

APPENDIX E

RESPONSES TO COMMENTS ON THE DRAFT EA/IS

Response to Comments

Responses to comments that were received during the 30-day public comment period on the Draft Environmental Assessment/Initial Study (EA/IS) for the Fresno County Service Area (CSA) 34 Winchell Cove Pipeline Project (Proposed Project) from July 8th to August 8th, 2011 are provided below. The three comment letters received are indexed in **Table 1**. The comment letters, which have been bracketed and numbered for ease of reference, are presented immediately after the responses.

Once an issue is addressed, either in the General Responses or in an individual response to a comment, subsequent responses to similar comments reference the initial response. This format eliminates redundancy where multiple comments have been submitted on the same issue. Where appropriate, the responses to comments include specific locations of additional information added to the Final EA/IS. All changes to the EA/IS text are indicated in underline (added text) and strike-out (~~deleted text~~).

TABLE 1
COMMENT LETTERS RECEIVED

Comment Letter	Name/Title	Agency/Organization	Date
1.	Assistant Field Supervisor, Sacramento Fish and Wildlife Office	U.S. Fish and Wildlife Service	August 8, 2011
2.	Kathleen Martyn Goforth, Manager Environmental Review Office Communities and Ecosystems Divisions	U.S. Environmental Protection Agency	August 10, 2011
3.	Jeffrey R. Single, Ph.D., Regional Manager	California Department of Fish and Game	August 11, 2011

1.0 General Response to Comments

General Response 1 – Concerns Regarding the Independent Utility of the Proposed Action

Summary of Comments: Several comments received requested additional information that demonstrates the “independent utility” of the Proposed Project from future development in CSA 34, including Millerton New Town.

Response: As described in Section 1.3 of the EA/IS, the concept of “independent utility” relates to the inter-relationship and dependency of actions. If an action 1) does not automatically trigger other actions which may require environmental analysis, 2) does not require that other actions are taken previously or simultaneously in order to proceed, and 3) is not an interdependent part of a larger action and depend on the larger action for its justification, then the action demonstrates “independent utility” and the scope of the environmental analysis may be for the direct, indirect, and cumulative impacts of that action only (40 CFR 1508). The following discussion clarifies how the Proposed Action fulfills each of these conditions, thereby demonstrating “independent utility.”

Condition 1 – Does the action automatically trigger other actions which may require environmental analysis?

Under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA), impacts caused by a secondary action that are triggered by a proposed action are referred to as “indirect effects” of the proposed action. Potential indirect effects of the Proposed Action were discussed in Section 3.10 of the EA/IS. As discussed therein, while the infrastructure developed as a result of the Proposed Action may eventually be utilized to provide water supply to future developments within the CSA 34 service area, no changes to water rights or permitted capacity of the CSA 34 water system would result from the Proposed Project. Future development projects would be required to be analyzed in separate environmental documents under CEQA and NEPA. This future analysis would be required to include a project-specific analysis of the available water supply and potential impacts to CSA 34 and Millerton Lake. For example, Millerton New Town Specific Plan is currently undergoing NEPA review by the Bureau of Reclamation (Reclamation) for the approval of water transfers to serve the development. Furthermore, as described in the engineering memorandum provided as Appendix D of the Final EA/IS, the proposed parallel pipe cannot, by itself, be growth-inducing due to other constraints at the downstream end of the system including the capacity of the Surface Water Treatment Plant (SWTP) and the single pipeline from Millerton Road to the SWTP. Reclamation and the County can approve the Proposed Action, without automatically triggering the approval of future developments that may utilize water from the CSA 34 system, and vice versa. Further discussion of indirect effects is provided in **General Response 2**.

Condition 2 - Does the action require that other actions are taken previously or simultaneously in order to proceed?

The Proposed Action does not require that other actions are taken previously or simultaneously in order to proceed.

Condition 3 - Is the action an interdependent part of a larger action and depend on the larger action for its justification?

The Proposed Action is needed under existing conditions to serve existing customers within CSA 34. The engineering memorandum provided as Appendix D of the Draft EA/IS has been updated and replaced within the Final EA/IS. The updated memorandum notes that the existing pipeline is at or beyond the mid-point of its useful life, which was estimated to be between 35 to 50 years (under normal conditions the design life of ductile iron pipe is supposed to be 100 years). The integrity of the portion of the existing pipeline beneath Millerton Lake is inherently reduced because pipelines under water are more likely to experience corrosion. The risk of corrosion is increased due to the lack of a protective polyethylene wrap, the installation of which is currently standard practice to minimize external corrosion. The integrity of the existing pipeline is further reduced from damage likely caused by the additional stress from the damaged support structures of the original platform that held the pumps. Furthermore, as described in Section 1.2 of the EA/IS, continued use of the single existing pipeline could cause damage to the newly replaced pumps, result in large energy demands due to inefficient operation of the pumps and motors, and result in major damage to the pipeline itself in the long-term, resulting in substantial costs associated with repairs. Because the Brighton Crest community relies on this single pipeline for the sole conveyance of raw water from Millerton Lake, failure of the existing pumps or pipeline would result in CSA 34 failing to reliably provide safe and reliable pumping and conveyance

capability to its customers, which is required by the California Department of Public Health. Furthermore, any downtime due to repair would result in serious consequences for the County including, but not limited to, being required to finance the delivery of raw water from a distance of 3 miles (Fresno) for the community for an extended duration and potential exposure to liability arising from water quality and sanitation issues. These reasons alone provide sufficient justification for the need of the Proposed Action; therefore, the Proposed Action does not depend on any other action for its justification.

General Response 2 – Indirect Effects

Summary of Comments: Several comments noted that there are a number of development projects in the vicinity that could be served by the Proposed Project and requested that the analysis within the EA/IS be expanded to consider full build-out of developments that may be provided water through the proposed pipeline and CSA 34 infrastructure.

Response: NEPA and CEQA require the analysis of growth inducing effects. However, “[t]he detail required in any particular case necessarily depends on a multitude of factors, including, but not limited to, the nature of the project, the directness or indirectness of the contemplated impact and the ability to forecast the actual effects the project will have on the physical environment. In addition, it is relevant, although by no means determinative, that future effects will themselves require analysis...” (*Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal. App. 4th 342, 369). The Third Appellate District of the State of California has stated that a detailed discussion of indirect effects is not required if 1) the purpose and nature of the project was not to facilitate additional development after the project is completed; 2) the contemplated impact on growth is indirect; and/or 3) if any future effects of the additional development will undergo NEPA/CEQA analysis (*Clover Valley Foundation v. City of Rocklin/Town of Loomis v. City of Rocklin, Super. Ct. No. 34-2007-00002871-CU-WM-GDS*). As discussed below, the Proposed Action fulfills all three of these guidelines and, therefore, the analysis of the indirect effects included in Section 3.10 of the EA/IS is appropriate and sufficient and no further detail or analysis is required.

As described in detail within the engineering memorandum included as Appendix D of the EA/IS and summarized in Section 1.2, the sole purpose of the Proposed Action is to provide system flexibility, improve water supply reliability, and provide more efficient operations in the delivery of raw water to the *existing* users within CSA 34, not to facilitate additional development.

As described in Section 3.10 of the Final EA/IS, while the infrastructure may eventually be utilized to provide water supply to future developments within the CSA 34 service area, it removes only one of the numerous obstacles and approvals required in order for this growth to occur; therefore the contemplated impact associated with growth is indirect.

