

STOCKTON EAST WATER DISTRICT LETTER – KARNA E. HARRIGFELD



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August 2, 2004

VIA FACSIMILE AND U.S. MAIL

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Mr. Bob Eckart
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2800 Cottage Way
Sacramento, California 95825

Fax No. (209) 827-9703

Ms. Joann Toscano
San Joaquin River Exchange Contractors Water Authority
P.O. Box 2115
Los Banos, California 93635

Re: Comments on Draft EIS/EIR Water Transfer Program for San Joaquin River
Exchange Contractors Water Authority 2005-2014

Dear Mr. Eckart and Ms. Toscano:

The following comments are submitted on behalf of Stockton East Water District (SEWD) to the Draft EIS/EIR Water Transfer Program (Draft EIS/EIR) for San Joaquin River Exchange Contractors Water Authority (Exchange Contractors) 2005-2014.

General Comments

SEWD is critically interested in the affects caused from drainage from irrigated agricultural land and wildlife refuges in the San Joaquin Valley. SEWD has a contract with the Bureau of Reclamation (Bureau) for water from the New Melones Reservoir on the Stanislaus River. Substantial releases of water from New Melones Reservoir are made throughout the year to achieve the water quality objective for salinity and flow objectives at Vernalis on the San Joaquin River. The effect of these releases and other actions taken by the Bureau has been to deprive SEWD of its full contractual entitlement for water from New Melones Reservoir. Depriving SEWD of its contractual water supply affects both its agricultural users and its ability to supply municipal and industrial water to its customers the City of Stockton, California Water Service Company, Lincoln Village Maintenance District and Colonial Heights Maintenance District.

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Over the past few years with increases in deliveries of water to the San Joaquin Valley wildlife refuges we have seen an increase in the need for water quality releases from New Melones Reservoir, a shift in the timing of releases needed from New Melones Reservoir for water quality purposes and a reduction in flows in the San Joaquin River from the water developed necessitating increases releases from New Melones Reservoir to meet the Vernalis flow objectives during the February through June time period. I have enclosed for your consideration a summary of water quality releases made from New Melones Reservoir for water quality purposes.

Because of the increased deliveries to the wildlife refuges in the San Joaquin Valley, water quality and flows at Vernalis have been impacted. This is borne out in the analysis contained in Draft EIS/EIR. It appears that this impacts to water quality and flows at Vernalis is caused by two events (1) the process of developing the water to make it available to the wildlife refuges and (2) the use of the water by the wildlife refuges.

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This Draft EIS/EIR completely ignores "development" of the water over the course of the past five years and, in fact, assumes in the analysis for existing conditions that continued use of this "developed" water by the Exchange Contractors. Moreover, this Draft EIS/EIR assumes that absent the previous deliveries of "water developed" by the Exchange Contractors, deliveries will continue to the wildlife refuges even though there is no identified source for such water. There is no support in fact or in law for inclusion of the previous "water developed" and certain Level 4 deliveries (water transfers) as "existing conditions." The result of this inclusion is a failure to analyze the true environmental affects of the proposed project and renders this Draft EIS/EIR legally inadequate and utterly indefensible.

Specific Comments

Section One – Purpose and Need

1

In a letter dated November 21, 2003, we requested that the Project Description be expanded to include the delivery of water to the Bureau for the purpose of meeting the Vernalis water quality and flow objectives contained in the 1995 Bay Delta Water Quality Control Plan. The State Water Resources Control Board (State Board) in Water Right Decision 1641 (D1641) imposed the obligation on the Bureau's water rights to meet these objectives. Water purchases is one of the methods the State Board contemplated the Bureau would utilize to meet these objectives. Over the past three years since D1641 has been implemented, Reclamation has had difficulty meeting the Vernalis water quality and flow objectives, it is irresponsible of the Bureau to not include the potential use of the transfer water for meeting with Vernalis objectives.

Section Two – Alternatives

2.2 No Action/No Project Alternative

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The description of the No-Action Alternative is confusing at best and outright misleading at worst. The Draft EIS/EIR makes some confusing statement about baseline conditions opposed to existing physical conditions. The description then proceeds to state that even though the Exchange Contractors have been the primary source for Level 4 refuge supplies, the No Action/No Project must assume that Level 4 deliveries will continue from some unnamed, unidentified water source. Where will the water come from for the Level 4 supplies? Where is the environmental document that supports the transfer to the refuges? The California Environmental Quality Act (CEQA) requires more. The purpose of the "No-Project/No Action" alternative is to allow a comparison of the environmental effects of approving the proposed project with the effects of not approving it. [See: 14 Cal. Code Regs. Section 15126 et seq.; *Planning and Conservation League v. Department of Water Resources* (2000) 83 CA 4th 892; *County of Inyo v. City of Los Angeles* (1981) 124 CA3d 1] The resulting effect of the assumption that deliveries will continue is that the Draft EIS/EIR is legally inadequate because of the flawed environmental analysis that only examines the incremental delivery of additional Level 4 refuge supplies not previously supplied by the Exchange Contractors.

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Moreover, the assumptions in the No Action/No Project Alternative related to the Exchange Contractors deliveries are equally flawed. The Draft EIS/EIR states that the existing conditions assume the recent provision of up to 71,600 acre-feet of transfer water. **In the absence of this proposed project, no water transfer would occur as the environmental document supporting the previous transfer was for a five-year period ending in 2005.** CEQA requires that the Draft EIS/EIR analyze the environmental effects of transferring up to 130,000 acre feet of which 80,000 acre feet would be coming from water developed through tail water recovery efforts under the various potential scenarios. By including the 71,600 of water developed in the existing conditions in the No Project Alternative the Draft EIS/EIR is legally flawed because the decision makers are never provided with a comprehensive analysis of the environmental impacts of approving the proposed project. A project description must include an accurate and consistent project description and all the integral components of the project in the EIR, failure to do renders the EIR invalid as it fails to disclose all of the impacts of a project. [See: 14 Cal. Code Regs. Section 15126 et seq.; *Planning and Conservation League v. Department of Water Resources* (2000) 83 CA 4th 892; *County of Inyo v. City of Los Angeles* (1981) 124 CA3d 1].

2.3 Action/Project Alternatives

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The Water Development Alternatives lists the actions the Exchange Contractors will employ to develop the water to be made available pursuant to this program including their tail water recovery efforts, supplement their tail water recapture program with other conserved water and provide groundwater pumping to develop the up to 130,000 acre feet needed for the project. In describing the break down of 130,000 acre-feet it states that 80,000 acre feet would come from the tail water recapture. Is this a new 80,000 acre

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feet or are the Exchange Contractor simply increasing its previous tail water recapture program by 10,000 acre feet. The manner in which this section is drafted, i.e., stating that 80,000 acre feet will be developed simply emphasizing the previous point that in order for this environmental document to be legally defensible, the environmental effects of developing 80,000 acre feet of tail water recovery/conserved water must be analyzed.

2.5 Alternatives Considered But Not Evaluated In Detail

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The Draft EIS/EIR improperly dismisses the use of transfer water for supplemental flows on the San Joaquin River. The "Purpose and Need" section is so narrowly defined that the Draft EIS/EIR rejects the use of this water for enhancement of the San Joaquin River. We specifically requested that the Bureau/Exchange Contractors include in the description of the project the use of water in the San Joaquin River for water quality for salinity and fish and wildlife purposes as directly by the State Board. This use was improperly rejected.

2.7 Summary Comparison of Alternatives

6

In the subsection on "Surface Water" it states that "[b]ecause flows and water quality at Vernalis are regulated by New Melones Reservoir operations, the primary effect of the action alternatives is on storage in New Melones with its implications for water allocations." What is the point of this statement and what does it mean? Flows and water quality at Vernalis are influenced by a number of actions, including tributary operations, agricultural, wildlife refuge and M&I discharges, and upstream development, to simply name a few. While the Bureau is obligated to meet certain objectives contained in the 1995 Water Quality Control Plan, it is important to note that ALL Bureau permits are obligated to meet the Vernalis salinity objective, not simply New Melones.

Section Four – Surface Water Resources

4.1.1.2 Overview of Exchange Contractors Service Area

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There is a statement on page 4-5 that "[a]lthough difficult to quantify, some drainage exits the Exchange Contractors service area to Salt and Mud sloughs....If they were reduced due to a tail water recovery program or are affected by other elements utilized by the Exchange Contractors to develop transfer water, a corresponding change in flow would occur at Vernalis." Drainage exiting the Exchange Contractors service area must be quantified. This statement acknowledges that the tail water recovery program adversely affects flows at Vernalis, which emphasizes the need for a complete environmental impacts analysis of the Exchange Contractors' tail water recovery program that produces 80,000 acre feet of water to be transferred.

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4.2 Environmental Consequences

8 The Draft EIS/EIR identifies two areas of effects on surface water resources (1) effects resulting from how the transfer water is developed in the Exchange Contractors, service area (source area) and (2) effects resulting from the use of the water outside the source area, by wildlife refuges area, agricultural and urban water users (transfer area). At the outset I would like to commend the drafters of the Draft EIS/EIR for recognizing that impacts occur to Vernalis water quality, Vernalis flow and New Melones operations. This is the first time in all my years of reviewing these water transfer documents that this specific analysis has been included! Having said that, however, this analysis is fundamentally flawed because of the assumptions contained in the No-Action/No Project Alternative. The environmental impacts to Vernalis water quality, Vernalis flow and New Melones Storage are GREATLY UNDERESTIMATED by this analysis for all Alternatives because it assumes that water will continue to be made available from wildlife refuges from other sources, and because it assumes that the Exchange Contractors will continue to use the "water developed" as discussed above. The resulting affect is a great underestimation of flow needed at Vernalis caused by the tail water recovery program, and a great underestimation of water quality impacts because of wildlife refuge deliveries. Because these environmental impacts are not analyzed, the significant adverse environmental impacts on New Melones storage is greatly underestimated.

We believe that entire Surface Water Resources analysis must be re-done with the appropriate assumptions included. The following general comments/questions are made on the analysis contained in the Section.

9 Page 4-13 – No Action/No Project Alternative: The No Action/No Project should not include the faulty assumption of continued deliveries to wildlife areas and continue re-use by the Exchange Contractors of water developed. Moreover, where is the analysis of the environmental impacts of the "re-use" by the Exchange Contractors of the tail water? Failure to include such analysis renders the Draft EIR/EIS inadequate.

10 Page 4-15 – Hydrologic Effects Due to Water Development: Alternative A must include an analysis of the environmental impacts of making 80,000 acre feet available for transfer from the Exchange Contractor service area. Currently, the hydrologic effects section only analyzes the "incremental amount of water above the baseline that is developed and delivered." What are the environmental impacts on Vernalis water quality of making this water available? What are the environmental impacts on Vernalis flows? How much more water will be needed to ensure the Vernalis water quality and flow objectives will be met? This should be a separate graph and not assume that these releases will be made from New Melones Reservoir.

11 At page 4-16: The Draft EIS/EIR recognizes that the largest potential affect to Vernalis flow comes from the conservation scenario. The documents further states "[d]uring these months any change in San Joaquin River flows upstream of the Stanislaus

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11 River are assumed to be counteracted by a change in New Melones Reservoir releases." Why is this assumed? Did New Melones have water allocated for Bay-Delta purposes under the IOP to make this water available (recognizing in below-normal water years, none is available)? The Vernalis flow objective runs from February through June. Where there are negative amounts, are any New Melones releases being made? Where there are negative amounts, are the flow objectives being met? Do the graphs show all of the affects on Vernalis flow or do they assume New Melones releases are made in some instances?

12 Page 4-17: The Draft EIS/EIR states that "[w]ater quality changes at Vernalis trend with the changes in flow at Vernalis. The water quality of tail water is typically worse than the melded quality of water at Vernalis. Therefore, the removal of tail water by the Exchange Contractor would improve water quality at Vernalis." This is not necessarily true, because while we have seen less water returning to the San Joaquin River from tail water return flow, the water that is entering the system is at a greatly degraded quality? What amount of dilution flow is required to bring the tail water into compliance with Vernalis water quality objective? The Draft EIS/EIR goes on further to state that "[t]here is no change in water quality for several months during below normal, dry and critical years although there would be a change in flow. These are periods when New Melones Reservoir releases are maintaining water quality requirements at Vernalis." Would these New Melones releases be required if there WAS NOT a reduction in flow? Are additional releases required to ensure that the Vernalis salinity objective is met? The Draft EIS/EIR analysis appears to IMPROPERLY assume that additional releases will be made when it states "[a] change in upstream flows and associated quality will be counteracted by releases from New Melones to maintain the water quality requirement at Vernalis." THIS IS TOTALLY UNACCEPTABLE. The environmental impacts of making this water available must be mitigated in a manner that does not require New Melones releases or the project should not be done.

13 Page 4-18: The Draft EIS/EIR states that State Board Decisions 1641 and 1422 require releases from New Melones to maintain minimum levels of water quality and flow at Vernalis. It should be noted that D1641 conditions all of the Bureau water rights on meeting the Vernalis salinity objective, not simply New Melones – water may be made available from other sources to meet these requirements; it is not mandated to come from New Melones Reservoir.

14 Page 4-19 – Table 4-14: It important to note that as little as a 1 acre foot reduction in New Melones storage may cause a reduction of 31,000 acre-feet to CVP Contractors.

15 Page 4-22-24: This section only analyzes the incremental affect of making refuge water available and therefore only shows an affect in August. What about the additional environmental impacts of the 70,000 acre-feet of water being made available by the Exchange Contractors. The Draft EIS/EIR discusses changes in New Melones Reservoir operations in February and June time periods. Please clarify whether additional

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- 15 releases are being made during this time period from New Melones to counteract the effects. It is unclear how and when these releases are being reported. **New Melones should not be used to counteract any transfer-related changes in Vernalis flow or water quality.** The Draft EIS/EIR should not assume that water degraded as a result of a refuge focus transfer, will be mitigated by Reclamation by operating New Melones Reservoir to continue to comply with water quality objectives consistent with past practice. In order to authorize this project, appropriate mitigation must be included which does not include increased releases from New Melones Reservoir.
- 16 Page 4-25: Does Table 4-18 accurately depict the **gross** increases in releases made from New Melones reservoir to counteract the decrease in flow from the water developed, the potential for increases water quality releases because of the developed water and the increased need for water quality from delivery of the developed water for use on water refuges?
- 17 Page 4-28: Why do deliveries to agricultural contractors generally result in additional return flow to the river at a quality better than existing conditions? Once again it states that water quality at Vernalis will improve or be neutral with an agricultural focus scenario because it is assumes Reclamation would continue to operate New Melones to comply with water quality objectives? Would the analysis change if New Melones operation was not operated to meet the objectives? Does delivery of this water to agricultural users require additional releases to meet the objectives?
- 18 Page 4-29 – Table 4-22: Please clarify the changes in New Melones reservoir releases occurring in February and June? Are these the only negative changes or are there additional changes that are not represented in this Table?
- 19 Pages 4-30-34: This section discusses use of the water out of basin. The analysis in this section incorrectly assumes that water will be released from New Melones Reservoir to make up for reduction in flow and degraded water quality. The analysis should not assume increases in releases from New Melones and should analyze the environmental impacts of the proposed actions without modifications in New Melones operations.
- 20 Page 4-36: The Draft EIS/EIR states that [c]ertain months (e.g., June of an above-normal year and February in below normal and dry years) show no change in flow. This is due to the New Melones Reservoir releases required to meet flow or water quality criteria at Vernalis.” What does this mean? Are New Melones releases being required in other months where negatives are represented in Table 4-28?
- 21 Page 4-37 – Table 4-30: Does Table 4-30 reflect the gross change in storage required by the assumed increases in releases for water quality and flow at Vernalis by implementation of this Alternative?

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- 22 Page 4-40: The discussion here once again improperly assumes that Reclamation would mitigate the degraded water quality with increased releases from New Melones Reservoir. What would be the environmental impact if such releases were not made by Reclamation? It should not be assumed that Reclamation will continue to operate New Melones to comply with water quality objectives consistent with past practice. The environmental impacts analysis must analyze the impacts of the transfer irrespective of how New Melones is operated.
- 23 Page 4-40 – Table 4-40: Does this table reflect the gross changes made in New Melones operations to counter the effects of making the water available and delivering the water? What does “[w]hen a reduction in flow is calculated, the reduction may not actually be allowed because another release objective may require the continuation of some level of that release” mean? Are the true impacts on New Melones being properly characterized? What if “another” release is not being made, how would this impact storage at New Melones?
- 24 Page 4-43-44: Does Table 4-38 reflect the gross changes made in New Melones operations to counter the effects of making the water available and delivering the water? What does “[w]hen a reduction in flow is calculated, the reduction may not actually be allowed because another release objective may require the continuation of some level of that release” mean? Are the true impacts on New Melones being properly characterized? What if “another” release is not being made, how would this impact storage at New Melones?
- 25 Page 4-46: Does Table 4-42 reflect the gross changes made in New Melones operations to counter the effects of making the water available and delivering the water? What does “[w]hen a reduction in flow is calculated, the reduction may not actually be allowed because another release objective may require the continuation of some level of that release” mean? Are the true impacts on New Melones being properly characterized? What if “another” release is not being made, how would this impact storage at New Melones?
- 26 Page 4-48 – Hydrologic Effects Due to Water Development: Alternative C must include an analysis of the environmental impacts of making 80,000 acre feet available for transfer from the Exchange Contractor service area. Currently, the hydrologic effects section only analyzes the “incremental amount of water above the baseline that is developed and delivered.” What are the environmental impacts on Vernalis water quality of making this water available? What are the environmental impacts on Vernalis flows? How much more water will be needed to ensure the Vernalis water quality and flow objectives will be met? This should be a separate graph and not assume that these releases will be made from New Melones Reservoir.
- 27 At page 4-49: The Draft EIS/EIR recognizes that the largest potential affect to Vernalis flow comes from the conservation scenario. The documents further states “[d]uring these months any change in San Joaquin River flows upstream of the Stanislaus

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27 River are assumed to be counteracted by a change in New Melones Reservoir releases." Why is this assumed? Did New Melones have water allocated for Bay-Delta purposes under the IOP to make this water available (recognizing in below-normal water years, none is available)? The Vernalis flow objective runs from February through June. Where there are negative amounts, are any New Melones releases being made? Where there are negative amounts, are the flow objectives being met? Do the graphs show all of the affects on Vernalis flow or do they assume New Melones releases are made in some instances?

