIS, EBMUD Supplemental Water Supply Project, Sch#1996022035

Gentleman,

The Natural Resources Defense Council (NRDC) has been a historic participant in important Reclamation decisions involving the American River division (see, e.g., NRDC v. Stamm).

We would like to generally associate ourselves with the letter submitted on behalf of Clean Water Action, Clean Water Fund, Friends of the River, Planning and Conservation League, Save the American River Association, Sierra Club, and Save the Bay concerning the above matter on October 19th of this year.

Thank you for your consideration.

Sincerely,

Hamilton Candee
Senior Attorney

RSp 8

Response to Comments of the Natural Resources Defense Council

RSp8-1

RSp 8-1, Hamilton Candee, Natural Resources Defense Council
Comment noted. See responses to Letter RSp 2.