The CSA 34 boundary consists of approximately 1,903 acres and includes the Millerton New Town Specific Plan Area and Brighton Crest. The delivery of Central Valley Project (CVP) water from Millerton Lake through the Winchell Cove Pipeline is subject to an existing contract between Reclamation and CSA 34 (Contract No. 14-06-200-8292A). The contract service area for municipal and industrial use of water delivered through the Winchell Cove Pipeline is limited to Brighton Crest, and was recently expanded to include an 83-acre area within Millerton New

Town referred to as “Tract 4870”. The existing boundaries of CSA 34 and the authorized contract service area for delivery of water are shown in **Figure 1** of this Response to Comments. As stated in a March 8, 2010 letter from Reclamation to the County:

“...the expansion of the Friant Division of M&I [municipal and industrial] place-of-use does not authorize deliveries of water to the remaining portion of the Millerton New Town lands until all necessary transfer or exchange agreements are executed and approved by Reclamation. Additional environmental documentation will also be required before Reclamation may authorize delivery of water to the remaining portion of Millerton New Town.” (Reclamation, 2010).

Build-out of the existing place of use for Brighton Crest and Tract 4870 would result in the addition of 215 previously approved residential units (54 within the Brighton Crest Community and 161 within Tract 4870). The build-out of these homes is not contingent on the construction of the Proposed Action, and has previously undergone CEQA and NEPA review.

Similar to Millerton New Town, which is currently undergoing independent NEPA review by Reclamation for the approval of water transfers to serve the development, any future development within CSA 34 would be required to be analyzed in separate environmental documents under CEQA and NEPA. Additional projects listed within Section 3.0 of the EA/IS, including Ventana Hills, Mira Bella, Friant Ranch, and Wellington Ranch, are not located within the contract service area for municipal and industrial use of water delivered through the Winchell Cove Pipeline, and thus would not be served by the proposed water pipeline.

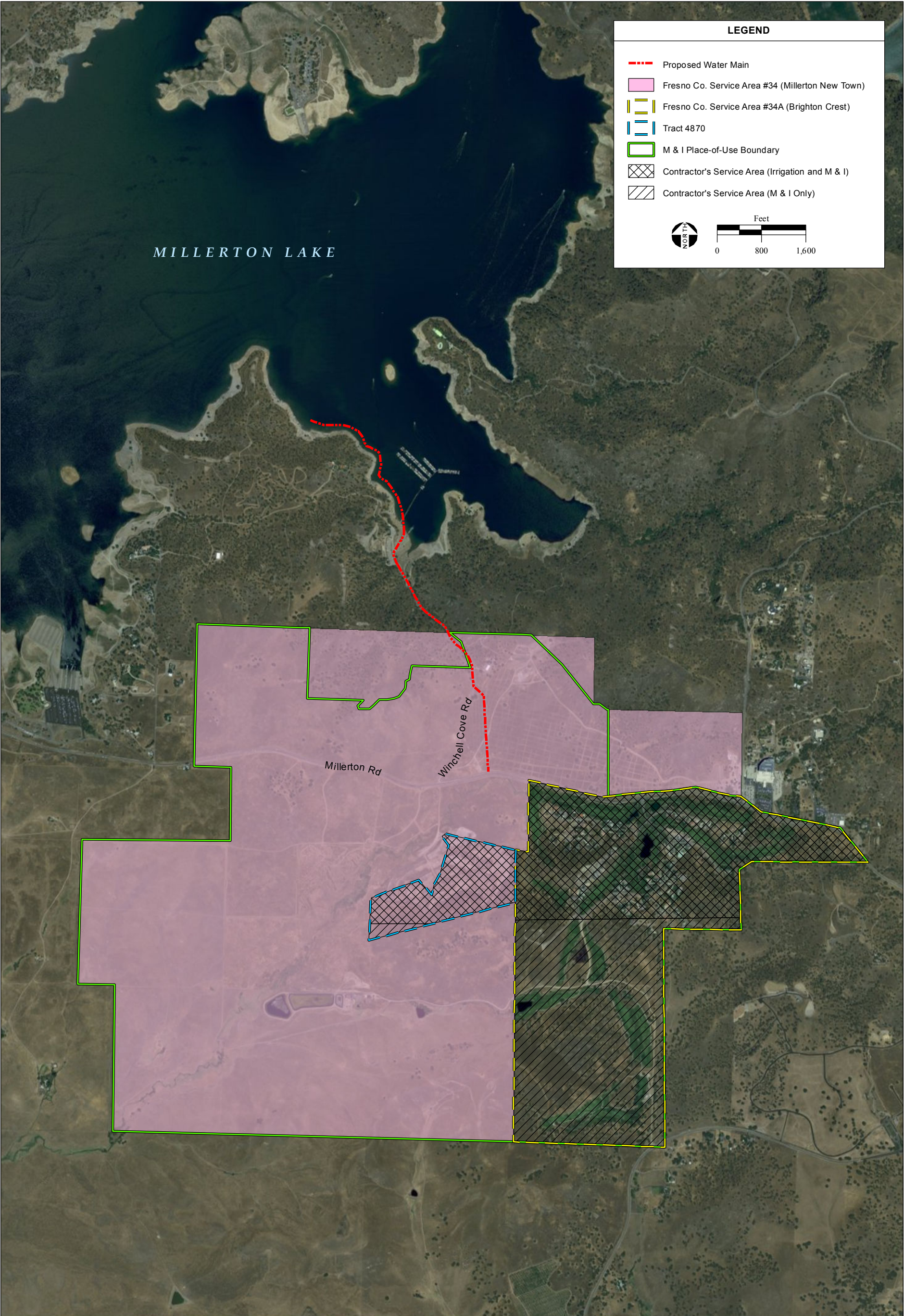
The tee valve connection to Table Mountain Rancheria referenced in Section 2.2 of the EA/IS would enable the Tribe to utilize CSA 34 infrastructure for water delivery in the event that future water may become available to the Tribe under separate agreements. In the event that the pipeline is utilized to deliver water to the Tribe, the water would serve existing tribal commercial uses, community facilities, and residences within the Rancheria. There are no reasonably foreseeable development plans within the Tribe’s property that would be supported by the Proposed Action. A significant portion of the water demands generated by existing uses on the reservation are currently served by water that is trucked in from the City of Fresno. The delivery of water through the CSA 34 system, should future water rights or transfers be secured, would reduce large truck traffic and associated diesel emissions. This would be a beneficial impact. Any permanent change to the approved municipal and industrial (M&I) use boundary for Reclamation water within the reservation would also be subject to Reclamation approval and NEPA review. Further, any development within the Tribe’s reservation is subject to the requirements of the Federal Endangered Species Act.

2.0 Response to Individual Comments

Comment Letter 1 – U.S. Fish and Wildlife Service

Response to Comment 1-1

The scope of the comments is noted. The commenter’s summary of the Proposed Action is accurate and is reflected in Section 2.2 of the EA/IS.



Response to Comment 1-2

Please refer to **General Responses 1 and 2. Section 2.1**, No Action Alternative, of the Final EA/IS has been revised and the reference to operation of the pipeline at “full design capacity” has been removed. As described in Section 2.1 of the EA/IS, continued use of the existing pipeline under existing conditions and water demands is likely to result in significant damage to this facility in the long-term, resulting in interrupted water service to existing water users within CSA 34 and substantial costs associated with repairs.