28 Page 4-50: The Draft EIS/EIR states that "[w]ater quality changes at Vernalis trend with the changes in flow at Vernalis. The water quality of tail water is typically worse than the melded quality of water at Vernalis." Therefore, the removal of tail water by the Exchange Contractor would improve water quality at Vernalis? This is not necessarily true, because while we have seen less water returning to the San Joaquin River from tail water return flow, the water that is entering the system is at a greatly degraded quality? What amount of dilution flow is required to bring the tail water into compliance with Vernalis water quality objective? The Draft EIS/EIR goes on further to state that "[t]here is no change in water quality for several months during below normal, dry and critical years although there would be a change in flow. These are periods when New Melones Reservoir releases are maintaining water quality requirements at Vernalis." Would these New Melones releases be required if there WAS NOT a reduction in flow? Are additional releases required to ensure that the Vernalis salinity objective is met? The Draft EIS/EIR analysis appears to IMPROPERLY assume that additional releases will be made when it states "[a] change in upstream flows and associated quality will be counteracted by releases from New Melones to maintain the water quality requirement at Vernalis." THIS IS TOTALLY UNACCEPTABLE. The environmental effects of making this water available must be mitigated in a manner that does not require New Melones releases or not be done.

29 Page 4-51: Does Table 4-46 reflect the gross changes made in New Melones operations to counter the effects of making the water available and delivering the water? What does "[w]hen a reduction in flow is calculated, the reduction may not actually be allowed because another release objective may require the continuation of some level of that release" mean? Are the true impacts on New Melones being properly characterized? What if "another" release is not being made, how would this impact storage at New Melones?

30 Page 4-52-55: This section only analyzes the incremental affect of making refuge water available and therefore only shows an affect in August. What about the additional environmental impacts of the 70,000 acre-feet of water being made available by the Exchange Contractors through its tail water recovery program. The Draft EIS/EIR discusses changes in New Melones Reservoir operations in February and June time periods. Please clarify whether additional releases are being made during this time period from New Melones to counteract the effects. It is unclear how and when these releases are being reported. **New Melones should not be used to counteract any transfer-related changes in Vernalis flow or water quality.** The Draft EIS/EIR should not assume that water degraded as a result of a refuge focus transfer, will be mitigated by Reclamation by

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- 30 operating New Melones Reservoir to continue to comply with water quality objectives consistent with past practice. In order to authorize this project, appropriate mitigation must be included which does not include increased releases from New Melones Reservoir.
- 31 Page 4-56: Does Table 4-50 accurately depict the **gross** increases in releases made from New Melones reservoir to counteract the decrease in flow from the water developed, the potential for increases water quality releases because of the developed water and the increased need for water quality from delivery of the developed water for use on water refuges?
- 32 Page 4-59: Why do deliveries to agricultural contractors generally result in additional return flow to the river at a quality better than existing conditions? Once again it states that water quality at Vernalis will improve or be neutral with an agricultural focus scenario because it is assumes Reclamation would continue to operate New Melones to comply with water quality objectives? Would the analysis change if New Melones was not operated to meet the objectives? Does delivery of this water to agricultural users require additional releases to meet the objectives?
- 33 Page 4-60 – Table 4-54: Please clarify the changes in New Melones Reservoir releases occurring in February and June? Are these the only negative changes or are there additional changes that are not represented in this Table? Please further elaborate on the statement [t]he exception is during an above normal year when the only change in New Melones releases is the reaction to the new removal of flow from the river during June.” What does this statement mean?
- 34 Pages 4-61-65: This section discusses use of the water out of basin. The analysis in this section incorrectly assumes that water will be released from New Melones Reservoir to make up for reduction in flow and degraded water quality. The analysis should not assume increases in releases from New Melones and should analyze the environmental impacts of the proposed actions without modifications in New Melones.
- 35 Page 4-64: Does Table 4-58 reflect the gross changes made in New Melones operations to counter the effects of making the water available and delivering the water? What does “[w]hen a reduction in flow is calculated, the reduction may not actually be allowed because another release objective may require the continuation of some level of that release” mean? Are the true impacts on New Melones being properly characterized? What if “another” release is not being made, how would this impact storage at New Melones?

4.2.3 Cumulative Effects

- 36 CEQA requires an EIR to discuss the cumulative impacts of a project. Cumulative impacts consists of an impact that is created as a result of the combination of the project together with other projects causing related impacts. [See 14 Cal Regs. Section 15130 and 15355]. The purpose of the cumulative impacts analysis is to avoid considering

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- 36 projects in a vacuum. Without the cumulative impact analysis, piecemeal approval of several projects with related impacts could lead to severe environmental harm. [*Whitman v. Board of Supervisors* (1979) 88 CA 3d 397; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 CA 4th 713]. The Cumulative Effects discussion is woefully inadequate. It fails to consider first and foremost the affects of the tail water recovery program previously implemented by the Exchange Contractors. It fails to evaluate the affects of the Regional Water Quality Control Boards adoption of its *Waiver for Irrigated Agricultural Lands*. It fails to evaluate the affects of the Regional Water Quality Control Board TMDLs for Salt and Boron and DO in the Stockton Ship Channel. The significant impacts from the proposed transfer program on flows and water quality into the San Joaquin River basin trigger a significant cumulative impact and must be properly mitigated.

4.2.4 Impact and Mitigation Summary

- 37 The impact to surface water resources in the San Joaquin River Basin associated with the three different alternatives creates significant adverse environmental impacts to water quality at Vernalis, **water flow at Vernalis**, New Melones operations, and Delta CVP/SWP supply that must be mitigated in order for this project to proceed. Tables 4-61, 4-62 and 4-63 must be modified to appropriately reflect in all CEQA categories: "Flows at Vernalis, Water Quality at Vernalis, New Melones Reservoir Operation" that potentially significant adverse impacts are identified and must be mitigated and all NEPA categories should reflect "negative effect with mitigation required."

Section Thirteen – Mitigation Monitoring and Reporting Program

13.2.1.1 New Melones Reservoir Operation

- 38 We agree that even a minor reduction in storage is a significant adverse impact that must be mitigated. Language should also be included that any change in flow or water quality at Vernalis is a significant adverse impact that must be mitigated without the use of water from New Melones Reservoir.

13.2.2.1. Water Quality at Vernalis and New Melones Reservoir

- 39 This section improperly concludes that water development alone has an "insignificant impact" to water quality at Vernalis. Section 4 of the Draft EIS/EIR clearly showed impacts to water quality from development of water. Moreover, there is a "significant impact" on flow at Vernalis by the water development that must be mitigated. If this is not true, how do you explain the first bullet in Section 13.2.2.2 CVP/SWP Delta Water Supply, which states that "the depletion effects of developing water would be partially offset with additional return flows and releases from New Melones for water quality and flow objectives." ALL effects on water quality and flow at Vernalis and New Melones operations must be fully mitigated in order for the project to proceed.

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13.3 Mitigation and Monitoring

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Section 13.3 states that “the other measure for mitigation of impacts is New Melones Reservoir Interim Plan of Operation.” New Melones cannot be used as mitigation measure for the significant adverse impacts caused by implementation of the proposed project. New Melones is not causing the problem, and therefore, should not be required to mitigate impacts for which it did not cause. Moreover, allocations under the IOP do not include water for mitigation resulting from water transfers. New Melones is tremendously over-allocated and cannot meet the current demands under the IOP. In fact, the IOP currently fails to meet the existing obligations for water quality and flow at Vernalis as we have seen since implementation of D1641. CEQA requires the proposal of mitigation measures that are designed to minimize the project’s significant impacts identified in the EIR [14 Cal Regs. 15126 et seq.]. Here, the proposed mitigation measure of utilizing New Melones Reservoir would actually create additionally environmental impacts because it would further exacerbate the water shortage on the Stanislaus River in violation of CEQA requirements.

Section 13.3.1 Mitigation Responsibilities

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As lead agency, the Exchange Contractors are the agency responsible for identifying and carrying out the proposed mitigation. The suggestion that that United States and the refuge entities would be responsible for the mitigation of impacts is an illegal delegation of responsibility. How can the Exchange Contractors be assured that the proposed mitigation will actually take place when they assert no authority or control over the United States? CEQA requires that mitigation measures must be fully enforceable through permit conditions, agreement or other legally binding instruments. [14 Cal Regs. Section 15126.4(a)(2). Here, no such mechanism is provided and therefore the mitigation measures are legally deficient.

Section 13.3.2 Previous Transfer Monitoring

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Please provide me with a copy of all reports discussed in this section for water transfers occurring during the 1999 and 2004, including any and all information related to the transfer approval process. Also, please provide me with a comprehensive summary of the changes made to the modeling referred to in this section.

Section 13.3.3 Proposed Transfer Program Approval Process/Mitigation Monitoring

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Section 13.3.3(5): It is insufficient to state that “mitigation measures for impacts to New Melones Reservoir...including carryover storage, will be resolved during the transfer approval process in the following year.” This language is completely unacceptable and violates the requirements of CEQA to proper identify and implement mitigation measures that result in reducing the impact to less than significant. Such post-hoc mitigation is legally flawed. How will water be replaced in New Melones storage? How will reductions

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43 in storage and corresponding reductions in allocation to New Melones CVP contractors be mitigated? How will New Melones CVP contractors receive their water allocations if storage is reduced? CEQA requires mitigation measure to be identified today, not at some point in the future. These mitigation measures must be feasible, implementable and enforceable. Deferring to a future date cannot occur.

44 Section 13.3.3(6): This section states that the "Exchange Contractors and Reclamation believe, that, except for extraordinary conditions, no significant adverse impacts on carryover storage in New Melones" will occur. This is in complete contradiction to the analysis contained in Section 4. As was previously stated in this section, ANY CHANGE in New Melones storage is potentially significant (page 13-2). Furthermore, I would refer you to Draft EIS/EIR pages 4-68, 4-69, 4-70, 4-73, 4-74, 4-75, 4-77, 4-78 and 4-79 that identify the change in storage and the potential significant impact to water supply allocations under the IOP. Also, see Tables 4-61, 4-62, 4-63 for the identification of potentially significant adverse effects of this project.

45 Section 13.3.3(7): If Level 4 deliveries exacerbate water quality conditions in the San Joaquin River triggering a water quality release from New Melones Reservoir, the only feasible mitigation measure is through the use of a portion of the Level 4 water acquired for dilution, not increase releases from New Melones Reservoir.

13.5 Other Mitigation and Environmental Commitments

46 The language in the bullet should be modified to state that Reclamation will operate all of its CVP facilities consistent with the water right permits held for each project. New Melones Reservoir cannot be required to make increased releases for Vernalis water quality and flow caused by implementation of this project.

We appreciate the opportunity to comment on the Draft EIS/EIR and look forward to the incorporation of our concerns into the analysis and final document.

Very truly yours,



KARNA E. HARRIGFELD
Attorney-at-Law

KEH:rl

cc: Mr. Kevin Kauffman

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Appendix E Comments and Responses

Summary of Total Monthly Water Quality Releases from 1991 - 2003

During the 13 Year period there were 9 Years when WQ Releases were made from New Melones

The following two tables show the total amount of water releases for a particular month and the frequency of months when water quality releases were required:

	WQ Release AF/Monthly Totals
January	1,893.8
February	30,675.0
March	97,757.8
April	109,971.2
May	39,903.9
June	128,782.3
July	143,753.4
August	71,076.7
September	33,304.5
October	2,254.7
November	0.0
December	0.0
TOTAL	659,373.3

	WQ Release Months of Releases
January	1/9 *
February	2/9 **
March	6/9
April	5/9
May	5/9
June	7/9
July	8/9
August	5/9
September	3/9
October	1/9
November	0/9
December	0/9

*2002

**2002, 2003

New Melones Water Quality Release Summary
Water Year 1991

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	533.4
June	1,162.3
July	16,185.2
August	9,663.2
September	9,221.0
October	2,254.7
November	0.0
December	0.0
TOTAL	39,019.8

Water Year 1992

	WQ Release AF
January	0.0
February	0.0
March	8,637.9
April	25,077.0
May	3,166.9
June	12,356.1
July	14,973.6
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	64,211.5

Water Year 1993

	WQ Release AF
January	0.0
February	0.0
March	5,116.1
April	0.0
May	0.0
June	10,751.8
July	19,742.7
August	13,700.5
September	10,472.2
October	0.0
November	0.0
December	0.0
TOTAL	59,783.5

Water Year 1994

	WQ Release AF
January	0.0
February	0.0
March	40,599.9
April	6,355.5
May	0.0
June	25,660.0
July	26,586.1
August	21,585.0
September	13,611.3
October	0.0
November	0.0
December	0.0
TOTAL	134,397.8

Water Year 1995

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	0.0

Water Year 1996

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	17,188.6
August	4,975.3
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	22,164.0

Water Year 1997

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	83.3
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	83.3

Water Year 1998

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	0.0

Water Year 1999

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	0.0

Water Year 2000

	WQ Release AF
January	0.0
February	0.0
March	0.0
April	0.0
May	0.0
June	0.0
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	0.0

Water Year 2001

	WQ Release AF
January	0.0
February	0.0
March	4,311.0
April	17,940.2
May	11,898.0
June	30,228.9
July	27,791.7
August	21,152.7
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	113,322.5

Water Year 2002

	WQ Release AF
January	0.0
February	7,535.4
March	16,905.1
April	21,709.9
May	9,205.1
June	28,991.5
July	21,202.2
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	105,549.1

Water Year 2003

	WQ Release AF
January	1,893.8
February	23,139.6
March	22,187.8
April	38,888.6
May	15,100.5
June	19,631.7
July	0.0
August	0.0
September	0.0
October	0.0
November	0.0
December	0.0
TOTAL	120,842.0

RESPONSE

Stockton East Water District – Karna E. Harrigfeld
August 2, 2004

General Responses

SEWD-i

The commenter asserts that releases deprive SEWD of its full contractual entitlement for water from New Melones. Because there are ongoing claims in regard to the SEWD and Central San Joaquin Water Conservation District in regard to water service from New Melones Reservoir in both administrative and judicial forums and because these statements appear to be for the purpose of describing SEWD's view of those historical events and not central to the compliance with NEPA and CEQA and the adequacy of the EIS/EIR, the lack of response does not constitute agreement or acceptance of these assertions.

SEWD-ii

Releases from New Melones for water quality purposes have changed because of many factors including the amounts of water delivered to CVP contractors and the refuges. Regardless of these changes, the transfer alternatives examined in this EIS/EIR and their possible effects upon New Melones operations and water quality in the river are described and quantified sufficiently. The alternatives have been analyzed against the current hydrologic setting and the projected future no project setting.

SEWD- iii

The commenter seems to be questioning the baseline or no project alternative descriptions. This issue and inquiry is fully addressed in response SEWD-2.

Specific Responses

SEWD-1

All water transfers are reviewed and approved by Reclamation with consideration of our Water Transfer Guidelines and consistency with CVPIA. The alternative suggested by the commenter is outside of the identified scope of the transfer project.

SEWD-2

When a project is a continuation of a previous project, the determination of the appropriate baseline for the environmental analyses, combined with the requirements of both NEPA and CEQA, requires reference to prior Congressional Acts.

In 1992, the CVPIA was adopted by Congress. Section 3406(D) provided in part that

“ . . . the Secretary shall provide, either directly or through contractual agreements with other appropriate parties, firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California. Los Banos, Volta, North Grasslands, and Mendota State wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California . . . Provided, that the Secretary shall be obligated to provide such water whether or not such long term contractual agreements are in effect . . .

“(2) Not later than ten years after enactment of this title, the quantity and delivery schedules of water measured at the boundaries of each wetland habitat area described in this paragraph shall be in accordance with Level 4 of the ‘Dependable Water Supply Needs’ Table for those habitat areas as set forth in the Refuge Water Supply Report and the full water supply needed for full habitat development for those habitat areas identified in the San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report prepared by the Bureau of Reclamation.”

Section 3403(J) defines “Refuge Water Supply Report” as the 1989 report of the Department of Interior. Whether or not there is a transfer from the Exchange Contractors to permit a proper CEQA/NEPA process, the current condition of water being supplied from the Delta Mendota Canal to the Refuges is required both because this is the law and because of the current physical environment.

Under CEQA and NEPA, legal enactments and programs approved by Congress are not subject to discretion or change. Further, in January of 2001 a final EA/IS on the San Joaquin Valley Refuge Supply Alternatives was completed by the Bureau of Reclamation and the environmental impacts and alternatives of supplying water to the Refuges was fully examined.

Under NEPA 40 CFR 1502.14, 1500.1(a), in some circumstances an EIS must examine alternatives that are outside an Agency’s jurisdiction or power and in conflict with law or Court orders if they are reasonable. However, this is not a basis for ignoring the current physical environment that includes water transfers from the Exchange Contractors for refuge use. If this EIS/EIR were to examine an alternative in which no refuge water was available or no transfer of Exchange Contractor water would be provided for refuge use, the objectives of NEPA and CEQA of providing a scientific and accurate description of the current human environment and the likely changes in that environment from the project or its reasonable alternatives would be ignored.. As 46 *Federal Register* 18026 as amended 51 *Federal Register* 15618: “Forty Most Asked Questions Concerning NEPA Regulations,” Question 3, states:

“Therefore, the ‘no action’ alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, project impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include

management plans of both greater and lesser intensity, especially greater and lesser levels of resource development.”

A subset of the comments refers to the appropriateness of utilizing the provision of 71,600 acre-feet annually to the Refuges from the Exchange Contractors as the baseline or the No Action/No Project Alternative. It is suggested by the commenter that the proper analysis would be to assume that no water transfer from the Exchange Contractors for Refuge use would occur. The Courts have provided guidance in those situations under CEQA where previous actions or policies have led to changes in the environment. The Courts have answered the question of whether it should be assumed, for purposes of the baseline or no project alternative, that the previous changes in environmental conditions should or could be reversed by directing that the existing physical conditions of the environment are the baseline to measure and analyze environmental impacts against. The Courts affirm that some theoretical environmental condition, should reauthorization of a project not be granted, is not the proper baseline when an EIR is being prepared. Remy Thomas, Guide to California Environmental Quality Act, 10th Edition p. 162-7; Environmental Planning and Information Council v County of El Dorado (3d Dist 1982) 131 Cal.App.3d 350, 352; Christward Ministry v Superior Court (4th Dist 1986) 184 Cal.App.3d 180, 186-187; 14 CCR 15125, 15126.6; Black Property Owners Association v City of Berkeley (1st Dist 1994) 22 Cal. App.4th 974, 985-986.

Under NEPA, even if a current practice or program could be discontinued, the proper baseline and the basis for considering a no action alternative is the existing physical conditions. American Rivers v FERC (9th Cir. 1999) 187 F.3d 1007 (FERC not required to consider a dam as removed and not in operation as baseline or no project alternative).

Refer to response STOCKTON-5 for further explanation of the No Action and existing conditions descriptions and response SDWA-2 for examining the incremental delivery of additional Level 4 refuge supplies not previously supplied by the Exchange Contractors.

CVPIA requires Interior to acquire additional water supplies, known as Incremental Level 4, to meet optimal waterfowl habitat management needs at National Wildlife Refuges in the Central Valley of California, certain State of California wildlife management areas, and the Grassland Resource Conservation District (collectively known as refuges). Incremental Level 4 is defined as the difference between historic annual average water deliveries (Level 2), and the water supplies required to achieve optimum waterfowl habitat management (Level 4).

Project impacts as identified in this EIS/EIR have been determined through comparison of the No Action/No Project against the proposed project. The No Action/No Project Alternative would result in no transfer of water from the Exchange Contractors to either the refuges or to any of the other potential water users, but the Refuges would receive Level 2 and Level 4 water from other sources because of the Congressional directive. Under the No Action/No Project, the Exchange Contractors would recover and reuse for their own operations approximately the same amount of tailwater flows that have recently been otherwise transferred. The reused water would be integrated in the Exchange Contractors’ water supply and likely reduce groundwater pumping that currently helps meet irrigation demands.

Under No Action/No Project, deliveries to the refuges would consist of Level 2 plus a portion of the Incremental Level 4 that could reasonably be obtained from sources other than the Exchange Contractors. Level 2 deliveries would be the same under the No Action/No Project and the Action/Project Alternatives. Under No Action/No Project, there would be no Incremental Level 4

deliveries to the refuges purchased from the Exchange Contractors. However, some Incremental Level 4 water supplies would be purchased from other willing sellers.

Under No Action/No Project, deliveries to the refuges are assumed to consist of 257,501 acre-feet of Level 2 plus 75,694 acre-feet of Incremental Level 4. In 2002 and 2003, Interior's Water Acquisition Program obtained an annual average of approximately 79,963 acre-feet from all sources including 62,250 acre feet from the Exchange Contractors. Under No Action/No Project, the Water Acquisition Program would continue to meet Interior's requirement to acquire Incremental Level 4 supplies for the refuges through purchases of water from willing sellers.

Since 1994, the Water Acquisition Program has made Incremental Level 4 purchases from 29 different water districts in addition to the Exchange Contractors. In the absence of purchases from the Exchange Contractors, the Water Acquisition would focus on willing sellers including those that have previously sold water to the program. For EIS/EIR modeling, general assumptions have been made about the sources of water under the No Action/No Project based on recent acquisition efforts. The specific water districts that would provide the water in any given year have not been identified at this time, since this would be highly speculative. As with all water purchases made by the Water Acquisition Program, appropriate environmental documentation would be prepared to address the individual and cumulative impacts of water acquisitions. It is also noted that the overall impacts of providing Level 4 refuge water supplies have been identified in the Programmatic EIS/EIR for the Central Valley Project Improvement Act (Reclamation 1997c) and in the EA/FONSI completed in January 2001 for the refuge water supply contracts (Reclamation 2001).

SEWD-3

The response to SEWD-2 is included herein. SEWD refers to the appropriateness of utilizing the provision of 71,600 acre-feet annually to the Refuges from the Exchange Contractors as the baseline or the No Action/ No Project Alternative. It is suggested that the proper analysis would be to assume that no water transfer from the Exchange Contractors for Refuge use would occur. It is unclear whether the commenter suggests that it be assumed that no Exchange Contractor water is delivered to the refuges or that water be delivered to the refuges from some other source, or that water be transferred for other uses and purposes.

The Courts have provided guidance in those situations under CEQA where previous actions or policies have led to changes in the environment, and have answered the question of whether it should be assumed, for purposes of the baseline or no action alternative, that the previous changes should or could be reversed. In Remy, Thomas, *Guide to California Environmental Quality Act*, 10th Edition, p. 162-7, it is emphasized that the existing physical conditions of the environment are the baseline to measure and analyze environmental impacts, and that some theoretical condition should re-authorization of a project not be granted is not the proper baseline when an EIR is being prepared. *Environmental Planning and Information Council v. County of El Dorado* (3d Dist. 1982) 131 Cal.App.3d 350, 352; *Christward Ministry v. Superior Court* (4th Dist. 1986) 184 Cal.App.3d 180, 186-187; 14 CCR 15125, 15126.6; *Black Property Owners Assoc. v. City of Berkeley* (1st Dist. 1994) 22 Cal.App.4th 974, 985-986.

Under NEPA, even if a current practice or program could be discontinued, the proper baseline and the basis for considering a no action alternative is the existing physical conditions. *American*

Rivers v. Federal Energy Regulatory Commission (9th Circuit 1999) 187 F.3d 1007 (FERC not required to consider a Dam as removed and not in operation).

Refer to responses STOCKTON-5 and SDWA-2. Existing conditions are as of October 2003 and reflect activities leading up to the state of the physical and social environments in 2003.

SEWD-4

The description of alternatives explains the total water transfer program. It specifically states that Alternative A is similar to the level of implementation currently underway for noncritical years (page 2-13). In the analysis of environmental effects of any program involving 80,000 acre-feet of tailwater recover/conservation, the incremental change over the existing condition/No Project/No Action is explained in Section 4 and Appendix B, both for water development alone and water development combined with water disposition. For example, Alternative A's conservation scenario is discussed on page 4-15: "...the Exchange Contractors would increase their water development by 10,365 acre-feet above baseline, including tailwater recapture of 16,365 acre-feet during noncritical years to achieve 80,000 acre-feet of transfer water..." Substantial effort was made in the Draft EIS/EIR to explain the effects of a wide range of programs in comparison to baseline conditions, and the environmental consequences sections are the appropriate location for this discussion.

SEWD-5

The commenter objects to not including additional purposes for the water: use of water in the San Joaquin River for water quality for salinity and fish and wildlife purposes. The project purposes were established by the lead agencies. The Exchange Contractors are free to reject other purposes that do not meet their program's specific objectives, and Reclamation's purpose to acquire water for the refuges is their CVPIA requirement that fits with the Exchange Contractors' objectives. See response SEWD-1 above. The earlier request by SEWD and others for additional purposes and alternatives to meet those purposes could be addressed in the future with the completion of other projects/planning studies focused on San Joaquin River restoration and TMDL requirements of the State Board. Section 1.3 of the text has been supplemented to include brief descriptions of these and other related projects and activities that are underway but not yet approved.

SEWD-6

Comment noted and considered. It is recognized that many factors influence the flow and quality of the San Joaquin River. In the context of the EIS/EIR analysis, the statement merely reflects the nexus between changes in flow and quality conditions in the San Joaquin River and the operation of New Melones.

SEWD-7

See response SDWA-13. The analysis incorporates recent, gaged information concerning the Exchange Contractors' discharges to Mud and Salt Slough. The reference to "difficulty" is the reference to the fact that some drainage flows are through accretion to Salt and Mud sloughs and not measured at gauges, and the percentage of accretion flows that may arise from the Exchange

Contractors service area application of water, compared to the amounts of waterfowl habitat use accretions or drainage accretions from other service areas, are difficult to determine as to origin. Since the project proposes not to change the accretions from waterfowl habitat or other districts or the unmeasured accretions that may originate in the Exchange Contractors service area, the methodology for examining impacts would appear to be correct.

The analysis in this EIS/EIR deals with return flows to the River specifically from proposed transfer program actions involving tailwater recovery and temporary land fallowing. Other drainage is not associated with the proposed program, and the sentence is an acknowledgement that it exists (under the affected environment section) but has not been quantified. This “other drainage” would be considered/quantified in other studies underway to deal with the Regional Board’s TMDL water quality requirements and Conditional Waiver Program for irrigated agriculture that involve the Exchange Contractors.

SEWD-8

See responses SEWD-2 and SEWD-3 above. The assumptions for No Action/No Project are appropriate and correct. The effects analyses for surface water and other resources are based on our reasonable analysis, quantifications, and assumptions about what would happen in the absence of this water transfer and are not speculative nor are they an attempt to underestimate effects which we have identified as significant.

Furthermore, the portrayal of the Exchange Contractors’ anticipated actions under the No Action scenario is based on information provided by the Exchange Contractors, and represents the expected operation of the facilities that they directly control if no transfers occur. The commenter is merely disagreeing with what the Exchange Contractors say they will do and how they will utilize the water resources available to their service area.

SEWD-9

See responses SEWD-2 and SEWD-3 above. The reuse of tailwater is currently an ongoing practice within the service area of the Exchange Contractors, and will continue with the transfer project. Any impacts associated with the tailwater reuse have already been experienced and are in fact a part of the existing condition.

SEWD-10

The analysis does evaluate the development of various levels of transfer water (e.g., 80,000 acre-feet under Alternative A). And, the effect of developing that amount of water is appropriately determined against Existing/No Project conditions. The Existing/No Project condition has been adequately formulated (see response SEWD-8); therefore, this comment is moot. The effects on water quality and flow at Vernalis are illustrated in the analysis for each alternative and its variations (e.g., see Table 4-11 and Table 4-11). The information is provided for the effects of development only, and the effects of the combination of water development and disposition (e.g., see Table 4-16 and Table 4-17). The amount of water that is required to compensate for water quality or flow changes due to the transfers is measured against the operation of New Melones Reservoir, and illustrated in tables such as Table 4-13. The analysis methodology does not

require, nor depend on the identification of the amount of water that is required to “ensure” water quality and flow objectives be met (see response SDWA-8).

SEWD-11

New Melones will react to changes in San Joaquin River conditions (see response STOCKTON-9). The analysis methodology does not need to specifically consider whether or not Reclamation is meeting flow or water quality objectives at Vernalis (see response SDWA-8). The effects of the transfers measures the counteractions necessary at New Melones to maintain the Existing/No Project conditions at Vernalis whenever the objectives control, whether or not Reclamation is fully complying with the objectives. The tables and graphs at Vernalis illustrate the resultant flow and quality conditions at Vernalis net of counteractions at New Melones.

SEWD-12

The commenter is mixing contexts. In the context of isolating the effect of removing a source of water with a quality worse than the quality of the water at a downstream location, with all other influences remaining the same, the downstream quality will improve. In the circumstance that New Melones releases are controlling the quality at Vernalis, any change upstream of the Stanislaus River will result in a change in releases at New Melones, and the water quality condition at Vernalis will appear to be unchanged. This effect could go either direction with water being retained in New Melones or additionally released from New Melones. The commenter also argues with the reaction of New Melones to changing conditions in the San Joaquin River (see response STOCKTON-9).

SEWD-13

Comment noted.

SEWD-14

The comment is correct in terms of the precise implementation of the Interim Plan of Operation. The annual transfer approval process would identify this highly unlikely circumstance.

SEWD-15

Comment noted and considered. The analysis of incremental effects is appropriate for reasons stated above for establishing the existing condition baseline for a NEPA/CEQA analysis. See responses STOCKTON-13 and STOCKTON-15 regarding Reclamation’s responsibility to meet flow and water quality objectives at Vernalis, and the mitigation of impacts to New Melones.

SEWD-16

Yes, the table reflects the net potential changes in New Melones releases due to water being developed by the Exchange Contractors and the disposition of the water. These changes occur due to changes in water quality or flow conditions in the San Joaquin River upstream of the Stanislaus River. In this specific circumstance, the results are associated with a refuge transfer scenario.

SEWD-17

See response SDWA-25. The net effect of delivering water to agriculture is dependent upon the combined effect of developing the water and the disposition of the water. The net effect is year-type dependent and source dependent, and results of the various combinations are illustrated by the EIS/EIR. The analysis of the net effect upon conditions upstream of the Stanislaus River due to transfers does not change with the assumption for New Melones counteractions, however the results of Vernalis water and flow conditions would change in certain circumstances.

SEWD-18

For these scenarios the negative values shown for the change in operations at New Melones reflect additional releases that would be required to maintain flow objectives at Vernalis, during those year types and those months, resulting from the net transfer effect of the scenarios. All the positive values reflect reductions in release needs from New Melones, typically due to a net water quality operation in the river.

SEWD-19

The commenter is not commenting upon environmental impacts or changes in the human environment but rather upon the legal or equitable question of whether New Melones flows may not be utilized for water quality purposes under certain circumstances. The SWRCB orders and decisions control these issues. New Melones releases are currently used to react to flow and water quality conditions in the San Joaquin River to meet the objectives at Vernalis.

SEWD-20

Table 4-28 is reflective of flow conditions at Vernalis. During the June and February months cited in the comment Vernalis flow objectives would control potentially control New Melones releases. A change in upstream flow conditions would be counteracted with New Melones releases and thus Vernalis flow would remain the same. The negative changes shown in the table represent other months when Vernalis water quality objectives would control New Melones releases. During those months the counteraction by New Melones to maintain water quality at Vernalis will not necessarily result in a one-for-one tradeoff in flow to compensate for change water quality and flow in the river. In this scenario, developed water alone removed flow from the river upstream of the Stanislaus while at the same time improved water quality and allowed a reduction in release needs from New Melones.

SEWD-21

Table 4-30 illustrates both the potential increases and decreases in releases by New Melones, for water development only.

SEWD-22

These comments are addressed in response SEWD-19.

SEWD-23

Page 4-40 contains Table 4-34 instead of the commenter's cited Table 4-40. Table 4-34 illustrates the potential changes in New Melones operations due to the combined effect of development and disposition of water. The statement regarding the results explains that the analysis evaluated potential changes in New Melones operations assuming that the controlling release requirement for New Melones (e.g., the water quality release component or the flow release component) was of sufficient magnitude to be reduced by the full calculated amount of reduction. In actual operations of New Melones, there may be circumstances when water quality releases control New Melones operations; however, fishery releases are also necessary but to a lesser flow level. Water quality releases may be reduced in reaction to the transfers but only to the level that the fishery release is still being supplied. The EIS/EIR analysis methodology could not identify when or if these circumstances would occur. The annual transfer approval process can and will address the occurrence of these circumstances.

SEWD-24

See response SEWD-23.

SEWD-25

See response SEWD-23.

SEWD-26

See response SEWD-10.

SEWD-27

See response SEWD-11.

SEWD-28

See response SEWD-12.

The comment may reflect a presumption that over time or during a dry cycle, counter releases from New Melones that can be traced to the impacts of transfers by the Exchange Contractors will result in a net depletion of New Melones. This assumption would require ignoring the savings in New Melones releases at other times arising from the exchange and reduction of tailwater, and Table 4-11 through Table 4-17 describe the multitude of variables and hydrologic factors. The assumption is not correct.

SEWD-29

See response SEWD-23.

SEWD-30

See responses SEWD-2 and SEWD-3 above regarding incremental effects and the appropriate baseline. See response SEWD-15 concerning New Melones operation.

SEWD-31

See response SEWD-16.