Response to Comment 1-3

Comment noted. The engineering memorandum provided within Appendix D of the EA/IS has been revised to include a more thorough discussion of the need for redundancy in the CSA 34 system. As described therein, replacement of the existing pipe would disrupt water supply to the existing residents of Brighton Crest, would result in substantially higher costs, and would not provide system redundancy in the event of a pipeline failure, and therefore, would not meet the purpose and need of the Proposed Project to provide a safe and reliable water service. An expanded discussion of alternatives considered but eliminated from detailed evaluation is provided in **Section 2.3** of the Final EA/IS.

Response to Comment 1-4

As described in **Section 1.1** of the Final EA/IS and the engineering memorandum provided within Appendix D of the Final EA/IS, the existing pipeline discharges into a storage pond on the Eagle Springs Golf Course. The water is used for irrigation use as well as to fill a raw water storage tank that connects to the SWTP and potable water storage tank, all of which are located at the Brighton Crest community. As described in Section 1.3.1 of the EA/IS, no changes to water delivery or permitted capacity of the CSA 34 water system would result from the Proposed Action; no modifications or upgrades to the SWTP are proposed as a component of the Proposed Action, nor would they be triggered as a result of the Proposed Action, therefore no additional analysis or discussion is warranted within the Final EA/IS. For background and informational purposes, a discussion of the water storage and treatment capacity of the SWTP has been provided within the revised engineering memorandum provided as Appendix D of the Final EA/IS.

Response to Comment 1-5

Please refer to **General Responses 1 and 2**. As described in Section 1.3.1 of the EA/IS, no changes to water delivery or permitted capacity of the CSA 34 water system would result from the Proposed Action; therefore, the Proposed Action will have no affect on existing water rights. The existing pipeline was designed to serve all proposed development within the CSA 34 service area. The purpose of the Proposed Action is not to expand the capacity of the pipeline, rather it is to provide CSA 34 water users with a contingency plan in the event of an emergency and system malfunction and provide more efficient operations in the delivery of raw water. An expanded discussion of the Purpose and Need for the Proposed Action is provided in **Section 1.2** of the Final EA/IS.

Response to Comment 1-6

Please refer to **General Responses 1 and 2.**

Response to Comment 1-7

As stated in the project description, the equipment used to trench and install of the pipelines would occur within 25 feet on either side of the proposed pipeline footprint. Therefore, the proposed action area includes land located approximately 25 feet east and west of the proposed pipeline footprint. While the total width of the proposed action area considered within this EA/IS is 50 feet, the actual impact area from construction activities, including areas disturbed by equipment and materials, would be limited to a 25 foot wide corridor (disturbance may occur up to 25 feet on either side of pipeline, but would not exceed 25 feet in total width).

Within the Draft EIS, the impacted nonnative grassland habitat was calculated based on the actual earth disturbance that would occur within the non-native annual grassland, which is the 24 inch wide trench. The habitat impact calculations were determined to be an appropriate basis for compensatory mitigation, given the lack of known instances of California Tiger Salamander (CTS) north of Millerton Road, the fact that the project would only result in a temporary disturbance to the habitat area, and all impacted habitat areas would be restored to pre-project conditions. After project implementation and with mitigation, there would be no net loss of CTS upland habitat within the project site, and compensatory mitigation would be paid to preserve additional habitat off the project site. This mitigation is the equivalent of what would be required if permanent habitat conversion would occur within the project site. Given that the project would result in only temporary disturbance, and all habitat areas would be restored to pre-project conditions, this commitment was determined to be sufficient to mitigate the project impacts. However, based on further consultation with the U.S. Fish and Wildlife Service (USFWS), it was determined that the habitat impact calculations should be expanded to include the entire width of the construction corridor to account for areas that may be disturbed through the use of construction equipment. The acreage of impacted habitat has been re-calculated within Section 3.3.2.2 of the Final EA/IS based on a 25-wide construction corridor, which includes the 24-inch wide trench and construction equipment used to trench and install the pipe.

Figure 5 has been revised within the Final EA/IS to clarify the acreages between the study area and the impact area and justification of the calculation methods has been included within the text of the Final EA/IS. Additionally, zoomed in views of the habitat types are shown in Sheets 1-4 of revised Figure 5 included within the Final EA/IS. From Millerton Lake, the pipeline would be located entirely within paved roadways until it reaches the non-native annual grassland, thus the blue oak woodland and nonnative annual grassland areas adjacent to the roadway would not be impacted. Vehicles would remain on the roadways and road shoulders. The staging area is shown in the revised Figure 5 of the Final EA/IS and consists of a gravel parking area and storage yard located at the Winchell Cove Marina. This area has been previously disturbed and is devoid of biological resources. As indicated in the Final EA/IS, there are 5.8 acres within the 25-foot wide impact area, 0.9 acres of which were determined to be potentially suitable CTS habitat (within the nonnative annual grassland).

A Biological Opinion with an incidental take statement for CTS was obtained on February 4 2013 (Appendix F of the Final EA/IS). In the Biological Opinion, the Service states the

following: “the Service is quantifying take incidental to a project as the amount of acres of habitat that will be affected for the species as a result of the action, this amounts to 0.9 acres.” The Service further states that “Upon implementation of the BMPs, proposed conservation measures, reasonable and prudent measures, and terms and conditions identified within the Biological Opinion, incidental take of CTS within this acreage in the forms of harm and harassment due to the Proposed Project activities, leading to habitat loss and degradation will become exempt from the prohibitions described in Section 9 of the ESA.” All conservation measures in the Biological Opinion and incidental take statement have been incorporated as mitigation measures within Section 3.3.3 of the Final EA/IS.

Response to Comment 1-8

The statement quoted by the commenter was made prior to the completion of the analysis within the EA/IS. Reclamation has since concluded that the proposed action does have independent utility. Refer to **General Responses 1 and 2**. Please note that the Millerton New Town Biological Assessment (BA) referred to by the commenter was released by the project proponent, not submitted by Reclamation. Since Reclamation has not formally submitted the BA, the Reclamation cannot yet formally respond to any comments the Service has submitted on the Millerton New Town BA.

Response to Comment 1-9

Please refer to **General Responses 1 and 2**.

Response to Comment 1-10

Detailed habitat maps of the proposed action area, including staging areas, have been added to the Final EA/IS as Figure 5 – Sheets 1-4.

Response to Comment 1-11

Please refer to **General Responses 1 and 2**.

Response to Comment 1-12

Comment noted. Reclamation has used its authority consistent with all federal regulations including those listed by the commenter. Please see Section 3.3 of the EA/IS for a discussion of the Proposed Action’s compliance with the FESA.

Response to Comment 1-13

A discussion of compliance with the Fish and Wildlife Coordination Act is provided in Section 5.2 of the EA/IS.

Comment Letter 2 – U.S. Environmental Protection Agency

Response to Comment 2-1

Comment noted.

Response to Comment 2-2

The commenter is correct that the proposed parallel pipeline terminates just north of Millerton Road. As described within the revised engineering memorandum provided within Appendix D of the EA/IS, from this point, the pipeline will be connected to a single existing pipeline that discharges to the SWTP, which serves existing users within CSA 34 including the Brighton Crest Community and Eagle Springs Golf Course. Please refer to **General Responses 1 and 2**.

Response to Comment 2-3

Please refer to **General Response 1**. As described in Section 1.3.1 of the EA/IS, no changes to water delivery or permitted capacity of the CSA 34 water system would result from the Proposed Action; therefore, the potential for climate change to affect the amount of stored water within Millerton Lake and the ability to serve developments within CSA 34 is outside of the scope of the analysis for the Proposed Action. In addition, CVP water allocations are made dependent on hydrologic conditions and environmental requirements. Since Reclamation operations and allocations are flexible, any changes in hydrologic conditions due to global climate change would be addressed within Reclamation's operation flexibility and therefore water resource changes due to climate change would be the same with or without the Proposed Action. Approval of any change to the authorized contract service area for delivery of water in CSA 34 will be subject to a separate NEPA compliance process and associated climate change analysis.

Response to Comment 2-4

Please refer to **General Responses 1 and 2** and **Response to Comment 2-2**.

As described in Section 2.2, the Proposed Action involves the construction of a *parallel pipeline* with cross connections with the existing pipeline installed to ensure even pressure and travel velocities in *both pipelines (emphasis added)*; therefore, the existing pipeline will not be phased out under the Proposed Action nor are there any plans to phase the existing pipeline out in the future. Please refer to **Section 2.3** of the Final EA/IS for a discussion of why phasing out the existing pipeline was eliminated as a suitable alternative.

A detailed discussion of indirect effects and Reclamation's commitment to conduct additional NEPA review for the Millerton New Town development is provided in Section 3.10 of the Final EA/IS.

Response to Comment 2-5

Please refer to **General Responses 1 and 2**.

Response to Comment 2-6

Please refer to **General Responses 1 and 2**. Reclamation and the County will continue to consult with the USFWS in accordance with the FESA to avoid or minimize direct, indirect and cumulative impacts to threatened and endangered species critical habitat. As noted in Section 3.10 of the Final EA/IS, all development outside Reclamation's authorized contract service area for delivery of water from Millerton Lake will be subject to additional review under NEPA and consultation with the USFWS pursuant to Section 7 of the FESA.

Response to Comment 2-7

Please refer to **General Responses 1 and 2**. Changes to water delivery and the authorized contract service area for delivery of water from Millerton Lake are not within the scope of the project.

Response to Comment 2-8

Please refer to **Response to Comment 2-3**.

Comment Letter 3 – California Department of Fish and Game

Response to Comment 3-1

Comment noted. The commenter's summary of the Proposed Action is accurate and is reflected in Section 2.2 of the EA/IS. The commenter's concerns regarding impacts to State-listed species are addressed within the following responses to the commenter's detailed comments.

Response to Comment 3-2

Please refer to **Response to Comment 1-7**.

Response to Comment 3-3

A Biological Opinion with an incidental take statement was obtained for CTS from the Service on February 4, 2013, and is included as Appendix F of the Final EA/IS. As required in the revised Mitigation Measure BIO-1 in the Final EA/IS, the County shall submit the incidental take statement to the Director of the California Department of Fish and Game (CDFG) for a Fish and Game code Section 2080.1 Consistency Determination for effects occurring outside of federal and tribal trust lands. Receipt of the application by the Director starts a 30-day clock for processing the Consistency Determination. In order for the CDFG to issue a Consistency Determination, CDFG must determine that the conditions specified in the incidental take statement are consistent with the California Endangered Species Act (CESA). If CDFG determines that the incidental take statement is not consistent with CESA, the County shall obtain a state Incidental Take Permit under Section 2081(b) of the Fish and Game Code prior to commencement of construction activities. All conservation measures in the Biological Opinion and incidental take statement have been incorporated within Mitigation Measure BIO-1 in the Final EA/IS.

Response to Comment 3-4

Mitigation Measure BIO-1 of the Final EA/IS has been revised to incorporate the measure recommended in this comment. Additionally, all conservation measures in the Biological Opinion (Appendix F of the Final EA/IS) have been incorporated within Mitigation Measure BIO-1 in the Final EA/IS.

Response to Comment 3-5

Detailed habitat maps of the proposed action area, including staging areas, have been added to the EA/IS as Figure 5, Sheets 1-4. Please refer to **Response to Comment 1-7**.

Response to Comment 3-6

Mitigation Measure BIO-1 of the Final EA/IS has been revised to incorporate the measures recommended in this comment. Additionally, all conservation measures in the Biological Opinion (Appendix F of the Final EA/IS) have been incorporated within Mitigation Measure BIO-1 in the Final EA/IS.

Response to Comment 3-7

Mitigation Measure BIO-3 did specify that the surveys for Swainson's Hawk be conducted in accordance with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (Swainson's Hawk Technical Advisory Committee 2000). As requested by the commenter, this requirement has been clarified in Section 3.3.2.2 of the Final EA/IS.

Response to Comment 3-8

Mitigation Measure BIO-1 has been revised to incorporate the specifications recommended in this comment. Additionally, all conservation measures in the Biological Opinion (Appendix F of the Final EA/IS) have been incorporated within Mitigation Measure BIO-1 in the Final EA/IS.

Response to Comment 3-9

Mitigation Measure BIO-2 has been revised to incorporate the measures recommended in this comment. Additionally, all conservation measures in the Biological Opinion (Appendix F of the Final EA/IS) have been incorporated within Mitigation Measure BIO-1 in the Final EA/IS.

Response to Comment 3-10

The recommendations noted in this comment for Swainson's hawk preconstruction surveys were reflected in Mitigation Measure BIO-3 of the Draft EA/IS. Section 3.3.3 of the Final EA/IS has been revised to increase the buffer around active Swainson's hawk nests to 0.5 miles as recommended in the comment.

Response to Comment 3-11

Mitigation Measure BIO-4 has been revised to extend the estimated duration of the nesting season and incorporate the recommended buffers noted by the commenter.

Response to Comment 3-12

Mitigation Measure BIO-5 has been revised to specify that the biologist conducting San Joaquin Kit Fox (SJKF) surveys must be approved by both USFWS and CDFG. The statement that pipes containing a SJKF can be moved under supervision of a biologist has been removed. The recommendation that pipes and other den-like structures should be capped has been added. Additionally, Mitigation Measure BIO-5 has been revised to state that the use of rodenticides and herbicides during construction shall be prohibited.

Response to Comment 3-13

No construction activities are proposed along Millerton Road under the Proposed Action. Mitigation Measure T-1 has been revised to reflect this.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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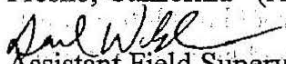


In reply refer to:
81420-2011-CPA-0128

AUG 8 2011

Memorandum

To: Bureau of Reclamation, South-Central California Area,
Fresno, California (Attention: Mr. Michael Inthavong)

From: 
Assistant Field Supervisor, Sacramento Fish and Wildlife Office,
Sacramento, California

Subject: Comments to the Bureau of Reclamation's Draft Environmental Assessment and
Finding of No Significant Impact for the Winchell Cove Pipeline Project, Fresno
County, California

This letter is in response to the release of the Draft Environmental Assessment/Initial Study (EA) and Finding of No Significant Impact (FONSI) for the proposed County Service Area (CSA) 34 Winchell Cove Pipeline Project (proposed project), which was made public on July 12, 2011, by the U.S. Bureau of Reclamation (Reclamation). The following comments and recommendations are made under the authority of the Endangered Species Act of 1973, as amended (16 USC § 1531 *et seq.*) (Act), and under the authority of, and in accordance with, provisions of the National Environmental Policy Act (NEPA) (40 CFR Part 1500). This letter is provided to assist you with your environmental review of the proposed project, and is not intended to preclude future comments from Service as may be required.