SEWD-32

See response SEWD-17.

SEWD-33

See response SEWD-18. The statement is made in the context of the net annual potential change in New Melones storage. In all year types except an above normal year, in some scenarios, a net gain in storage is anticipated. During the exceptions, a net reduction in storage is anticipated. The accounting process is for the purpose of keeping track of the net changes over a hydrologic cycle of New Melones and when necessary to guide the mitigation of impacts.

SEWD-34

See response SEWD-19.

SEWD-35

See response SEWD-23.

SEWD-36

While the anticipated effect on river conditions of the several cumulative actions that may occur in the future can only be defined by speculation at this point in time, the analysis provided in the EIS/EIR is sufficient to evaluate the range and types of impacts that may occur due to the transfers. The annual transfer approval process and its incorporated analytical methods will dynamically capture the changes to the underlying hydrology of the San Joaquin River caused by additional actions that occur in the future.

As to the portion of the comment contending that the baseline should not be the present physical conditions but a theoretical past condition in which substantial tailwater is not recaptured and reused within the Exchange Contractors, please see the response SEWD-2.

A cumulative impact analysis focuses on those effects that are not significant when evaluated previously but that could contribute along with other activities in the region to creation of a significant effect. More specifically, could an insignificant effect from the proposed transfer program be large enough to trigger a cumulative effect when combined with other small effects? Because we recognize that the program occurs within a regional context where water quality/quantity problems are significant, we designated small impacts to New Melones Reservoir operation as significant under some scenarios and year types. This means we did not

consider the proposed transfer in a vacuum. Furthermore, the “previous transfer program” comment is really a question of the baseline, which is addressed in response SEWD-2. The Regional Board’s irrigated agricultural conditional waiver determination, TMDL requirements for salt and boron, and DO in the Stockton Ship Channel are all activities designed to improve water quality in the San Joaquin River. These studies are underway to determine sources of discharge and resulting best management practices to control those discharges and have not been finalized for implementation at the time of preparation of this EIS/EIR. The Exchange Contractors are participating in these studies, and results are not immediately available for the transfer program EIS/EIR. Regardless of whether these other projects or activities are included in the No Action/No Project baseline or are identified as part of a cumulative analysis to provide a regional context, the specific effects of the transfer program are clearly identified. Text in Sections 1.3, 4.1.2, and 4.2.3 has been supplemented with a discussion of these related projects and activities.

SEWD-37

The commenter would appear to want “flow at Vernalis” determinations of significance to be altered to read “potentially significant,” commensurate with the determinations for water quality at Vernalis, New Melones Reservoir operation, and Delta supply. This is not consistent with the determinations made by preparers of the impact analyses. Furthermore, the tables are merely a summary of impacts and feasible mitigation measures. The commitment to mitigate, or “must mitigate” according to the commenter, is presented in Section 13 and will be documented further in a resolution by the Exchange Contractors and in a Record of Decision by Reclamation for transfer program approval following publication and certification of the Final EIS/EIR.

SEWD-38

New Melones operations for water quality and flow are governed by the objectives set by the SWRCB orders and Reclamation policy. See responses STOCKTON-13 and STOCKTON-15.

SEWD-39

As reported in Section 4, water development alone does not have a significant adverse effect on flow or water quality at Vernalis for any of the action alternatives. The potentially significant effect was on New Melones change in storage and Delta supply in certain circumstances (Figures 4-4 and 4-5). In reality, water development alone would not occur and is only shown to assist in the assignment of mitigation responsibility. Concerning the requirement to mitigate, the comment is noted and considered. See response SEWD-37 above.

SEWD-40

Comment noted. See responses STOCKTON-13 and STOCKTON-15.

SEWD-41

We disagree, as this is a combined NEPA/CEQA document with two lead agencies. The Exchange Contractors are responsible for mitigation of significant impacts arising from how they

develop the water for transfer. Reclamation is responsible for mitigation of significant impacts arising from the acquisition of water and its application to the refuges to meet CVPIA requirements. In addition, Reclamation approves all transfers of CVP water. The broader question is whether the measures are enforceable through permit conditions, agreements, or other legally binding instruments and can include measures proposed by lead, responsible, or trustee agencies (CEQA Guidelines 15126.4). The transfer approval process is an agreement between the Exchange Contractors and Reclamation and includes conditions of approval. Purchasers of transfer water, whether by Reclamation or other districts, also enter into agreements with the Exchange Contractors where limitations/conditions to avoid impacts can be incorporated.

SEWD-42

Comment noted. Concerning the summary of model changes, this is not available. The modeling provided for the analysis is based on a spreadsheet tool that was created “new” for this EIS/EIR. Therefore, an effort was not made to document changes (revisions) comparing the new model to the old model. The model itself is self-explanatory within its construct.

SEWD-43

The measures to mitigate the impacts to New Melones water supply will be addressed during the annual transfer approval process as described in Section 13.3.3. See also response STOCKTON-18.

SEWD-44

See also response STOCKTON-19: The comment illustrates the threshold that was used for the significance criteria. For purposes of identifying significant impact to New Melones water supplies, any potential reduction in storage (indicative of an additional release) caused a negative determination. Review of the potential effects to New Melones storage (e.g., Figure 4-6) illustrates that in many circumstances the effects of the transfers would be a gain to storage. However, since under certain circumstances a reduction in storage could occur, a significant impact determination was stated in the broad summary tables provided to give the reader a quick summary. From a practical perspective, a reduction in storage will be avoided through the annual approval process. Also, the estimated reduction in storage in the worst of circumstances amounts to approximately 5,000 acre-feet, which when applied through the procedures of the Interim Operations Plan results in very minor changes in water supply allocations.

Section 4 presents the conclusions of the environmental impact analysis in detail and conservatively focuses on the extraordinary conditions/certain circumstances that lead to a conclusion of significant effect. Section 13.3.3 provides an opinion based on recent transfers that these significant effects would not occur, and is not a complete contradiction because of the “extraordinary conditions” language that parallels the “certain circumstances” language used in Section 4. The impact summaries are directed to the worst case, infrequent event. Because the period of the proposed transfer is 10 years, the probability for hydrologic conditions to occur that lead to a significant effect is greater than what occurred for a 5-year transfer program.

SEWD-45

Comment noted and considered. As pointed out previously the environmental impacts arising from use of water upon the Refuges under the CVPIA has been made subject to NEPA review and that process has been concluded.

SEWD-46

The water right permits and CVP operating guidelines for New Melones Reservoir and procedures are not the subject of this CEQA/NEPA process and cannot be modified by this process.

Appendix E Comments and Responses

WESTLANDS WATER DISTRICT LETTER – JON D. RUBIN

JON D. RUBIN

KRONICK
MOSKOVITZ
TIEDEMANN
& GIRARD
A PROFESSIONAL CORPORATION

August 2, 2004

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VIA FACSIMILE AND U.S. MAIL
(916) 978-5055

Mr. Bob Eckart
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Re: *Comments on Draft EIS/EIR for the San Joaquin River Exchange
Contractors Water Authority 2005-2014 Water Transfer Program*

Dear Mr. Eckart:

Westlands Water District ("Westlands"), on behalf of its landowners and water users, submits these comments on the draft Environmental Impact Statement/Environmental Impact Report ("Draft EIS/EIR") for the San Joaquin River Exchange Contractors ("Exchange Contractors") Water Authority 2005-2014 Water Transfer Program.

Westlands is a California water district with a contractual right to receive up to 1,150,000 acre feet of Central Valley Project ("CVP") water from the United States Bureau of Reclamation ("Reclamation"). Westlands provides water for the irrigation of approximately 547,000 acres on the west side of the San Joaquin Valley, in Fresno and Kings Counties, and maintains the authority to protect, on behalf of its landowners and water users, rights that may be of common benefit to lands within Westlands.

Westlands supports the goals of Reclamation and the San Joaquin River Exchange Contractors Water Authority to develop a water transfer program in order to benefit San Joaquin Valley wildlife refuges, to meet the demands of agriculture and M&I uses for other CVP contractors, and for use by the Environmental Water Account ("EWA"). Water transfers have become an integral part of conserving and managing the state's existing water supply. The Preferred Alternative/Proposed Action is, for the most part, a balanced and flexible plan for conserving and maximizing beneficial water use.

Based on the review of the Draft EIS/EIR, Westlands makes the following comments.

Classification	DUE
Project	
Control No.	4009344
Folder I.D.	57190

ATTORNEYS AT LAW
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Mr. Bob Eckart
U.S. Bureau of Reclamation
August 2, 2004
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I.
GENERAL COMMENTS

1 Westlands is concerned that the Draft EIS/EIR fails to adequately consider the effect of the Proposed Action on CVP water supplies. The Draft EIS/EIR describes the impacts on the CVP and State Water Project ("SWP") water supplies in Section 4, and provides a detailed report on the impacts in Appendix B. The data provided throughout Section 4 and Appendix B, shows that, under most scenarios, Delta CVP/SWP water supplies will be reduced in any given year. In particular, Figure 4-15, on page 4-80, seems to show potential reductions of up to 20,000 acre-feet in some years. However, the Draft EIS/EIR does not describe the potential impacts on the CVP or SWP individually. If possible, the EIS/EIR should be revised to do so.

2 Section 4 concludes by finding that the potential impacts to the Delta water supplies are potentially significant, and require mitigation. (Section 4.24, page 4-66.) Section 13 of the Draft EIS/EIR addresses mitigation of the potential impacts of the proposed project, including those to the Delta CVP/SWP water supplies. Section 13.3.1 notes that the Exchange Contractors, along with Reclamation and the refuge entities, will be responsible for mitigation of the project impacts. However, the proposed mitigation strategies outlined in Section 13.3.3 are vague and do not specifically address how these parties will be responsible for mitigation of the project impacts.

3 When read as a whole, the proposed mitigation strategies appear to minimize the Exchange Contractors' obligations to mitigate the project impacts. For example, Section 13.3.3(4) states that, if Reclamation determines that a significant impact on Delta water supplies has occurred, it will be the responsibility of the CVP to "make the SWP whole through a mutually agreed-upon accounting protocol consistent with the Coordinated Operations Agreement." (Section 13.3.3(4), page 13-5.) This statement is problematic because it appears to shift the mitigation burden caused by the water transfer project away from the transferors and transferees, where it belongs, and towards the CVP. The EIS/EIR should be revised to place the mitigation burden on the proper party or parties.

4 Westlands is also concerned that the Draft EIS/EIR fails to recognize the existing efforts of the agencies involved in the CALFED process, including Reclamation, to address water quality in the San Joaquin River. In particular, Reclamation has been involved in the development of a document that recognizes the ongoing effort to prepare a "San Joaquin River Salinity Management Plan", which may include consideration of "the potential for salt load management and drainage reduction in agricultural and wildlife areas that drain into the San

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Mr. Bob Eckart
U.S. Bureau of Reclamation
August 2, 2004
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4

Joaquin River.” The Draft EIS/EIR should discuss that effort and what effect, if any, the proposed project might have on that Plan.

II.

SPECIFIC COMMENTS

Westlands would like to further provide comments with regard to specific details of the Draft EIS/EIR:

5

1. Tables 1-1 and Table 4-9 appear to contain the same information, however, the data is different. Additionally, the 2002 year and data have been left out of Table 4-9.

6

2. Section 1.2.1 and Table 1-2 describe the need for 103,014 acre-feet (AF) of Level 4 water measured at the refuge boundary. After a 20% conveyance loss is added, the total needed is 128,767 AF. For the conveyance losses, the Draft EIS/EIR should include information on how the conveyance losses are calculated, if the same percentage of loss occurs to all refuges, where the losses go, i.e. to groundwater or to discharges to other water bodies, and if those losses can be decreased.

7

3. Section 1.2.2 should also include with the CVPIA discussion the requirement to provide Level 2 and 4 water to refuges which has redirected another 250,000 – 350,000 AF to environmental purposes, and Reclamation’s obligation to diversify Level 2 water under Section 3406(d)(1) of the CVPIA to minimize adverse effects of CVP contractors.

8

4. The data provided in Table 1-3 references a Water Balance Analysis in Appendix A. Westlands is unfamiliar with this data and is unaware of the source. For Contract Renewal, Westlands has completed a Water Needs Analysis which provides information related to crop water needs which should be the source of the Appendix and Table 1-3. Additionally, Reclamation has completed a “Gap Analysis” for south of delta CVP Contractors and Refuges which provides similar information.

9

5. Table 2-1 is unclear as to whether conveyance losses are included or excluded.

10

6. Section 2.3.2.1 and Table 2-3, see comment #2.

11

7. Section 5.1.1.1 states that “in an average year, 40% of the water supply in the San Joaquin Valley region is provided by groundwater.” While this statement might be true if averaged throughout the valley, it is not true as it relates to Westside CVP contractors. The statement should be clarified in the document.

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Appendix E Comments and Responses

Mr. Bob Eckart
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August 2, 2004
Page 4

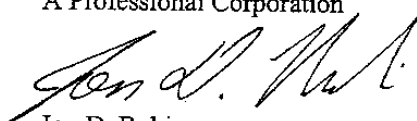
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8. Section 5.1.1.2, page 5-3, states that the San Joaquin River unconfined groundwater flows from southwest toward the northeast. While the groundwater elevations may decrease from southwest to the northeast, the groundwater flow is unknown at this time and should not be referenced.

Very truly yours,

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Professional Corporation



Jon D. Rubin

JDR/dg

cc: Joann Toscano
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RESPONSE

Westlands Water District – Jon D. Rubin
August 2, 2004

WWD-1

Regarding water supply impacts in the Delta, the EIS indicates possible reductions in San Joaquin flows into the Delta. Generally these reductions are small. In a dry year, Alternative A could reduce flows into the Delta by approximately 15,000 acre feet. However, it is not likely that these reductions in flows on the San Joaquin River will have any impact on South of Delta exports. The impacts, if any, to CVP/SWP supplies will only be realized after the year of transfer in a subsequent year's allocations. The annual transfer approval process incorporates this circumstance. The mitigation of impacts to CVP supplies is addressed during that process. Also see response STOCKTON-18.

WWD-2

Section 13.3.3 describes the mitigation measures. Basically if impacts are identified during the annual transfer approval process that warrant Exchange Contractor mitigation, the Exchange Contractors will mitigate those impacts.

WWD-3

If the impact is a result of how the Exchange Contractors make water available for transfer, the annual transfer approval process will determine how the mitigation will occur. The need for mitigation may not be required in the immediately following year since impacts may not be realized until several years subsequent. The measures and timing of the mitigation will be addressed at that time. If the impact is a result of how the refuges manage their water supplies, mitigation will be provided by Reclamation or by the refuges. See Section 13.3.3.

WWD-4

The San Joaquin River Salinity Management Plan is currently under development, and no plan is currently available for review. This plan is intended to enable reliable compliance with all existing Delta water quality salinity objectives (electrical conductivity and chloride) for which the Federal water project has responsibility, in accordance with SWRCB Water Right Decision 1641. This plan is looking at a whole host of activities and programs that could address water quality which could include a coordinated drainage strategy, salt load management and reduction, recirculation, voluntary water transfers and exchanges, and real time monitoring and coordination of eastside tributary operations. Consistent with NEPA/CEQA requirements, this subject EIS/EIR discloses potentially significant impacts of the Proposed Action that pertain to water quality including salinity. This information will be relevant in assessing how the Proposed Project could affect implementation of the plan. However, until the plan is available, such an assessment is speculative and unreliable, and, therefore, is not required for this EIS/EIR.

WWD-5

Table 4-9 only represents Exchange Contractor transfer amounts associated with its recent recapture and conservation transfer program and transfers for the WAP. Table 4-9 (referencing Appendix B) represents total water transfer by the Exchange Contractors including district-to-district transfers on behalf of land owners who have lands in multiple districts. The values will be different. The referencing text has been modified for clarity. Table 4-9 in the text has been modified to reflect this comment as indicated below.

Table 4-9
Previous Exchange Contractor Annual Water Transfers

Calendar Year	Total (acre-feet)
1993	59,891
1995	27,596
1996	32,448
1997	52,160
1999	61,260
2000	65,860
2001	70,286
2002	72,048
2003	74,039

Source: Appendix B.

Note: Table 4-9 only represents Exchange Contractor transfer amounts associated with its recent recapture and conservation transfer program and transfers for the WAP. Table 4-9 (referencing Appendix B) represents total water transfer by the Exchange Contractors including district-to-district transfers on behalf of land owners who have lands in multiple districts. The values will be different from those in Table 1-1.

WWD-6

The twenty percent loss amount is a general rule-of-thumb value, but not specific to any specific circumstance. The loss value assumption has only minor influence in the analysis methodology. The more salient aspect of the refuge delivery amount is the amount of water that is delivered at each refuge boundary for a total of 103,014 acre-feet. This value enters the hydrologic analysis for effects to the San Joaquin River. The losses are assumed to have no influence on San Joaquin River hydrology.

WWD-7

Issues related to delivery of Level 2 water and the diversification of Level 2 supplies are beyond the scope of this EIS/EIR. The Federal action here relates only to acquisition of a portion of the Incremental Level 4 supply.

WWD-8

Appendix A was prepared by URS, preparers of the EIS/EIR, and the text has been modified to reflect this. Appendix A is based on the sources listed after the text and preceding the tables. The methodology used by URS is explained in Appendix A. Table 1-3 (and Appendix A) was prepared to demonstrate the need for the Proposed Action utilizing a consistent methodology for all of the districts rather than a survey of each district's estimates utilizing different methodologies. We requested a copy of Westlands Water Needs Assessment from Thad Bettner on August 19, 2004, and Table 1-3 has been footnoted to reflect Westlands' information (see response MID-8). Furthermore, the Westlands Water Needs Assessment of October 11, 2000 has been included in its entirety as an attachment in Appendix A but without rerunning the water balance model. We recognize that different methodologies produce different estimates, and that your preferred estimate of "Contractor's Agricultural Water Demands" for a normal hydrologic year ranges from 1,394,349 acre-feet (1989) to 1,447,252 acre-feet (2025).

WWD-9

Table 2-1 shows Level 2 and Level 4 deliveries at the refuge boundaries. Conveyance losses are already accounted for.

WWD-10

See response WWD-6.

WWD-11

Comment questioned the statement, "in an average year, 40 percent percent of the water supply in the San Joaquin Valley region is provided by groundwater." The text in Section 5.1.1.1 will be replaced with the following text "...According to DWR Bulletin 118 (*California's Groundwater, Update 2003*, October 2003), groundwater provides approximately 30 percent of the total supply for the San Joaquin River Hydrologic Region. However, the amount of groundwater use within the region varies widely, both between different areas and from one year to the next. In the Westlands Water District, for example, groundwater has accounted for between 5 and 60 percent of total supply over the last 15 years, while in the Exchange Contractors' service area groundwater supplies have accounted for between 10 and 40 percent of the total over the last 10 years."

WWD-12

The text reflects the interpretation of the data used for the analysis.

CALIFORNIA FARM BUREAU FEDERATION LETTER – BECKY SHEEHAN



CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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August 2, 2004

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S.J.R.E.C.W.A.

VIA FACSIMILE AND U.S. MAIL

Joann Toscano
San Joaquin River Exchange Contractors Water Authority
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Los Banos, CA 93635

Bob Eckart
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Comments on Draft Environmental Impact Statement/ Environmental Impact Report
for San Joaquin River Exchange Contractors Water Authority's Water Authority Transfer
Program 2005-2014

Dear Ms. Toscano and Mr. Eckart:

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable food and fiber supply through responsible stewardship of California's resources. Farm Bureau's membership consists of 53 county farm bureaus throughout the state and, through them, more than 89,000 farm families and individual members.

The Farm Bureau provided scoping comments regarding this proposed ten-year water transfer to both the Bureau of Reclamation and the San Joaquin River Exchange Contractors Water Authority (referred to jointly as "Lead Agencies") on December 2, 2003. See attached. We are incorporating our earlier comments by reference, as the concerns we raised during the scoping process are not adequately addressed in the current Draft Environmental Impact Statement/ Environmental Impact Report for the Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority, 2005-2014 (Draft EIS/EIR.)

Ms. Toscano and Mr. Eckart
August 2, 2004
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Introduction

Specifically, in our scoping comments, we reminded the Lead Agencies that agricultural resources are a part of the physical environment, thus it is not proper to address the conversion of agricultural resources as only a change in land use or a socioeconomic impact. It is clear that a proper California Environmental Quality Act ("CEQA") analysis considers agricultural resources as part of the physical environment. The fact that agricultural resources are a part of the environment is evidenced by the extensive legislative intent we cited in our scoping comments and the specific guidance provided by the California Resources Agency in Appendix G of the CEQA Guidelines, which states:

AGRICULTURAL RESOURCES: In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:

- (a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?
- (b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?
- (c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland, to non-agricultural use?

Cal. Code of Regs., tit. 14, Appendix G. Moreover, as outlined in our December 2003 scoping comments, the Council on Environmental Quality ("CEQ") provides similar guidance regarding the appropriate consideration of agricultural resources during a National Environmental Policy Act ("NEPA") review.

The Lead Agencies did not follow the aforementioned guidance during its environmental review. As a result, the direct, indirect, cumulative and growth inducing impacts of the ten-year water transfer described in the Draft EIS/EIR were not sufficiently considered. Since there were impacts that were not sufficiently considered, the Draft EIS/EIR does not include mitigation measures to reduce those impacts. Finally, the Lead Agencies did not consider a reasonable range of alternatives, including alternatives that could have reduced the impacts of the proposed water transfer on agricultural resources.

Ms. Toscano and Mr. Eckart
August 2, 2004
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The Draft EIS/EIR Failed to Adequately Consider the Direct, Indirect, and Growth Inducing Impacts of the Proposed Long-Term Transfer

2

The Draft EIS/EIR did not adequately consider impacts to agricultural resources as directed by both NEPA and CEQA because the joint environmental document does not recognize the indirect effects of consistently taking a significant amount of farmland out of production every year. The fact that the same parcels may not be idled every year cannot be equated with negligible impacts.

As CEQA provides, "Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." Cal. Code Regs., tit. 14, § 15126.2(a). "The discussion should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in population distribution, population concentration, the human use of the land (including commercial and residential development), health and safety problems caused by the physical changes, and other aspects of the resource base such as water, historical resources, scenic quality, and public services." *Id.*

NEPA similarly requires a consideration of direct and indirect impacts. 40 C.F.R. §§1502.16(a), (b). Among other things, EISs must consider "...the environmental impact of...the proposed action, ..." and "...any adverse environmental effects which cannot be avoided should the proposal be implemented...." *Id.* §1502.16.

3

By taking up to 20,000 acres of agricultural land out of production every year, the currently proposed project will cause significant physical changes to the environment. As a result of this project, a significant portion of the agricultural resources in the project area may become unviable, thus will no longer be able to support agricultural production. These impacts will likely occur, because when a substantial segment of agricultural land is consistently removed from production every year, the farming infrastructure is damaged and farmland and farm water will be converted to other uses. A viable agricultural sector needs access to various support services, such as farm workers, supply companies, equipment dealers, transportation providers, pesticide applicators, processors, and marketers. These support services, in turn, require that a critical mass of agricultural resources be production to remain viable. But as agricultural land and water are converted to other uses, resulting in fragmentation of agricultural land, these necessary support services typically leave the area. Land fragmentation also reduces economies of scale, and increases traffic on rural roads with which agricultural traffic must compete. The net result of these impacts is to discourage farmers and ranchers from remaining in or entering the agricultural business, which in turn leads to further conversion of agricultural land and water.

4

The aforementioned loss of farm infrastructure and viability are not just economic or social impacts. The loss of agricultural infrastructure impacts the physical environment because the agricultural soils and the water required for the production of food and fiber

Ms. Toscano and Mr. Eckart
August 2, 2004
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- 4 loose productive capabilities when converted to other uses like urban development, wildlife refuges, and parks. Moreover, when farmland and farm water are converted, there are other environmental impacts to consider besides the loss of agricultural productivity. The impacts vary depending on the use that replaces agriculture, but they may occur whether agricultural land is converted to urban development or wildlife habitat. These potential impacts include, but are not limited to, a change in drainage patterns, diminished groundwater recharge, increased water use, and deterioration in water quality. The project also may have growth inducing impacts, as reduced agricultural viability makes these resources vulnerable to land speculators. Therefore, these secondary effects cause a reasonably foreseeable indirect change in the environment by depleting agricultural infrastructure and encouraging additional conversions of agricultural land and water to non-agricultural uses. These impacts must be analyzed as an environmental impact under both NEPA and CEQA.

- 5 The Draft EIS/EIR states that constantly fallowing up to 20,000 acres for ten years will not significantly impact agriculture. Draft EIS/EIR p. 7-13 ("No adverse impacts would occur to existing land uses (agriculture land uses, recreation, and other land uses), so no mitigation is required.") Fundamentally, the Draft EIS/EIR is flawed because agricultural resources are not addressed as a physical part of the environment. At the same time, however, the analysis that is a part of the Draft EIS/EIR is also flawed because the environmental document does not sufficiently explain why the fallowing of 20,000 acres is not a significant change in land use. The Draft EIS/EIR identifies a threshold for determining significance. Draft EIS/EIR pp. 7-10 to 7-11. However, the Draft EIS/EIR does not apply the threshold to the resources so the public can understand why the Lead Agencies believe there is no significant impact, and why the selected threshold is an effective tool for determining significance.

The Draft EIS/EIR Does Not Adequately Consider the Cumulative Impacts of this Proposed Water Transfer

- 6 The Draft EIS/EIR does not sufficiently consider the cumulative impacts of crop idling, short and long-term, as required by both CEQA and NEPA. Significantly, the Draft EIS/EIR does not consider any of the agricultural land retirement programs that are currently being undertaken throughout the region, nor does it consider widespread urban pressures to convert agricultural land.
- CEQA requires that every EIR "shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable...." Cal. Code Regs., tit. 14, § 15130(a). "The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." *Id.* at § 15355(b). Thus, it is well established that one "overwhelming consideration" of CEQA is that environmental considerations "do not become submerged by chopping a large project into many little ones - each with a minimal potential impact on the environment - which cumulatively

Ms. Toscano and Mr. Eckart
August 2, 2004
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may have disastrous consequences.” Bozung v. Local Agency Formation Com. (1975) 13 Cal. 3d. 263, 283-84.

NEPA regulations also require a federal agency to consider “[c]umulative actions, which when viewed with other proposed actions have cumulative significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. §1508.25 (a)(2). *See also id.* at 1508.25(c) (requiring discussion in EIS of cumulative impacts.)

- 6 Farm Bureau’s December 2003 scoping comments included a list of projects that are affecting the same agricultural resources as those targeted by this project’s land fallowing program. However, the projects we identified were not included in the Draft EIS/EIR’s cumulative impact analysis. The only project on our list that is mentioned in the Draft EIS/EIR is the Environmental Water Account (“EWA.”) While the Draft EIS/EIR recognizes the existence of the EWA, it fails to consider that the EWA for years 4-7 (Notice of Determination signed March 18, 2004) describes a project where 600,000 acre-feet of water may be acquired through land fallowing in the same region as the currently proposed project. If the Draft EIS/EIR contained a proper environmental analysis, it would have considered the cumulative impacts of the projects we identified, and mitigated for the significant impacts.

The Draft EI/EIR Does Not Adequately Consider the Feasible Mitigation for this Project’s Significant Impacts

- 7 Under CEQA, lead agencies must adopt feasible mitigation measures (or feasible environmentally superior alternatives) in order to substantially lessen or avoid otherwise significant adverse environmental impacts. Pub. Resources Code §§ 21002, 21081(a); Cal. Code Regs., tit. 14, §§ 15002(a)(2)-(3), 15021(a)(2), 15091(a)(1). NEPA also requires agencies to include a discussion of mitigation measures in an EIS. See 42 U.S.C. § 4332(2)(C) (requiring discussion of “any adverse environmental effects which cannot be avoided.”) The CEQ regulations require agencies to include in EIS/S “appropriate mitigation measures not already included in the proposed action or alternatives.” 40 C.F.R. § 1502.14(f). See also 40 C.F.R. § 1502.16(h) (requiring discussion of “[m]eans to mitigate adverse environmental impacts (if not fully covered under 1502.14(f)).

The Draft EIS/EIR states that this project may sell water to the EWA. As such, the Lead Agencies’ must discuss the mitigation requirements outlined in the CALFED Environmental Water Account Draft Environmental Impact Report/ Environmental Impact Statement (Years 4-7) (“EWA EIR/S”) and discuss how the EWA EIR/S’ mitigation measures will be applied to this project. Specifically, the EWA EIR/S states that, in counties where the EWA purchases water, no more than 20% of the agricultural land in that county will be fallowed in any given year. EWA EIR/S Vol. 2 pp. 11-27 to 11-28. However, The Draft EIS/EIR does not discuss this mitigation requirement. The EWA EIR/S also includes many other mitigation requirements for impacts to other environmental resources, like groundwater, but the Draft EIS/EIR also fails to discuss

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how the Lead Agencies will incorporate these other EWA mitigation requirements into the currently proposed long-term water transfer.

Besides the measures included in the EWA EIR/S, there are many other mitigation measures that were not considered that are inherently feasible, thus requiring review in the Draft EIS/EIR. These inherently feasible measures include the following:

- 7
1. Protect agricultural land and associated water rights of equivalent production potential for the duration of the water transfer at a predetermined ratio of at least 1:1 and/or protect an equivalent percentage of agricultural land and associated water rights of equivalent production potential within the same county or irrigation district of the transfer for the duration of the transfer.
 2. Agreements with the regulatory agencies that land idled by the this long term water transfer program will not be considered reverted to habitat and thus subject to increased regulation under the Endangered Species Act and Clean Water Act. In so doing, the environmental baseline will not be increased, thereby increasing environmental regulation when the land is put back into production.
 3. A mitigation fee paid to an infrastructure security bank that will make funds available to packing plants, processing plants and other farm infrastructure that is impacted by a loss in tonnage as a result of the proposed land fallowing. For example, a fee could be charged to the account for every acre-foot of water that is acquired by the EWA due to crop idling. A strong farm infrastructure will protect the environment from changes in land and water use.
 4. Adopt an alternative that does not include agricultural land fallowing.

The Draft EIS/EIR Does Not Adequately Consider a Reasonable Range of Alternatives

The Draft EIS/EIR does not consider a reasonable range of alternatives as every alternative includes a significant land fallowing component. The Lead agencies should have considered a no land fallowing and/or minimal land fallowing alternative.

- 8
- CEQA requires agencies to consider in every EIR a reasonable range of alternatives to the proposed action. *See e.g., Laurel Heights Improvements Ass'n v. Regents of University of California* (1988) 47 Cal.3d. 376, 400. The California Legislature has expressly declared that "it is the policy of this state to:...[r]equire governmental agencies at all levels...to consider alternatives to proposed actions affecting the environment'." See also, Pub. Resources Code § 21001(g). NEPA similarly requires agencies to include a discussion of "alternatives to the proposed action" in their EISs. See 42 U.S.C. § 4332(2)(C)(iii). NEPA also requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources." See 42 U.S.C. § 4332(2)(E). Judicial review of the range of alternatives considered by an agency is an inquiry into whether the agency has set forth all those

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alternatives necessary to permit a “reasoned choice.” Cal. Code Regs., tit. 14, § 15126.6(f) (“The range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice.”)

The Draft EIS/EIR does not Adequately Consider the Currently Proposed Water Transfer’s Impacts on Air Quality

The discussion of potential impacts to the valley’s air quality resulting from the fallowing of up to 20,000 acres is inadequate; as a result, we are concerned that the farmers who are not participating in the land fallowing program will be left to carry a heavier regulatory burden. The potential increase in particulate matter resulting from the currently proposed large land fallowing will be attributed to the entire area, thus the Environmental Protection Agency’s regulatory response to any reduction in air quality, or any inability of the region to achieve compliance, will be imposed on all farmers within the region.

9

Specifically, we believe the discussion in the Draft EIS/EIR’s Air Quality section is inadequate because it does not address the new air quality regulations that are being imposed on farmers in the project area. The Draft EIS/EIR states that fallowed fields will follow the current practice of planting a cover crop that subsequently gets plowed into the soil. However, the Draft EIS/EIR fails to discuss whether this practice is included on the San Joaquin Valley Air Pollution Control District’s (“SJVAPCD”) list of approved land management actions. Moreover, the Draft EIS/EIR does not discuss what must be included in a farm’s Conservation Management Practices (“CMP”) Plan before a farmer may participate in the fallowing program. The Draft EIS/EIR does not discuss any monitoring the Lead Agencies undertake to ensure that the land fallowed by this project will be managed according to the requirements of the applicable air district. It appears that the SJVAPD requires a fee for processing CMP Plans. Will the Lead Agencies be responsible for all or part of the fees if a CMP Plan needs to be amended before a farmer may participate in this project’s fallowing program?

At a minimum, the Draft EIS/EIR should discuss, as it relates to the land that will be fallowed, the following: wind-speed and frequency, soil types (sandy verses clay,) soil moisture content, vegetative cover or residue, exposed soil surfaces, climate interaction with salt minerals and the influences on dust emissions.

The Draft EIS/EIR should also discuss the following mitigation and monitoring considerations for land enrolled in this project’s fallowing component:

1. Study of historical information on dust emissions;
2. Determine how much land would be exposed through fallowing over time and who owns it;

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3. Conduction of sampling to determine the composition of "representative" sediments;
4. Analyze sediments to predict response to environmental conditions such as rainfall, humidity, temperature, and wind;
5. Study of potential dust control measures specific to the identified problems and conditions;
6. Designate responsible party for monitoring to ensure that mitigation measures are put in place.

The Draft EIS/EIR Does Not Adequately Consider the Proposed Project's Impacts on the Food Supply.

10

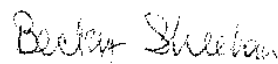
The Draft EIS/EIR fails to address the project's potential impact on our locally grown food supply. We believe the Draft EIS/EIR must address a possible reduction in the food supply because the fallowing of agricultural land may have indirect impacts (as described above) that may permanently reduce the acreage of certain crops. The CEQA Guidelines require an agency to make a "mandatory finding[] of significance" for an environmental impact where "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." Cal. Code Regs., tit. 14 § 15065.