Project Description

An existing pumping station and pipeline generally follows the Millerton Lake shoreline to Winchell Cove Road, where it extends through an existing public utility easement (located within land held in Federal trust for the Table Mountain Rancheria) to Millerton Road. The pipeline then heads east on the north side of Millerton Road to the Brighton Crest development, and terminates at either a storage pond on the golf course or the Surface Water Treatment Plant and storage tank.

The proposed project involves the construction of a new pipeline parallel to the existing CSA 34 pipeline from the Winchell Cove submerged pump station located in Millerton Lake. From the pumps, the new pipeline would extend for about 0.56 mile on the Millerton Lake bed to Winchell Cove Marina. From the marina, the pipeline would be installed within Fresno County's existing CSA 34 pipeline easement, extending for about 0.5 mile south within the Winchell Cove Road

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paved right-of-way, where it would transition through the existing public utility easement held in Federal trust for the Table Mountain Rancheria for about 1,600 feet in a southeasterly direction and terminate just north of Millerton Road.

In 2008, the annual water transmitted through the existing water system was 179,620,000 gallons, or about 492,110 gallons per day. The water is used by Brighton Crest community residents and the Eagle Springs Golf and Country Club. However, the EA states that the proposed project may be utilized to provide water supply to future developments within the CSA 34 service area, specifically the Millerton New Town Specific Plan. The Millerton New Town Specific Plan is currently undergoing NEPA review by Reclamation for the approval of long-term water transfers to serve the development. Reclamation has stated that no changes to water delivery or permitted capacity of the CSA 34 water system would result from the proposed project. Additionally, Reclamation has stated that the proposed project represents a "stand-alone" action and demonstrates "independent utility."

1-1
Cont.

Comments

Section 2 Alternatives Including the Proposed Action; 2.1 No Action Alternative, page 9, Reclamation states:

"Continued use of the existing pipeline at full design capacity is likely to result in significant damage to this facility in the long-term, resulting in interrupted water service to existing water users within CSA 34 and substantial costs associated with repair and property damages."

1-2

The EA should quantify the existing systems current design capacity and identify the percent of the time the existing system is operated at full design capacity.

1.2 Purpose and Need, describes the proposed action as needed to "keep flow velocities at a level that will not cause excessive pipe wear." However in Appendix D (report of the engineering firm of Quad Knoph Inc) it is stated that the existing 12-inch pipe, which has been in place since 1988, shows no obvious signs of corrosion on the outside or inside of the pipe. It was further noted that the existing pipe was not wrapped with polyethylene. It appears from these statements that the potential for pipe failure is a result of the type of pipe material (iron, unwrapped) and construction methods used (placement of a portion of the pipe on the lake bottom) rather than a result of operational factors. **Section 2.2**, further describes the proposed project and identifies that a goal of the action is to provide redundancy, although the document provides no explanation as to why redundancy is the preferred alternative for this system. If the existing pipeline is unreliable and the intent is to simply provide a more reliable water system for the existing water users then the action could be to replace or reconfigure the existing pipeline. Identifying alternative actions considered that were determined to not be equally effective in addressing any adverse conditions within the pipeline system may help clarify our concerns. The proposed project is described as a raw water conveyance system, but what is not clear is how

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1-4

or where the water will be treated for use. Details of the existing water treatment facility which would be treating the raw water provided by the proposed project should be provided. These should include current capacity of the facility, and current water storage capacities. If there will be a new water treatment facility constructed, or if an existing water treatment facility will require modification to accommodate the raw water from the proposed project, then that should be included in the proposed project as an interrelated and interdependent action.

1-4
Cont.

On page 9 of the draft EA and on page 2 of the draft FONSI it states that the proposed project would only supply water to existing users of CSA 34, would not change the boundaries of CSA 34, would not increase water supply capacity over current water rights, and would not increase the quantity of diversion from Millerton Lake beyond what was previously approved by Reclamation. What is unclear is what the current water rights are and what was previously approved by Reclamation. Reclamation should describe the current water rights, including the quantity of water involved, and how that compares to the amount currently available through the existing pipeline system.

1-5

On page 9 of the draft Environmental Assessment/Initial Study it states that, "A tee valve connection, meter, and blind flange north of Millerton Road would connect Table Mountain Rancheria to the raw water system, consistent with the Millerton New Town Infrastructure Plan (Rabe Engineering, 2000)." On page 15, **Section 3 Affected Environments and Environmental Consequences, Cumulative Impacts**, a number of future developments are identified in the Fresno County General Plan, the Sierra North Regional Plan, and the Millerton New Town Specific Plan. Proposed development within 2 miles of the proposed project would result in the construction of 12,320 homes and include 147 lots. If this future development is contingent upon the construction of the proposed project and is reliant upon the water that would be supplied by it in order to be permitted and developed, then those developments should be considered interdependent and interrelated to the proposed project, and the environmental impacts of those developments should be included in the EA for the proposed project.

1-6

3.3.2.2 Proposed Action: Special-Status Species: California Tiger Salamander (CTS), page 40:

Reclamation has determined that the extent of impacts to CTS habitat by the proposed project is 0.17 acre of designated critical habitat (Unit 2). The draft EA states that: "Approximately 1.14 acres of the proposed action area occurs within designated critical habitat Unit 2 (Southern San Joaquin Region) for CTS," but it has been determined that only 0.17 acre of Unit 2 will be temporarily impacted. Figure 5, on page 26, indicates that 1.73 acres of blue oak woodland, 2.36 acres of non-native annual grassland, and 3.42 acres in ruderal/developed land are included in what appears to be the action area for the proposed project, a total of 7.51 acres. All of these habitats have potential to be utilized and occupied by CTS. The Service is unclear how these totals were derived and why the total impacts were not included in the consideration of adverse effects to the CTS. Explain why the impacts by the proposed project do not include the total 7.51 acres from Figure 5.

1-7

In the Biological Assessment for the proposed project, dated March 2011, Reclamation determined that the proposed project, other than the issuance of a license by Reclamation and the Nationwide Permit 7 from the U.S. Army Corps of Engineers, would have no additional interrelated and interdependent effects as a result of the proposed action. In February 2009, the Service received a draft copy of the *Millerton New Town Specific Plan Area Change in the Service Area Under the Water Service Contract Between the United States and the County of Fresno, Service Area No. 34, Biological Assessment*. Reclamation requested Service comments on the draft Biological Assessment; the Service supplied the Bureau comments in a memorandum dated August 11, 2009. To date, the Service has not received a response to those comments. In April 2010, the Service received a copy of the *Winchell Cove Pipeline Improvement Project Biological Assessment*, dated April 2010. Under the proposed project heading, 3.4 PURPOSE AND NEED, page 6, it is stated: "The proposed project would result in improvements to the existing CSA 34 raw water system to allow provision of raw water as approved within the original Millerton Newtown (MNT) Master Plan." On November 8, 2010, the Service (K. Berry) was provided a copy of an electronic mail message from Reclamation (N. Gruenhagen) to the California Department of Fish and Game (L. Gymer) concerning "...the County of Fresno Winchell Cove II project, which involves installation of a pipeline." Mr. Gruenhagen states in the electronic mail that:

1-8

"Reclamation's current view of the project is that it is interrelated to the MNT project and does not have independent utility. As such, Reclamation believes that the action should be integrated with the description for the development of MNT and should be analyzed with that action."

Considering the information the Service has received from Reclamation and the information available from other sources, and the potential impacts to CTS designated critical habitat Unit 2 from some of the proposed developments included in the cumulative impacts, the Service believes that future developments, including Table Mountain Rancheria, are in fact interdependent and interrelated to the proposed project, and "finding of no significant impact" as currently proposed by Reclamation is not appropriate.

Conclusion

First, the Service believes that Reclamation should describe in the EA how much water has been approved for diversion from Millerton Lake and if there has been a change in that amount. Secondly, as a result of the Millerton New Town Specific Plan (which is currently undergoing NEPA review by Reclamation for the approval of long-term water transfers to serve future development) identify if there would be a change in diversion rates and amounts which could be accommodated by the increased capacity of operating two parallel pipelines where there is currently only one.

1-9

Detailed maps showing the proposed project and the habitat type that exists along the entire route should be provided. The maps should be scaled so that areas of impacts and the activities that will take place on those habitats can be clearly differentiated. The map should include all locations of stockpiling and staging and access roads for the proposed project.

1-10

The Service believes that future developments, including Table Mountain Rancheria, are in fact interdependent and interrelated to the proposed project and it should be evaluated as part of the larger Millerton New Town Specific Plan.

1-11

Reclamation should fulfill their obligations under the Endangered Species Act to use their authority in a manner that is consistent with the policies of the Department of the Interior and the Act under sections 2 (b)¹ and (c)², 3 ("conservation")³, and 7(a)(1)⁴.

1-12

Finally, the Service believes that this action is subject to the requirements of the Fish and Wildlife Coordination Act (FWCA). This action constitutes a new Federal action involving a body of water (Millerton Lake), and is represented as a water supply project. NEPA does not supplant the requirements of the FWCA as NEPA does not require "coordination," nor does it require that fish and wildlife resources receive "equal consideration" to other resources. We request that Reclamation contact Mark Littlefield, Watershed Planning Branch Chief at (916-414-6520) regarding coordination of this action pursuant to the FWCA.

1-13

If you have any questions or concerns regarding these comments please contact Rocky Montgomery, Senior Biologist, or Mark Littlefield, Chief, Watershed Planning Branch, at (916) 414-6600.

1. Sec. 2(b) ... "The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved..."
2. Sec. 2(c) ... "(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purpose of the Act."
3. Sec. 3(3) ... "The term(s) ... 'conservation' mean to use and the use of all methods and procedures which are necessary to bring any endangered species and threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."
4. Sec. 7(a)(1) ... "All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act..."

cc:

Shauna McDonald, U.S. Bureau of Reclamation, Fresno, CA

Zachary Simmons, U.S. Army Corps of Engineers, Sacramento, CA

Laura Fuji, U.S. Environmental Protection Agency, San Francisco, CA

Lisa Gymer, California Department of Fish and Game, Fresno, CA

Willis E. Robinson, Fresno County, Fresno, CA

Ryan Lee, Analytical Environmental Services, Sacramento, CA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

AUG 10 2011

Michael Inthavong
Natural Resources Specialist
Bureau of Reclamation
Mid-Pacific Region
South-Central California Area Office
1243 N Street
Fresno, California 93721-1813

Subject: Draft Environmental Assessment: County Service Area 34 Winchell Cove Pipeline Project

Dear Mr. Inthavong:

The U.S. Environmental Protection Agency has reviewed the above document pursuant to the National Environmental Policy Act, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our detailed comments are enclosed.

2-1

EPA supports the need to ensure water supply system redundancy, reliability, and more efficient delivery for existing users within County Service Area 34 (CSA 34). However, we note that the proposed parallel pipeline does not appear to extend to existing users, terminating just north of Millerton Road. The Draft EA also states that the infrastructure may be utilized to provide water supply to future developments within the CSA 34 service area, specifically the Millerton New Town Specific Plan. Millerton New Town is currently undergoing NEPA review for approval of long-term water transfers to serve the development. If approved, the water provided by these transfers may be obtained from Millerton Lake.

Concerns have been raised to EPA by the US Fish and Wildlife Service regarding the independent utility and potential cumulative impacts of the proposed pipeline, especially given the projected development of 12,467 homes within two miles of the water supply pipeline. We recommend the Final EA include additional information and supporting data that clearly demonstrate the independent utility of the proposed pipeline from proposed development in CSA 34. If such independent utility cannot be demonstrated, the Bureau of Reclamation should consider whether the pipeline project should be evaluated jointly with development water supply approvals in one NEPA document. The cumulative effects analysis should also be expanded to include an evaluation of indirect and cumulative effects of full build-out of developments that may be provided water through the proposed pipeline and CSA 34 water supply system.

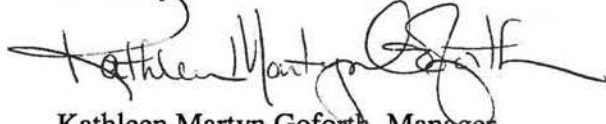
2-2

Climate change has the potential to reduce the Sierra Nevada mountains' snow pack and increase storm intensities, which, in turn, could affect the timing and amount of stored water within Millerton Lake. We recommend evaluating the potential effects of climate change on the proposed water supply pipeline project and the long-term reliability of the water supply system for CSA 34. We urge the Bureau of Reclamation to consider an analysis of regional hydrologic changes under different climate scenarios and their potential effects on Reclamation's legal and contractual arrangements for water allocation from Millerton Lake.

2-3

We appreciate the opportunity to comment on this Draft EA. Please send one copy of the Final EA to the address above (mail code: CED-2) at the same time it is officially released for public review. If you have any questions, please contact Laura Fujii, the lead reviewer for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov.

Sincerely,



Kathleen Martyn Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Enclosures: EPA detailed comments

cc: Willis E. Robinson, Fresno County, CA
Mark Littlefield, US Fish and Wildlife Service

EPA DETAILED DEA COMMENTS – COUNTY SERVICE AREA 34 WINCHELL COVE PIPELINE PROJECT, FRESNO COUNTY, CALIFORNIA, AUGUST 10, 2011

Independent Utility

Provide specific information and data that demonstrate independent utility. The Draft EA states that the new parallel water pipeline is considered an improvement and maintenance project needed under existing conditions to serve existing demands in County Service Area 34, with individual utility distinct from future planned growth. There would be no changes to water delivery or permitted capacity of the CSA 34 water system, although it is not clear whether the existing pipeline would be phased out of use. Though the Draft EA states the need to ensure system redundancy, reliability, and more efficient delivery for existing users; the proposed parallel pipeline does not appear to extend to existing users, terminating just north of Millerton Road. The Draft EA does state that the CSA 34 water supply infrastructure may be utilized to provide water supply to future developments within the CSA 34 service area, specifically the Millerton New Town Specific Plan. Millerton New Town is currently undergoing NEPA review for approval of long-term water transfers to serve the development (p. 6). If approved, the water provided by these transfers could be obtained from Millerton Lake.

Recommendations:

Additional specific information and data should be included in the Final EA that demonstrates the independent utility of the proposed pipeline from future development in CSA 34. For instance, state whether or not the existing pipeline will be phased out and whether additional pipeline capacity, water rights, and pumps would be required to provide water supply service to Millerton New Town and future development. We recommend the Final EA include a firm commitment to additional detailed environmental analysis for future decisions to extend water service through the proposed new pipeline or CSA 34 water infrastructure to Millerton New Town, or other projected growth.