Conclusion

11

Finally, the Farm Bureau is concerned by this project's the proposed water sales to the EWA because we believe the EWA EIR/S is legally inadequate. Farm Bureau is currently challenging the EWA EIR/S in court and the analysis of this project's impacts to agricultural resources parallels the analysis of the fallowing component of the EWA in many respects. As such, we urge the Lead Agencies to re-consider this project's environmental document to avoid perpetuating the same flawed assumptions about the impacts of land fallowing as those contained in the EWA EIS/EIR. The Farm Bureau looks forward to a satisfactory resolution of our concerns and a successful project. If you have any further questions, please do not hesitate to contact me at (916) 561-5667.

Sincerely,


Becky Sheehan

Enclosure, as noted



CALIFORNIA FARM BUREAU FEDERATION

ORIGINAL

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 • PHONE (916) 561-5665 • FAX (916) 561-5691

December 2, 2003

VIA FACSIMILE

Joann Toscano
San Joaquin River Exchange Contractors Water Authority
P.O. Box 2115
Los Banos, CA 93635

Bob Eckart
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Notice of Preparation of a Joint Environmental Impact Statement/Environmental
Impact Report for a 10-year water transfer program ("EIR/S for a 10-year water
transfer program")

Dear: Ms. Toscano and Mr. Eckart:

The California Farm Bureau Federation ("Farm Bureau") is a non-profit voluntary membership corporation whose purpose is to work to find solutions for the problems of the farm, the farm home, and the rural community. Our membership consists of 90,000 members throughout California who are farmers and ranchers, or otherwise concerned about the future of agriculture and rural communities in California. The Farm Bureau appreciates this opportunity to provide scoping comments on this joint project, and we appreciate your understanding in granting the Farm Bureau an extension until December 2, 2003 to provide our comments.

The Farm Bureau has several concerns and questions about the joint plan by the San Joaquin River Exchange Contractors Water Authority and United States Bureau of Reclamation (collectively referred to as "Lead Agencies") to transfer 130,000 acre-feet of water from the Exchange Contractors.

Ms. Toscano and Mr. Eckart
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CONCERNS

Our primary concern about the project described in the October 21, 2003 notice from the San Joaquin River Exchange Contractor Water Authority is how impacts to agricultural resources will be addressed in the environmental analysis. The Farm Bureau wants to remind the lead agencies that agricultural resources are a part of the physical environment, thus the Draft EIR/S for the 10-year water transfer program must consider direct, indirect, cumulative, and growth inducing impacts to these resources, and mitigate accordingly. It is not proper only to consider impacts to agricultural resources as a change in land use, which is what the October 21, 2003 notice appears to be proposing.

DIRECT, INDIRECT, AND GROWTH INDUCING IMPACTS

One of the major principles of the California Environmental Quality Act ("CEQA") is to sustain the long-term productivity of the state's agriculture by conserving and protecting the soil, water, and air that are agriculture's basic resources. (*See*, Cal. Pub. Res. Code §21060.5; 14 C.C.R. § 15360; CEQA Guidelines.) In fact, the California Legislature amended CEQA in 1993 because there was concern that agricultural resources were not being sufficiently protected; thus lead agencies required additional guidance as to how to properly review impacts to these resources. (*See*, Sen. Bill No. 850 (1993-1994 Reg. Sess.) (adding Pub. Res. Code §§ 21060.1 and 21095).

During the 1993 CEQA amendment process, the Legislature made clear its intent that CEQA is to protect agricultural resources:

Agriculture is the state's leading industry and is important to the state's economy.

The continued productivity of agricultural lands in California is important in maintaining a healthy agricultural economy.

The conversion of agricultural lands to nonagricultural uses threatens the long-term health of the state's agricultural industry.

The California Environmental Quality Act plays an important role in the preservation of agricultural lands.

It is the intent of the Legislature in enacting this act to encourage wise and efficient land use decisions based on the best available information by promoting the adoption and use of land evaluation and site assessment criteria by state and local agencies based on the system developed by the United States Soil Conservation Service to implement the Farmland Protection Policy Act (7 U.S.C. secs. 4201, et seq.).

Legis. Counsel's Digest for Sen. Bill No. 850, Environment-Agricultural Land Preservation (1993-1994 Reg. Sess.) This explicit statement by the Legislature highlights

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12/2/2003
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two important points: (1) that the legislature is concerned about "conversion of agricultural lands to non-agricultural uses;" and (2) that an important purpose of CEQA is to ensure the "preservation of agricultural lands." *Id.*

Agricultural resources similarly are considered a part of the existing environment under the National Environmental Policy Act ("NEPA"). On August 30, 1976, the Council on Environmental Quality ("CEQ"), in cooperation with the Department of Agriculture, issued a memorandum to federal agencies informing them of the need to consider loss of farmland as a potentially significant environmental impact. On August 20, 1980, the CEQ issued additional guidance to the heads of agencies as losses of agricultural lands had continued:

Approximately one million acres of prime and unique agricultural lands are being converted irreversibly to non-agricultural uses each year. Actions by federal agencies such as construction activities, development grants and loans, and federal land management decisions frequently contribute to the loss of prime and unique agricultural lands directly and indirectly. Often these losses are unintentional and are not necessarily related to accomplishing the agency's mission.

45 F.R. 59189. The CEQ further states:

If an agency determines that a proposal significantly affects[s] the quality of the human environment, it must initiate the scoping process...to identify those issues, including effects on prime or unique agricultural lands, that will be analyzed and considered, along with the alternatives available to avoid or mitigate adverse effects related to inducing changes in the patterns of land use...cumulative effects...mitigation measures...to lessen the impact on...agricultural lands.

Id. Pursuant to this CEQ guidance, and NEPA itself, the Lead Agencies are obligated to consider impacts to agricultural resources.

The Farm Bureau is further concerned that the Lead Agencies may believe, as the Bureau of Reclamation apparently did in the Draft Environmental Water Account Environmental Impact Statement/ Environmental Impact Report, that several years of fallowing cannot significantly impact agricultural resources. In fact, the opposite is often true as agricultural land fallowing for up to 10 years can significantly impair the viability of a region's agricultural resources.

When a substantial segment of agricultural land is consistently removed from production every year, the farming infrastructure is damaged and farmland and farm water will be converted to other uses. A viable agricultural sector needs access to various support services, such as farm workers, supply companies, equipment dealers, transportation providers, pesticide applicators, processors, and marketers. These support

Ms. Toscano and Mr. Eckart
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services, in turn, require a critical mass of farmers to remain viable. But as agricultural land and water are converted to other uses, resulting in fragmentation of agricultural land, these necessary support services typically leave the area. Land fragmentation also reduces economies of scale, and increases traffic on rural roads with which agricultural traffic must compete. The net result of these impacts is to discourage farmers and ranchers from remaining in or entering the agricultural business, which in turn leads to further conversion of agricultural land and water.

The aforementioned loss of farm infrastructure and viability are not just economic or social impacts. The loss of infrastructure is also a physical impact to the environment because the agricultural soils and the water required for the production of food and fiber have lost their productive capabilities when they are converted to other uses like urban development, wildlife refuges, and parks. Moreover, when farmland and farm water are converted, there are other environmental impacts to consider besides the loss of agricultural productivity. The impacts vary depending on the use that replaces agriculture, but they may occur whether agricultural land is converted to urban development or wildlife habitat. These potential impacts include, but are not limited to, a change in drainage patterns, diminished groundwater recharge, increased water use, and deterioration in water quality. Therefore, these secondary effects cause a "reasonably foreseeable indirect change in the environment" - by depleting agricultural infrastructure and encouraging additional conversions of agricultural land and water to other uses - and thus must be analyzed as an environmental impact under CEQA. Pub. Res. Code § 21065.

The weakening of agricultural viability should also be analyzed as possibly growth inducing. When agricultural resources are vulnerable, these resources are susceptible to urban pressures, and further urban development may result. This analysis should not be constrained only to the region where the transfers originated, because the weakening of agricultural viability will likely result in more agricultural water being sent to rapidly urbanizing areas outside the region, like southern California.

CUMULATIVE IMPACTS

The Draft EIR/S for the 10-year water transfer program should also consider the many other similar projects that are occurring throughout the region that could have cumulative impacts on agricultural resources. Although this is by no means an exhaustive list, the Draft EIR/S should have considered the following classes of projects:

1. The many agricultural land conversions that have been funded by the Wildlife Conservation Board in the past and that are currently proposed;
2. The land retirement and temporary idling funded through Farm Bill (Conservation Title) Programs;
3. United States Fish and Wildlife Service National Wildlife Refuges and proposed expansions of these refuges;

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4. Agricultural land conversions funded through the CALFED Ecosystem Restoration Program both before and after the ROD;
5. Habitat Conservation Plans/Natural Community Conservation Plans, both approved and in negotiation, because these plans usually convert farmland to wildlife reserves as mitigation for urban development;
6. Agricultural land conversions funded by the Central Valley Project Improvement Act Restoration Program;
7. Acquisitions of "B3" water through the Central Valley Project Improvement Act;
8. CALFED Environmental Water Account, including the proposed expansion;
9. Levee setback programs for river meander that are retiring agricultural lands (Sacramento-San Joaquin Rivers Comprehensive Plan, CALFED);
10. Urban sprawl;
11. The incremental pumping associated with the Napa Proposition;
12. The changes in project operations associated with the new Central Valley Project Operating Criteria and Procedures ("OCAP").

With the aforementioned in mind, the Lead Agencies must consider the direct, indirect, growth inducing, and cumulative impacts of the 10-year water transfer project.

QUESTIONS

The Farm Bureau also has several questions about the proposed 10-year water transfer program and how it relates to other on-going or proposed programs and agreements. Our questions are as follows:

1. How will the operation and/or design of the proposed 10-year water transfer program be changed or impacted by the terms and conditions of the "Napa Proposition?"
2. How will the operation and/or design of the proposed 10-year water transfer program be changed or impacted by the terms and conditions of the new Central Valley Project Operating Criteria and Procedures ("OCAP"?)
3. How does the proposed 10-year water transfer program relate to the proposed expansion of the Environmental Water Account?
4. What will happen to the agricultural resources in the region if there is a drought and up to 130,000 acre-feet of water is obligated under long-term water transfer contracts?

Ms. Toscano and Mr. Eckart
12/2/2003
Page 6 of 6

The Farm Bureau looks forward to a satisfactory resolution of our concerns and a successful project. If you have any further questions, please do not hesitate to contact me at (916) 561-5667.

Sincerely,

Becky Sheehan

Becky Sheehan

CC:
Bill Pauli
George Gomes

RESPONSE

California Farm Bureau Federation – Becky Sheehan
August 2, 2004

FBF-1

The commenter appears to want a separate agricultural resources section in the document. Agricultural resources are considered in two sections: land use and recreation (Section 7) and socioeconomics (Section 8). Under land use, the physical aspects of land fallowing are considered, while socioeconomic impacts are considered in the socioeconomics section. The CEQA Guidelines criteria that you identify are included under land use. Growth-inducement is addressed under the socioeconomics section. Consequently, we believe the CEQA and NEPA guidance has been addressed.

Responses below address the more specific comments concerning impacts, mitigation, and a reasonable range of alternatives.

FBF-2

The commenter objects to taking a significant amount of farmland out of production over the ten-year program, up to 20,000 acres each year to develop water for transfer. The land idling is to be done as rotational fallowing and is limited by district policy. In any year, the amount of water to be transferred is based on the 3 years prior history of consumptive use. No more than 20 percent of a district can be fallowed in any year. In short, land that could be idled one year may be brought back into production the next, and idled lands would be distributed throughout the Exchange Contractors' 240,000-acre service area. The primary direct effects of rotational fallowing would be on wildlife that use the previously cultivated area for foraging and on the agricultural economy; and these effects are explained in Sections 6 and 8, respectively. Indirect effects on the human environment are also explained in Section 8, while Section 11 addresses air quality. Growth-inducement is specifically discussed in Section 8.2.2.1. SCVWD is the only recipient of water for M&I purposes, and their CVP contract supply would not be exceeded; consequently, there is no growth-inducement. Their supply reliability would be improved. The transferred water could be used to support agriculture in districts unlikely to get their full CVP supplies, and no current CVP allotments would be exceeded. Because there is no land retirement, i.e., no conversion of land to non-agricultural uses, all of the impacts are temporary. See Section 3.2 for why several resources were not evaluated in the EIS/EIR, which focuses on resources that are most likely to be affected.

Section 7.1.1.1 has been supplemented with additional information on designated prime, unique, and FSI farmlands in the Exchange Contractors service area and vicinity (new Figure 7-1). Since there is no conversion of farmlands to other land uses, none of these designated lands are affected, even in the short term. They remain in agricultural use but at a reduced intensity or level of production.

FBF-3

Up to 20,000 acres of farmland may be idled each year under this program. In some years, it is likely that 20,000 acres will indeed be idled. In other years, it is equally or even more likely that fewer than or, possibly, no, land would be idled. The extent of idling would depend on many factors, such as the type of water year and crop prices. The land to be idled could be idled no more than three consecutive years. Consequently, the idled land would alternate/rotate throughout the service area of the San Joaquin River Exchange Contractors Water Authority during the tenure of the program.

It is important to differentiate between land idling and land conversion. Land idling, as the name suggests, refers to letting land lie idle temporarily. Sometimes used synonymously with “fallowing,” land idling may be used by farmers for a variety of reasons, including crop rotations, pest control, and market variables. Any land temporarily idled under the proposed transfer program would not be removed from agriculture and, in fact, would be maintained for continued agricultural use by cover crops and other activities. Consequently, scenic values would not be affected.

Conversely, land conversion, as related to agricultural land, is permanent. That is, once farmland is converted to home sites or wetlands, conversion back to agriculture is highly doubtful. The proposed program does not include such land conversion.

The EIS/EIR analyzes the worse case scenario of temporarily idling 20,000 acres of farmland. The assumption is that this would include 11,429 acres of cotton, 2,857 acres each of alfalfa and sugar beets, and 1,429 acres each of melons and wheat. Given the location of the San Joaquin River Exchange Contractors Water Authority service area, these reductions would be spread among as many as four counties: Fresno, Madera, Merced, and Stanislaus.

For the entire service area, acreage of field crops, including cotton and wheat, varied by an average of 7,811 acres per year for the period 1991-2002 inclusive. Acreage of vegetables, including melons, varied by an average of 5,509 acres per year. Variation of other annual crops was less, and the annual average variation for all annual crops (including fallowing) was 4,424 acres. Acreage that is fallowed varied by an average of 2,798 acres per year. Thus, the maximum of 20,000 acres that may be idled in any given year exceeds by 15,576 the normal annual variation in non-permanent crops.

For context, average annual variation for all of California for the crops considered was 209,729 acres over the same period. Temporarily idling of 20,000 acres within the San Joaquin River Exchange Contractors Water Authority service area would be highly unlikely to have deleterious effects on either farming or farming infrastructure. Were this program to involve permanent land conversion, then certainly the issues of land fragmentation and the resultant diseconomies of scale in regional farming would be of serious concern. However, given the temporary nature of the program, land suitability, and other variables, such outcomes are highly unlikely.

FBF-4

See response FBF-3 above.

FBF-5

Agriculture as a type of land use is addressed as a physical part of the environment. Land is both a physical resource and its use is a social resource. The land and the crops not grown under crop idling/rotational fallowing are addressed including the indirect effects on air quality and wildlife from this change in land management. Text has been added to Section 7.2.2.2 and 7.2.4.1 as follows:

Agricultural land would not be converted to other non-agricultural uses, so there would not be a loss of designated prime/unique/FSI farmlands within the Exchange Contractors Service Area. The effect is not significant.

FBF-6

We do consider the cumulative impacts of crop idling to be cumulatively significant. Section 7.2.3.1 states:

In the San Joaquin Valley, however, several proposed areas could be idled permanently due to water supply shortages and subsurface drainage problems. Under the CVPIA, Reclamation has a land retirement program that has retired 2,091 acres in Westlands WD, and a total of 7,000 acres could be retired (i.e., permanently removed from production) by 2007. Westlands WD has a proposal to retire up to 200,000 acres over the long term. Thus, if an additional 20,000 acres were idled under this project, even on a temporary basis, the effect on agricultural land use in the short term could be cumulatively considerable and potentially significant if the large-scale land fallowing under consideration by Westlands WD as well as other land retirement programs were implemented in the short term.

The list of projects, activities, and trends identified in your scoping letter are acknowledged herein, as they are attached to your comment letter. While we focused on land retirement activities and proposals for the cumulative discussion, the conclusion was there was a significant cumulative effect without having to quantify the implications of the listed activities.

FBF-7

Any water sold to the EWA under the proposed transfer program would be only for the benefit of CVP operations, as replacement water to CVP contractors. Conditions that are required to be met that result separately due to EWA requirements will be incorporated into the agreements of transfers (if any) to the EWA.

FBF-8

Within the three alternatives, 28 scenarios (subalternatives) were evaluated in the surface water resources section. Table 4-8 shows hydrologic effects of several scenarios where the water was not developed from land fallowing. In the remainder of the EIS/EIR, the focus of the analysis is

on the “worst case” to ensure that potential impacts are not understated. For resources, such as land and socioeconomics, assuming maximum land fallowing was the conservative approach to the impact analysis.