We recommend the Final EA include specific information regarding the NEPA review for approval of long-term water transfers to serve the Millerton New Town development. Provide the name and type of the NEPA document and public review schedule. Given the projected growth of 12,467 homes within two miles of the proposed pipeline (p. 15), and increasing demands for Millerton Lake water supplies, an environmental impact statement level of analysis for additional diversions from Millerton Lake and expanded water service to CSA 34 or other development areas may be warranted.

Cumulative Impacts

Expand the cumulative effects analysis to include full build-out of developments that may be provided water through the new parallel pipeline. The Draft EA states that the new pipeline alignment would have no adverse cumulative impacts on land use, biological resources, air quality, and other resources. The project is consistent with existing zoning, construction effects would be temporary, and project construction would not exceed the San Joaquin Valley Air Pollution Control District construction emission thresholds. However, major development projects are planned within two miles of the project which could be provided water through the CSA 34 water supply system (pps. 6, 15).

2-4

2-5

Recommendations:

The Final EA should expand the cumulative effects analysis to consider full build-out of developments that may be provided water through the new parallel pipeline and CSA 34 water supply infrastructure. For instance, provide additional information on the approved and zoned projected growth, anticipated infrastructure required to support this growth, and effects of the cumulative developments on the CSA 34 water supply system and proposed action.

2-5
Cont.

Work with the US Fish and Wildlife Service to avoid and minimize impacts to threatened and endangered species critical habitat. Designated critical habitat Unit 2 for the State and federally threatened California tiger salamander and federally threatened vernal pool fairy shrimp overlaps with the project site and CSA 34 (pps. 32-36). Projected growth within CSA 34, and growth supplied by the CSA 34 water supply system, could have significant adverse cumulative impacts on this designated critical habitat.

2-6

Recommendations:

We urge Bureau of Reclamation and Fresno County to work closely with the US Fish and Wildlife Service (USFWS) and other resource agencies to avoid and minimize direct, indirect, and cumulative impacts to threatened and endangered species critical habitat. We recommend Reclamation consult with USFWS regarding potential effects of Millerton New Town and other developments on sensitive resources.

Consider smart growth principles when considering changes to water delivery or permitted capacity of the CSA 34 water supply system. Six major development projects are planned within two miles of the proposed parallel pipeline, any or all of which could be provided water through the CSA 34 water supply system. Public concerns have been raised regarding cumulative effects of this proposed growth beyond the City of Fresno growth boundary.¹

Recommendations:

Reclamation and Fresno County should consider smart growth principles when considering changes to water delivery or permitted capacity of the CSA 34 water supply system and approval of future growth. Smart growth has been defined as “development that serves the economy, community, and the environment.”² It incorporates government and community partnering, environmental stewardship, and transportation network enhancements for safety and functionality. Smart growth can mean different things to different people, but the Smart Growth Network (SGN), a coalition of national, state, and local organizations, defines it as development that achieves the following principles³:

2-7

- Create range of housing opportunities and choices
- Create walkable neighborhoods

¹ James Sinclair, “Millerton New Town – More sprawl, coming soon!,” stopandmove.blogspot.com, 8 June 2011; Todd R. Brown, “Work starts on 1,000-home Millerton ‘New Town’,” The Business Journal, 04 March 2011; Mark Grossi, “Groups Protest Water Delivery: Board urges negotiation in dispute over water to housing developments,” The Fresno Bee, 22 August 2005.

² Smart Growth Network, *Getting to Smart Growth: 100 Policies for Implementation*, <http://smartgrowth.org>

³ <http://www.smartgrowth.org/about/default.asp>

- Encourage community and stakeholder collaboration
- Foster distinctive, attractive communities with a strong sense of place
- Make development decisions predictable, fair, and cost-effective
- Mix land uses
- Preserve open space, farmland, natural beauty, and critical environmental areas
- Provide a variety of transportation choices
- Strengthen and direct development towards existing communities
- Take advantage of compact building design

2-7
Cont.

Global Climate

The global climate analysis focuses on project-related greenhouse gas emissions (pps. 62-64). Climate change has the potential to reduce the Sierra Nevada mountains' snow pack and increase storm intensity, which, in turn, could affect the timing and amount of stored water within Millerton Lake. More variable weather and extreme droughts and floods can be expected to influence water supply demands.

Recommendations:

The Final EA should evaluate the potential effects of climate change on the proposed project and long-term reliability of the water supply for CSA 34. Issues to consider include other Millerton Lake water supply obligations and demands, such as flow releases required by the San Joaquin River Restoration Program, and the effect of extreme droughts and floods.

2-8

We recommend Reclamation analyze regional hydrologic changes under various climate scenarios and their potential effects on Reclamation's legal and contractual arrangements for water allocation from Millerton Lake.



State of California - The Natural Resources Agency

DEPARTMENT OF FISH AND GAME

Central Region
1234 East Shaw Avenue
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JOHN McCAMMAN, Director



Comment Letter 3

August 11, 2011

Ejaz Ahmad
County of Fresno
Department of Public Works and Planning
Development Services Division
2220 Tulare Street, Sixth Floor
Fresno, California 93721

Subject: Environmental Assessment / Initial Study
Fresno County Service Area 34 Winchell Cove Pipeline Project
SCH No. 2011071042

Dear Mr. Ahmad:

The Department of Fish and Game (Department) has reviewed the above Environmental Assessment / Initial Study (EA/IS) for the Fresno County Service Area 34 (CSA 34) Winchell Cove Pipeline Project (Project) submitted by the County of Fresno Department of Public Works and Planning (County). Project approval would allow the construction and operation of a parallel water pipeline. The proposed pipeline would tie into an existing water supply pipeline to maintain equal pressure and water velocities to prevent excessive pipe wear, head loss, and water hammer in the system and to ensure reliable water delivery to existing CSA 34 users. The pipeline would begin at the Winchell Cove submerged pump station, extend approximately 0.56 miles through the Millerton Lake bed to the Winchell Cove marina, then continue in a southeast direction along Winchell Cove Road for approximately 0.50 miles, then cut across grassland for approximately 1,600 feet to terminate just north of Millerton Road.

3-1

The Department is concerned that implementation of this Project without appropriate avoidance, minimization, and mitigation measures will result in impacts to State-listed species and other sensitive species, such as the State and federally threatened California tiger salamander (*Ambystoma californiense*) (CTS) and the State Species of Special Concern western spadefoot toad (*Spea hammondi*). Although the EA/IS provides Mitigation Measures to be implemented to reduce Project-related effects to less than significant levels, additional avoidance, minimization, and mitigation measures are warranted to further reduce impacts to biological resources. The following comments should be incorporated into the EA/IS and subsequent California Environmental Quality Act (CEQA) document, and recommended avoidance, minimization, or mitigation measures should be included in the CEQA document as enforceable mitigation measures.

California Tiger Salamander

Section 3.3.2.2 (page 40) identifies 0.17 acres of grassland CTS upland habitat that will be temporarily impacted through implementation of the Project. It is unclear how this acreage was calculated; it appears as though there are approximately 4,500 feet of pipeline construction that

3-2

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Page 2

will occur in non-native grassland, oak woodland, or unpaved road shoulder that has the potential to provide upland CTS habitat in the form of rodent burrows used for resting and aestivation purposes. This acreage does not include potential staging, stockpiling, and laydown areas, the size of which were not identified in the EA/IS document. Moreover, based on the information contained in Figure 5 (Page 26) it appears that the area of potential habitat for CTS, which could be impacted in the implementation of the Project, is greater than 7.5 acres which varies considerably from the 0.17 acre figure discussed in the EA/IS.

3-2
Cont.

The EA/IS document also states that the County will purchase credits in a ratio of 3:1 at a United States Fish and Wildlife Service (USFWS)-approved mitigation bank to offset the Project's temporary habitat impacts on CTS. This approach may be problematic, since the Project as proposed cannot likely be implemented without significant impacts and "take" (as defined in Section 86 of the Fish and Game Code) of CTS. Therefore, the Department is recommending the County immediately apply for incidental "take" coverage pursuant to Section 2081(b) of the Fish and Game Code. The Incidental Take Permit (ITP) requires specific criteria to be met including avoidance, minimization and full mitigation of the impacts to listed species. The County will need to propose additional mitigation measures to fully mitigate for the "take" of CTS, which should be addressed in the CEQA document and presented during the ITP application process. As proposed, the mitigation currently outlined in the EA/IS will not meet the fully mitigate standard under the California Endangered Species Act (CESA) since there are currently no Department-approved CTS mitigation banks. Further, a CTS "take" analysis is needed to determine what amount and type of mitigation is warranted. Therefore, in order for the County of Fresno to meet the fully mitigate standard under CESA, the County may need to provide a different acreage of compensatory lands. Regardless of acreage amount, compensatory lands would need to be placed in a conservation easement and monitored and managed for the benefit of CTS and associated habitat (both breeding and upland aestivation) in perpetuity. Management of conservation lands in perpetuity requires that a non-wasting endowment be established, the amount of which is determined based on a Property Analysis Record (PAR) or PAR-like analysis. Guidance for ITP procedures can be found at: http://www.dfg.ca.gov/habcon/cesa/incidental/incid_perm_proced.html.

3-3

Section 3.3.3 – Mitigation (page 43): As explained above, mitigating temporary impacts to CTS through the purchase of credits at an approved USFWS would not satisfy CESA mitigation requirements.

Staging, stockpiling, and laydown areas should be located on impervious surfaces, or disturbed areas with no or degraded habitat value. This means that all rodent burrow openings, which potentially contain aestivating CTS, should be avoided by 50 feet. These 50-foot avoidance buffers should be clearly delineated on the ground in each staging, stockpiling, or laydown area to make it obvious to the construction crew that these areas are protected and off limits. The environmental condition of each staging, stockpiling, and laydown area should be described in the CEQA document, the areas delineated on a Project site map, and the acreages of each identified and included in the CTS burrow disturbance calculations for mitigation purposes.

3-4

3-5

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Page 3

The methodology for the CTS pre-construction surveys should be described as well. Depending on the activities identified, a USFWS and Department permitted biologist may need to conduct the surveys. The rodent burrow openings do not need to be flagged, but the 50-foot avoidance buffer around each rodent burrow opening does. Buffers should be clearly delineated with flags, tapes, stakes, or other materials on the ground prior to initiating any Project-related activities.

3-6

Other Comments

Page 41: The mitigation for Swainson's hawk should state specifically that the surveys will be conducted according to the Department's "Recommended Timing and Methodology for Swainson's Hawk nesting Surveys in California's Central Valley" (SHTAC 2000) prior to initiating Project-related activities.

3-7

Page 45: The mitigation measure requiring trenches and holes to be covered at the end of each work day and inspected for species each morning should be changed to include all trenches or holes of any depth with greater than 3:1 side slopes.

3-8

BIO-2: Again, because rodent burrows can be used by both western spadefoot toad and CTS, all rodent burrows within the Project Action Area should be identified and protected with a 50-foot avoidance buffer clearly delineated on the ground with flags, tape, or other appropriate material.

3-9

BIO-3 provides mitigation measures for Swainson's hawk. The first bullet item should state that surveys shall be completed for two survey periods in accordance with the "Recommended Timing and Methodology for Swainson's Hawk nesting Surveys in California's Central Valley (SHTAC 2000). It should be noted that the two survey periods is the minimum effort needed immediately prior to initiating Project-related activities. The second bullet item requires establishment of appropriate buffers for Swainson's hawk active nests. The Department recommends establishing a ½-mile buffer around active Swainson's hawk nests located in more rural areas. If an active nest is identified within the Project site boundaries or within ½ mile of the Project site boundaries and the ½ mile buffer cannot be maintained, then this species should be included in the request for "take" coverage through the ITP application process.

3-10

BIO-4: The first bullet item should include a definition of the normal bird breeding season, which the Department defines as January 1 through September 15 (red-tailed hawks are known to come into the area starting in January). The second bullet item should include language to clearly delineate all nest protection buffers with flags, tape, or other appropriate, highly visible material. The Department recommends a ½-mile buffer for species listed under the federal or California Endangered Species Act; 500 feet for non-listed raptors; 250 feet for migratory birds; and 150 feet for any other species. If these buffers cannot be maintained, the County will need to consult with the Department to determine if reduction of buffers is appropriate or if an ITP is warranted.

3-11

BIO-5: Approval of a qualified biologist for San Joaquin kit fox surveys is needed by both the USFWS and the Department as this species is listed under both the federal and the California Endangered Species Acts. The third open bullet item language is not correct. Pipes or other

3-12

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hollowed materials cannot be moved if a San Joaquin kit fox is discovered inside. The animal should be left alone and allowed to leave on its own, unless the Project proponent has a "take" permit from the USFWS and Department. Moving a kit fox is "take" (e.g., capture) and cannot be lawfully accomplished without an ITP. The Department recommends that the CEQA document prepared for this Project include an additional mitigation measure to require pipes, culverts, and the like be capped at both ends until just before they are to be used to prevent San Joaquin kit fox or other species from entering. The seventh open bullet item is strongly discouraged. The Department recommends that rodenticides not be used in areas where hawk, eagle, and other sensitive species could forage on poisoned rodents.

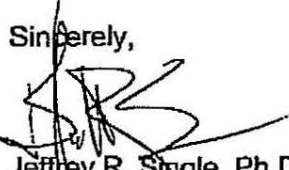
3-12
Cont.

T-1 states that the County shall ensure that at least one lane on Winchell Cove Road and Millerton Road is open to through traffic. It is not clear what type of activities are proposed along Millerton Road that would require lanes to be closed to traffic. The Department is concerned that undisclosed activities that involve work off the road could impact known CTS breeding ponds located along Millerton Road in the vicinity of the intersection with Winchell Cove Road. The County should provide a more complete description of activities along Millerton Road and any subsequent potential impacts to CTS breeding ponds along Millerton Road and provide appropriate avoidance, minimization, or mitigation measures to reduce those impacts.

3-13

If you have any questions regarding these comments, please contact Lisa Gymer, Environmental Scientist, at the address provided on this letterhead or by telephone at (559) 243-4014, extension 238.

Sincerely,



Jeffrey R. Single, Ph.D.
Regional Manager

cc: See Page Seven

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August 11, 2011
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cc Thomas Leeman
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Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
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Literature Cited:

The Burrowing Owl Consortium. 1993. Burrowing owl survey protocol and mitigation guidelines. The Burrowing Owl Consortium, April 1993.

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