FBF-9

Section 11 was completed prior to the adoption of the SJVAPCD’s Rule 4550 Conservation Management Practices (May 20, 2004), although the draft plan was discussed. The following text is being added to Section 11.1.4.2:

Rule 4550 (May 20, 2004) includes land preparation/cultivation PM10 fugitive dust control measures include conservation irrigation, conservation tillage, cover crops, land fallowing, and other activities. Land fallowing is defined as temporary or permanent removal from production that eliminates entire operation/passes or reduces activities. Therefore, land fallowing is a dust control measure that would benefit air quality.

Furthermore, see the response to the SJVAPCD’s letter wherein they subsequently determined that the proposed transfer program would not significantly impact air quality. Consequently, there is no need to develop the additional information.

FBF-10

All fallowing scenarios analyzed include an assumption of fixed proportions of crops for which production would temporarily be foregone. These include cotton at 57 percent, alfalfa and sugar beets each at 15 percent, and wheat and melons each at seven percent (the sum differing from 100 because of rounding). Normal annual variation in California cotton acreage is 185,000 acres. Alfalfa varies by an average of 67,000 acres, sugar beets by 34,000, wheat by 80,000, and melons by 3,900.

All of the crops that would likely be fallowed in any year of the program that involves temporary idling are grown in many other parts of California. Moreover, a maximum of 5,600 acres of food crops would be idled in any one year, well within the range of normal variation within the four counties and the entire State. Finally, the idling of agricultural land is temporary and not, as discussed above, a conversion to alternative uses. Consequently, it is highly unlikely that the proposed program would cause a reduction in locally grown food supplies.

FBF-11

Comment noted and considered. No response required.

MENDOTA POOL GROUP LETTER – WILLIAM V. PIPES, R.G.

FAX

from: **Geomatrix Consultants, Inc.**
2444 Main Street, Suite 215, Fresno, CA 93721
www.geomatrix.com



Date: August 2, 2004

Number of pages
including cover sheet: **23**

The information in this telecopy is intended for the named recipient(s) only. It may contain privileged and confidential matter. If you have received this telecopy in error, please notify the sender immediately. Thank you.

To: **Mr. Bob Eckart, USBR (916) 978-5055**
Ms. Sheryl Carter, USBR (559) 487-5397

From: **William Pipes**
Agent, Mendota Pool Group

Fax No: _____
Telephone: _____
cc: _____

Fax Phone: **559-264-7431**
Phone: **559-264-2535**
Direct dial: _____
Email: _____
Project No.: _____
Project Name: _____

REMARKS:

☒ Hard copy to follow ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

Mr. Eckart/Ms. Carter – find enclosed comments on the ***Draft Environmental Impact Statement/Environmental Impact Report Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2005-2014*** prepared on behalf of the Mendota Pool Group. Please call me if you have any questions.

Oakland, CA • San Leandro, CA • Fresno, CA • Sacramento, CA • Costa Mesa, CA • Corning, CA
Phoenix, AZ • Denver, CO • Austin, TX • Houston, TX • Minneapolis, MN • Buffalo, NY • Waterloo, ONT

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Appendix E Comments and Responses

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Sent via: ☐ Messenger ☒ U.S. Mail ☐ Overnight Mail

Date August 3, 2004

To Bob Eckart USBR
Sheryl Carter USBR From Bill Pipes

Cc Barry Baker, Anthony Coelho, Joe Coelho, Bill Kuhs

Project Number 8456.000

Project Name Mendota Pool Group

Item Description MPG Comments on the Draft Environmental Impact Statement for the San Joaquin River Exchange Contractors Water Authority 2004-2015

Remarks

Enclosed please find one copy of the subject document as submitted via fax to the USBR on behalf of the Mendota Pool Group. Please call if you have questions.

Geomatrix Consultants, Inc.
Engineers, Geologists, and Environmental Scientists

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August 2, 2004

United States Bureau of Reclamation
Mid-Pacific Region
Division of Environmental Affairs
Attention: Mr. Bob Eckart
2800 Cottage Way
Sacramento, California 95825

Subject: Draft Environmental Impact Statement/Environmental Impact Report
Water Transfer Program for the San Joaquin River Exchange Contractors
Water Authority 2005-2014 (EIS/EIR)

Dear Mr. Eckart:

Thank you for the opportunity to comment on the subject EIS/EIR. The members of the Mendota Pool Group (MPG) pump groundwater for irrigated agriculture on the west side of the San Joaquin Valley in the vicinity of the water transfer program being proposed by the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors). This is an area where the potential for groundwater quality impacts, groundwater drawdowns, subsidence, and surface water quality impacts due to groundwater pumping are well known.

Although just one of several agricultural, municipal, and industrial entities pumping groundwater in this area, the MPG has performed numerous studies, has completed its own EIS, and has instituted a rigorous and comprehensive groundwater monitoring program to assess the impacts from their pumping. The MPG and the Exchange Contractors have cooperated in these studies, and many of the monitoring activities have been joint efforts.

Because of the MPG's reliance on groundwater to grow its crops and the potential for the proposed water transfer program to affect groundwater conditions and other resources in the area, the MPG has asked two of its consultants to review and comment on the EIS/EIR. Their comments are attached.

Based on these reviews, it appears that the EIS/EIR is lacking in key areas. Among them, there is no mention of the wells to be used for groundwater pumping, the location of the land to be fallowed, or the canals to be used in conveying the pumped water. The evaluation of the program's cumulative impacts on groundwater conditions is not adequately described or documented. There is no discussion of surface water quality impacts. Finally, the discussion of the monitoring plan contains no specifics and does not mention groundwater monitoring at all.

Geomatrix Consultants, Inc.
Engineers, Geologists, and Environmental Scientists



Mr. Bob Eckart
U. S. Bureau of Reclamation
August 2, 2004
Page 2

The MPG requests that these issues, and those presented in the attached letters, be addressed in this EIS/EIR.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'W. Pipes'.

William V. Pipes, R.G.
Agent, Mendota Pool Group

Attachments



TETRA TECH, INC.
3746 Mt. Diablo Boulevard
Suite 300
Lafayette, California 94549
Telephone (925) 283-3771
FAX (925) 283-0780

August 2, 2004

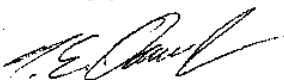
Mr. William Pipes
Geomatrix, Inc.
2444 Main St., #215
Fresno, CA 93721

Re: Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority
2005-2014

Dear Mr. Pipes,

At your request, I have reviewed the subject document. My review focused on water quality and monitoring components of the EIR/EIS. In general, little attention is paid to water quality issues in the document. No data on existing groundwater or surface water quality are provided. The effect of the proposed project on the TMDLs for salt, boron, and selenium in the lower San Joaquin River should be addressed explicitly in the document. My comments are attached.

Sincerely yours,



Theodore E. Donn, Jr.
Principal Scientist
R & D Division
Tetra Tech

General Comments:

- 1) The document specifies three manners by which SJREC will develop/conservate water for transfer: groundwater pumping, tail water recovery, and land fallowing. This water would then be available to other users. However, the document does not state what benefit the participants in the program (i.e., individual farmers within SJREC) would receive in exchange for implementing these measures.
- 2) The document should state where the groundwater and tail water that is developed in SJREC would be used. Would this water be used within the SJREC distribution system, or would it be discharged into other water bodies?
- 3) Tail water recovery and land fallowing are water conservation measures that are currently being implemented in other water districts due to limited surface water supplies. These water districts do not receive compensation for these measures, but are implementing them out of need. This EIR/EIS should provide a rationale as to why the SJREC should benefit from implementing these conservation measures.
- 4) The discussion of the project effects on water quality, both in surface waters and groundwater, is not adequately addressed. No data on current water quality conditions or projected conditions are presented or discussed. The document does not adequately address project effects on water quality, specifically salts (as EC or TDS), selenium, or boron. These are critical concerns in the region.
- 5) The document does not make any mention of the TMDL for Salt and Boron for the lower San Joaquin River, nor the proposed TMDL for selenium. The impact of the program on these TMDLs should be addressed.

Specific Comments:

- 6) page 4-6. Paragraph 3 identifies relevant water quality criteria for salinity at Vernalis. However, it does not identify any other water quality criterion such as those for selenium or boron. The lower San Joaquin River is on the Clean Water Act 303(d) list for all three constituents.
- 7) page 4-7. The document states that agricultural tailwater is of poorer quality than receiving waters at Vernalis. The document goes on to state that the less agricultural tailwater that is discharged, the better the overall water quality in the San Joaquin River would be. It appears that the analysis assumes that if tailwater is reused, it will not be discharged. Reuse of tailwater, would result in a reduction in volume, but would also potentially concentrate contaminants such as salt, selenium, and boron, which would ultimately be discharged to surface waters. The potential concentration increases in these constituents could offset the reduction in volume. This factor needs to be explicitly addressed.
- 8) Section 13. This section purports to describe the mitigation monitoring and reporting program. However, it does not specify which environmental media (e.g., groundwater, surface water) would be monitored, where the monitoring locations would be, when the monitoring would take place (i.e., sampling frequency), and what constituents would be monitored (e.g., flow, electrical conductivity,

- 8 TDS, selenium, boron, etc.). As such, it will not be possible to assess the impact of the project on the environment.



LUHDORFF & SCALMANINI
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August 2, 2004
File No. 04-1-013

Mr. William V. Pipes
Agent, Mendota Pool Group
Geomatrix Consultants
2444 Main St., Suite 215
Fresno, CA 93721-2734

**SUBJECT: COMMENTS ON DRAFT EIS/EIR FOR EXCHANGE CONTRACTORS
WATER TRANSFER PROGRAM 2005-2014**

Dear Mr. Pipes:

At the request of the Mendota Pool Group (MPG), Luhdorff and Scalmanini, Consulting Engineers (LSCE) has reviewed the draft of the EIS/EIR entitled *Water Transfer Program for the San Joaquin River Exchange Contractors Water Authority 2005-2014*. The MPG operates a number of wells in the Mendota area, just south of the Exchange Contractors service area, and is particularly concerned about the potential for the proposed project to increase overdraft in western Madera County. The size of the overdrafted area has grown in recent years, and now appears to be spreading south to Farmers Water District lands in Fresno County. With this in mind, LSCE would like to offer the following comments, which are focused primarily on the groundwater sections of the EIS/EIR.

Section 2. Alternatives

Section 2.3.1. (pages 2-13 and 2-14)

9 Under alternatives A and C, up to 20,000 acre-feet of groundwater pumping would occur in noncritical years somewhere in the Exchange Contractors service area, which covers 240,000 acres in four counties. The locations of wells that would be used to pump this water are not specified in this section or elsewhere in the document. Groundwater conditions vary considerably over such a large area, and it is impossible to evaluate potential groundwater impacts without identifying the areas where additional groundwater pumping would occur.

10 All three project alternatives (A, B, and C) call for up to 50,000 acre-feet of water to be made available for transfer by fallowing 20,000 acres of land within the Exchange Contractors service area. Again, the locations of lands to be fallowed are not identified. Elsewhere in the document, there is a statement that fallowed lands will be rotated, but which lands would be included and the rotation schedule is never specified. As discussed later in the report, land fallowing will result in a reduction in groundwater recharge (estimated at 10,000 acre-feet per year). The impact of this

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- 10 reduction on groundwater conditions cannot be evaluated without knowing where the land fallowing would occur. The likelihood of significant impacts due to land fallowing is increased by the fact that land fallowing would occur during all years, including critical years.

Section 4. Surface Water Resources

- 11 The discussion of surface water resources does not specify which canals would be used to convey groundwater pumped for this project, and there is no discussion of surface water quality impacts that could result from the proposed groundwater pumpage. Any groundwater not used on overlying lands would presumably be pumped into the existing surface water distribution system. The document should indicate which canals would be used to convey the groundwater, the relative quality of the surface and groundwater, and the predicted water quality impacts associated with the project. If any groundwater would be pumped into canals that flow to the Grasslands Watershed or the San Joaquin River downstream of Mendota Dam, compliance with existing TMDLs for salt and boron also would need to be addressed.

Section 5. Groundwater Resources

Section 5.1.1.1 (pages 5-1 and 5-2)

- 12 The last paragraph on page 5-1 summarizes overdraft in the San Joaquin groundwater basin and states that "Much of the San Joaquin Valley aquifer system is in overdraft." The amount of overdraft was indicated to be 224,000 acre-feet in 1990. There is no mention in the document of the potential for this project to exacerbate overdraft by exporting up to 130,000 acre-feet of water out of the groundwater basin each year. The document indicates that the direct groundwater depletion due to the project would be 30,000 acre-feet per year or less, but groundwater recharge from surface water flowing in rivers and canals is not included in this estimate. It seems unlikely that 130,000 acre-feet of surface and groundwater could be exported without increasing overdraft somewhere in the basin. This impact should be evaluated in this chapter.

- 13 This paragraph also contains the statement "Currently, the Exchange Contractors are not in an overdraft condition with the exception of the lands that lie in Madera County." Section 2 (page 2-12) contains the statement "Groundwater would not be accepted if the wells are (1) located in areas of current groundwater overdraft." When these statements are taken together, it would appear that none of the additional groundwater pumping proposed for this project would occur in Madera County. If this is the case, it should be stated explicitly.

Section 5.1.1.3 (pages 5-10 to 5-13)

- 14 Paragraph 2 summarizes Ken Schmidt's review of pre-1990 hydrographs in the Exchange Contractors service area, which apparently showed that groundwater levels were stable or rising in all areas. It is unlikely that Mr. Schmidt would make this same statement today, given recent data which show declining water levels throughout the Columbia Canal Company (CCC) service area. Table 5-2 (Long-Term Groundwater Trends in the Exchange Contractors Service Area [Prior to



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Page 3

- 14 1990]), based on Schmidt's study, indicates that in Subarea G (which includes CCC) 25% of the hydrographs showed constant water levels and 75% showed rising water levels. This is no longer the case, as indicated by 1999-2004 hydrographs for wells in the CCC service area attached to this letter. These hydrographs are copied from the *Mendota Pool Group Pumping and Monitoring Program: 2003 Annual Report* (LSCE and Kenneth D. Schmidt and Associates, 2004) and show declining water levels in all wells. It is possible that groundwater trends have changed in other areas as well. The hydrographs reviewed for Schmidt's 1997 report are now 14 years out of date. This study needs to be updated if it is going to be used to support conclusions in this EIS/EIR.
- 15 Figure 5-4 on page 5-13 shows three hydrographs that are presented as evidence that groundwater levels have been stable or rising since 1993. These hydrographs are clearly not representative of hydrographs throughout the Exchange Contractors service area. All hydrographs reviewed for this analysis should be included in an appendix, along with a map showing the well locations.
- 16 The first paragraph on page 5-13 contains the statement that "The Exchange Contractors maintain a policy of not pumping from areas experiencing groundwater overdraft conditions." This policy is apparently not being followed in Madera County, where a large amount of pumping still occurs from lands in the Exchange Contractors service area each year. In 2003, for example, approximately 14,800 acre-feet were pumped from wells in the CCC service area. These wells include CCC wells, wells owned by private landowners within CCC, and wells owned by the City of Mendota on the B&B Ranch. Pumpage in the CCC service area is one of the causes of overdraft in western Madera County.
- 17 Section 5.1.1.4 (page 5-14)
The first paragraph states that the Exchange Contractors project that the average annual municipal pumpage within its service area (currently 16,500 acre-feet) will double by 2020. The effect of this increased pumpage should be evaluated in the cumulative effects section.
- 18 Section 5.2.2.2 (page 5-19 to 5-20)
The paragraph entitled *Impacts of Groundwater Pumping* contains the statement "Based on a review of groundwater levels over the past 10 years, no net substantial change in groundwater storage has occurred within the Exchange Contractors service area." As discussed above, this statement is not true, at least in Madera County. The data used to reach this conclusion need to be included in the document.
- 19 In the same paragraph, it is stated that "The Exchange Contractors propose no more than 20,000 acre-feet per year of transfer water to be developed from groundwater in a normal year." As discussed under Section 2, there is no mention of where this pumping would occur. Without this information, it is not possible to determine the impacts because of the considerable variability in groundwater conditions in the region. The EIS/EIR should include maps showing locations of wells from which this proposed pumping would occur. The document should also include tables showing the perforated intervals of the wells, the amount of historical pumpage, and results of



August 2, 2004
Mr. William V. Pipes
Page 4

19 groundwater quality sampling. Water level hydrographs for these wells should also be included in the document.

20 This paragraph also contains the statement "Furthermore, ongoing groundwater monitoring will detect any negative impacts that CCID pumping may have on nearby wells or the depth to water." CCID's groundwater monitoring program is not summarized anywhere in the document, and there is no mention of monitoring that would be conducted by the other three members of the Exchange Contractors. It would be impossible to determine project impacts in all areas where pumping and land fallowing would occur without adequate groundwater monitoring.

21 The paragraph concludes with the statement that "The impact of groundwater pumping is less than significant or minimal." There is no basis for this conclusion given the lack of specific information about current groundwater conditions, the locations of wells that would participate in the groundwater pumping program, and any groundwater monitoring that would be conducted during the project.

22 Section 5.2.2.2 (Impacts of Crop Idling, page 5-20)
The EIS/EIR provides even less information about potential groundwater impacts resulting from land fallowing. It is stated that "the maximum potential reduction in groundwater recharge due to crop idling is estimated to be 10,000 acre-feet per year. This impact is less than significant or minimal." No data are provided to support this conclusion, and it does not seem possible to determine the impacts without knowing the locations of the areas where land fallowing would occur. In general, it would seem that fallowing land on a rotating basis would have a less-than-significant impact in areas that are not currently experiencing overdraft. The statement that groundwater pumping would not occur in overdrafted areas should also apply to land fallowing.

23 Section 5.2.3 (Cumulative Effects, pages 5-23 and 5-24)
This section contains no substantive evaluation of cumulative impacts. There is no discussion of the combined impact of the proposed project and other projects in the area that have a groundwater component, such as the MPG transfer pumping project. The analysis of cumulative impacts should also include other projected pumping increases such as the additional 16,500 acre-feet of municipal pumpage discussed on page 5-13.

Section 13. Mitigation Monitoring and Reporting Program

24 Section 13.3 and 13.4 (pages 13-4 to 13-6)
The monitoring plan contains no specifics about monitoring that might be conducted during this project. Monitoring for potential groundwater impacts is not mentioned at all in this section. The document should contain a detailed monitoring plan that includes monitoring of groundwater levels and quality in areas where groundwater pumping or land fallowing would occur.



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Section 14. Compliance Requirements

25

Section 14.4.1 (page 14-6)

Both Fresno and Madera Counties have groundwater ordinances that prohibit the direct or indirect export of groundwater from the county without a permit. This section states that the Exchange Contractors have an MOU with Fresno County that apparently includes an exemption from the requirements of the Fresno County Groundwater Ordinance. There is no mention of how the Exchange Contractors would comply with the provisions of the Madera County Groundwater Ordinance if any of the proposed pumping occurs in Madera County.

Summary

The potential impacts of this project on groundwater resources are not adequately addressed in this EIS/EIR. The potential for the project to increase overdraft in the basin would be the primary concern of MPG members because increased overdraft in western Madera County has already affected MPG wells in Farmers Water District. Overdraft conditions in this area could be exacerbated by increased groundwater pumping and reduced groundwater recharge in the southern portion of the Exchange Contractors service area.

We hope that these comments will be helpful in evaluating the EIS/EIR Draft. Please call if you have questions or need additional information.

Sincerely,

LUHDORFF AND SCALMANINI
CONSULTING ENGINEERS



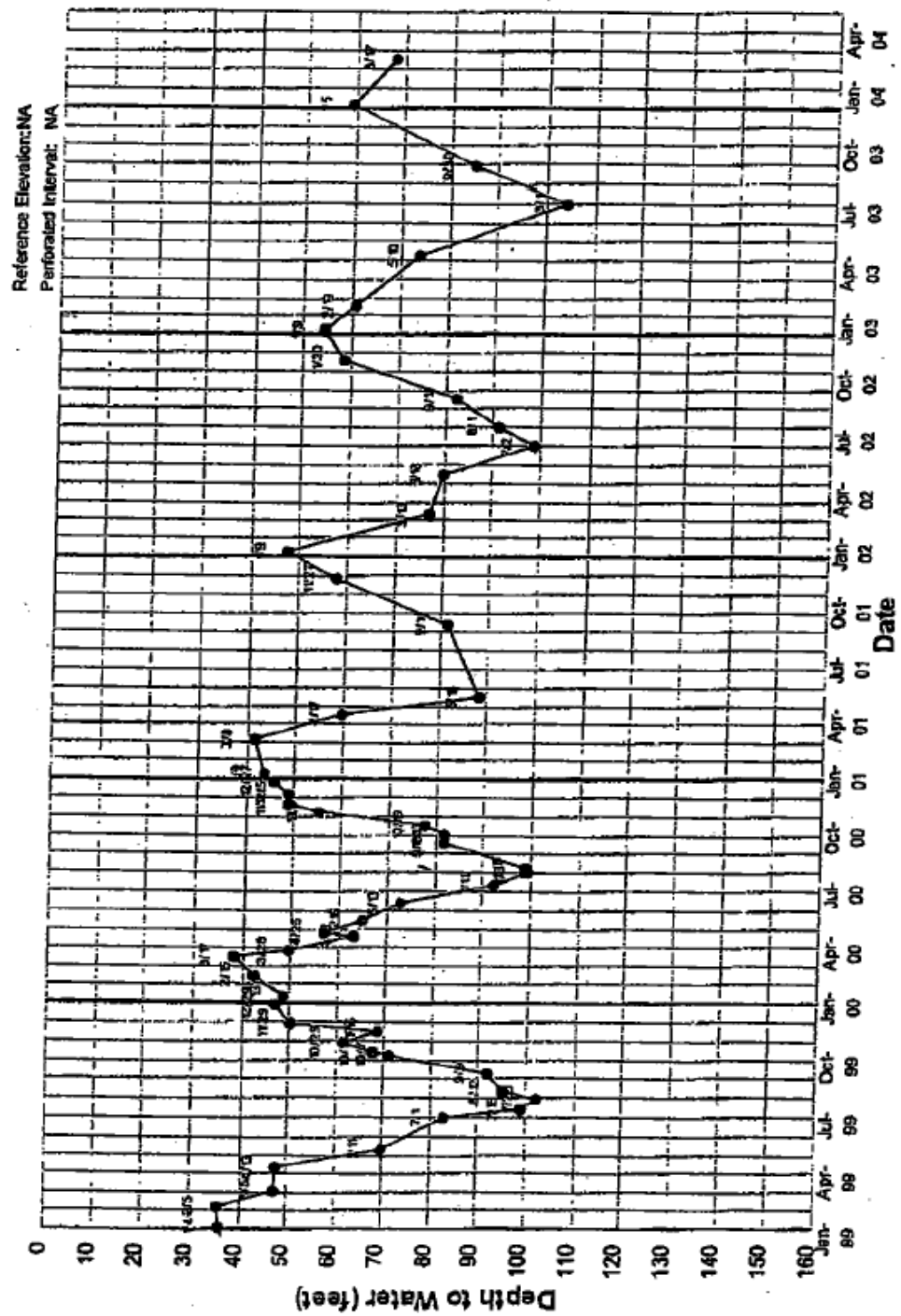
Glenn Browning
Senior Hydrologist

Enclosure

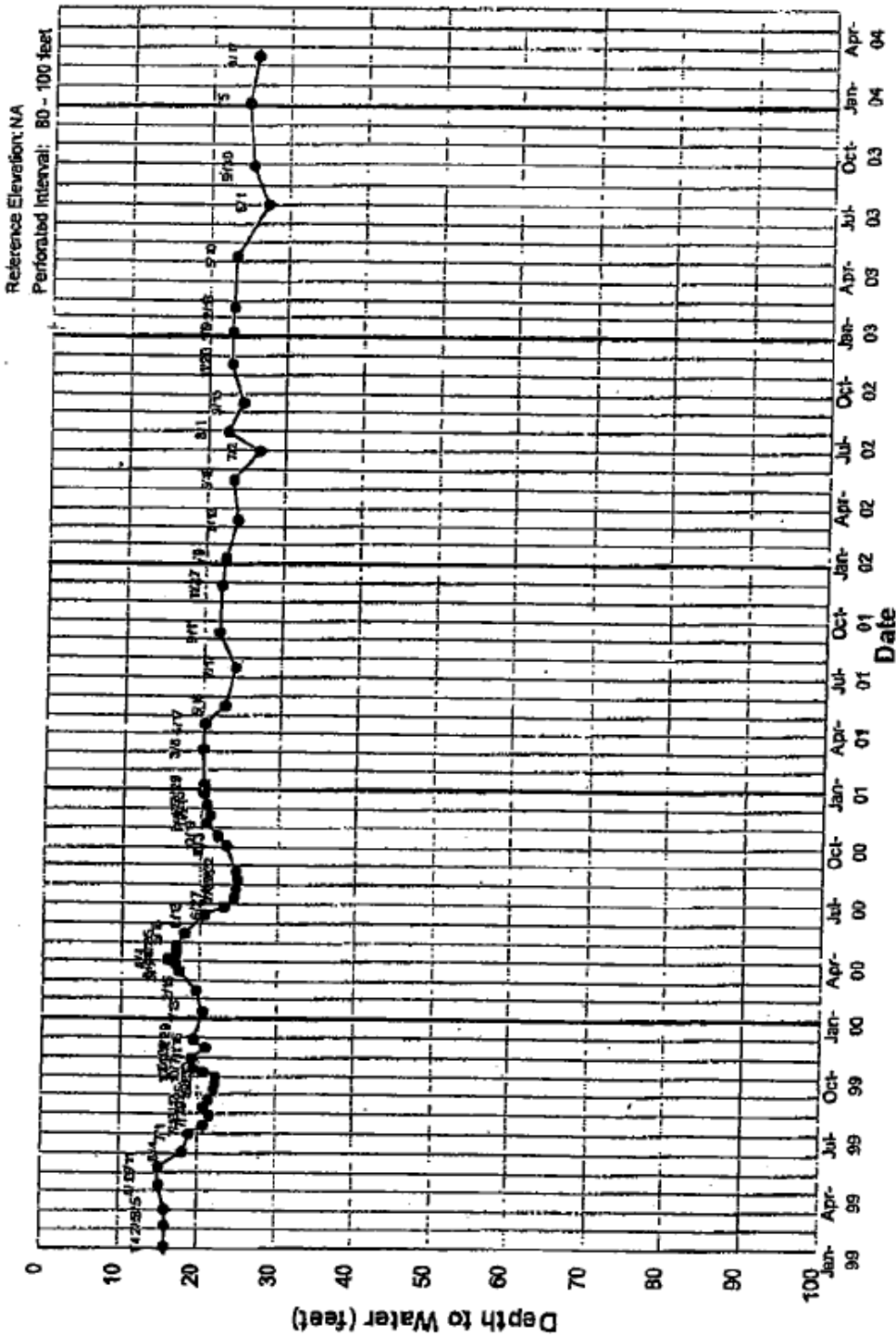


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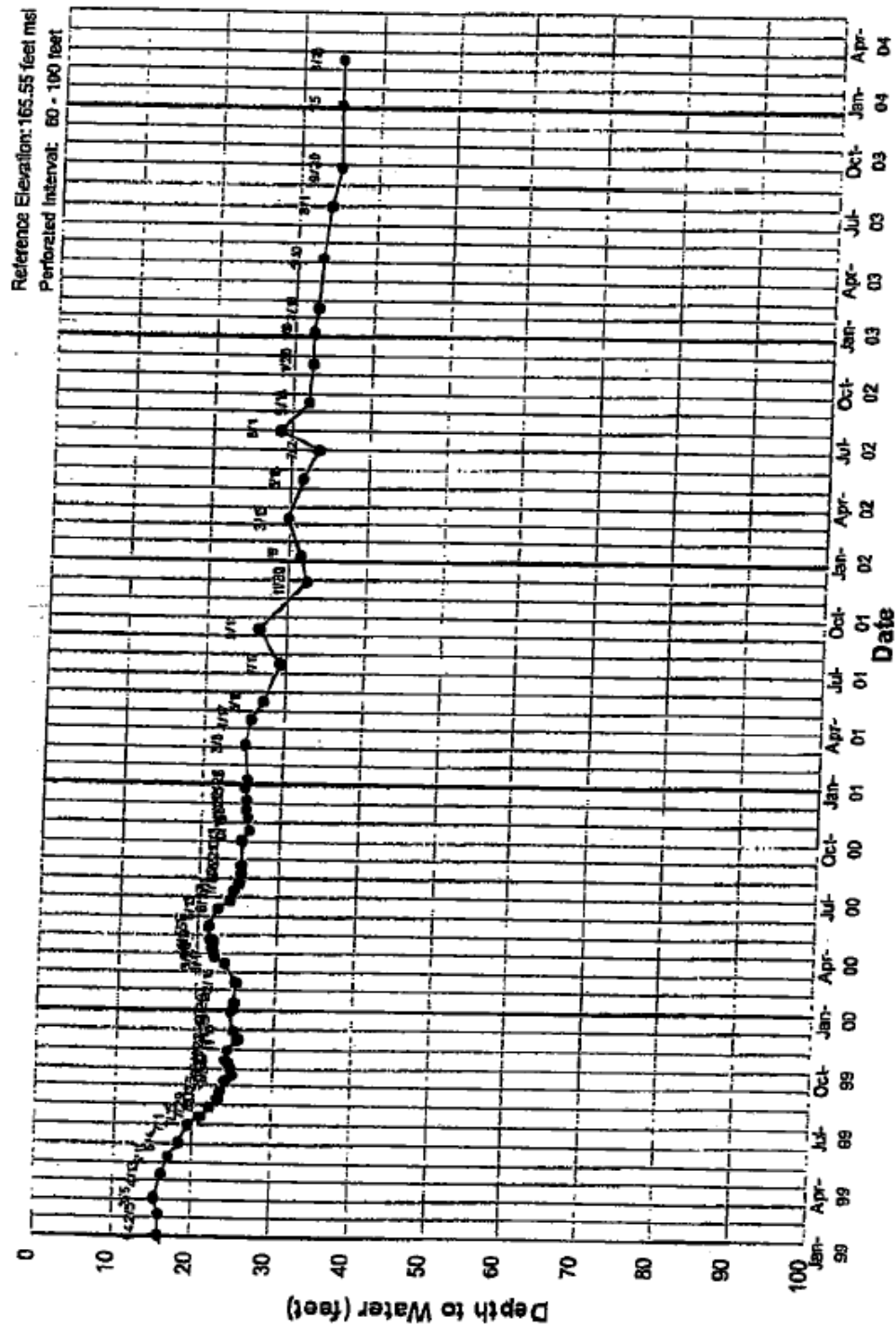
Mendota Area Hydrograph
Columbia Canal Company Well CC-1



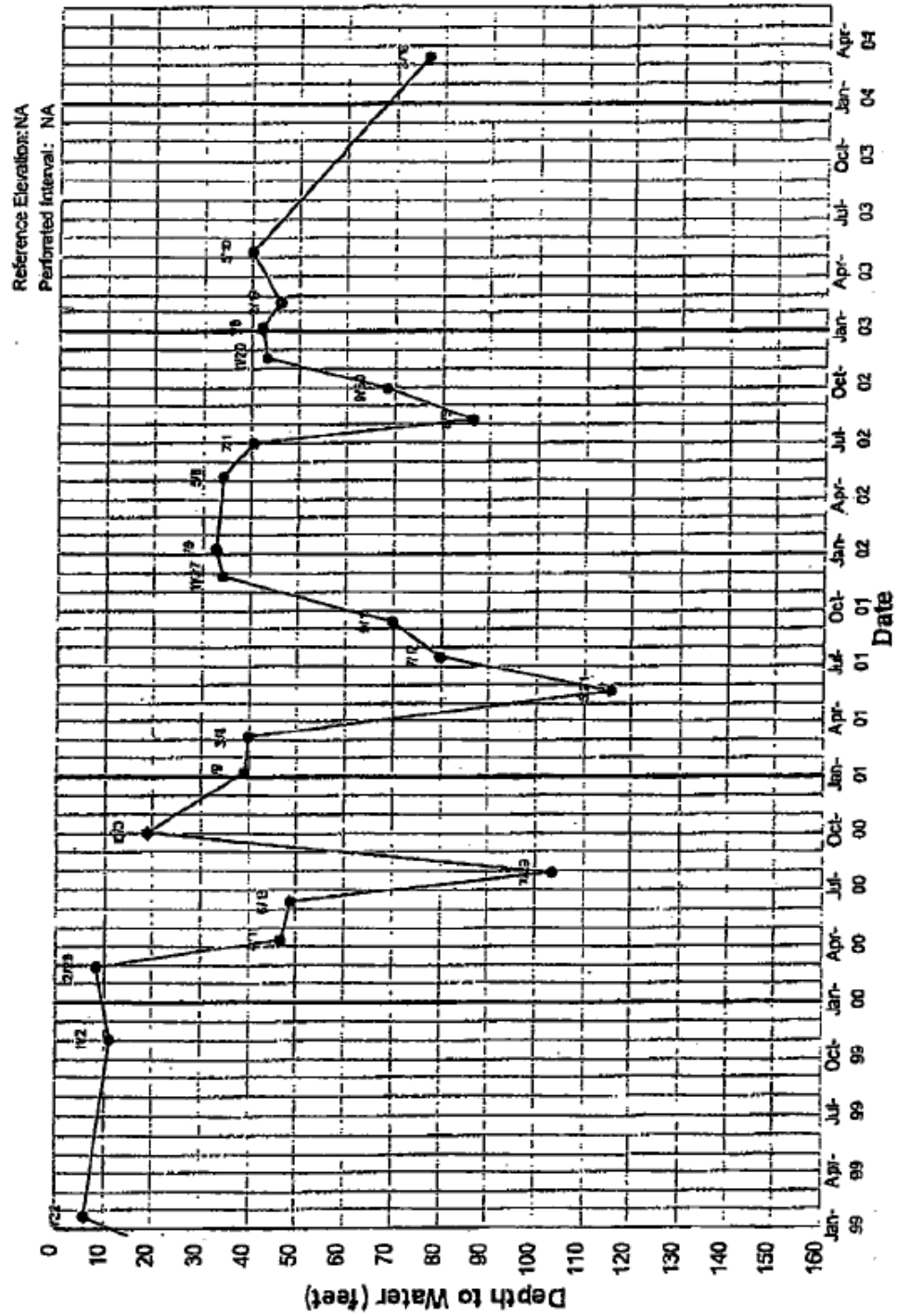
Mendota Area Hydrograph
Columbia Canal Company Well Lopes-Obs.



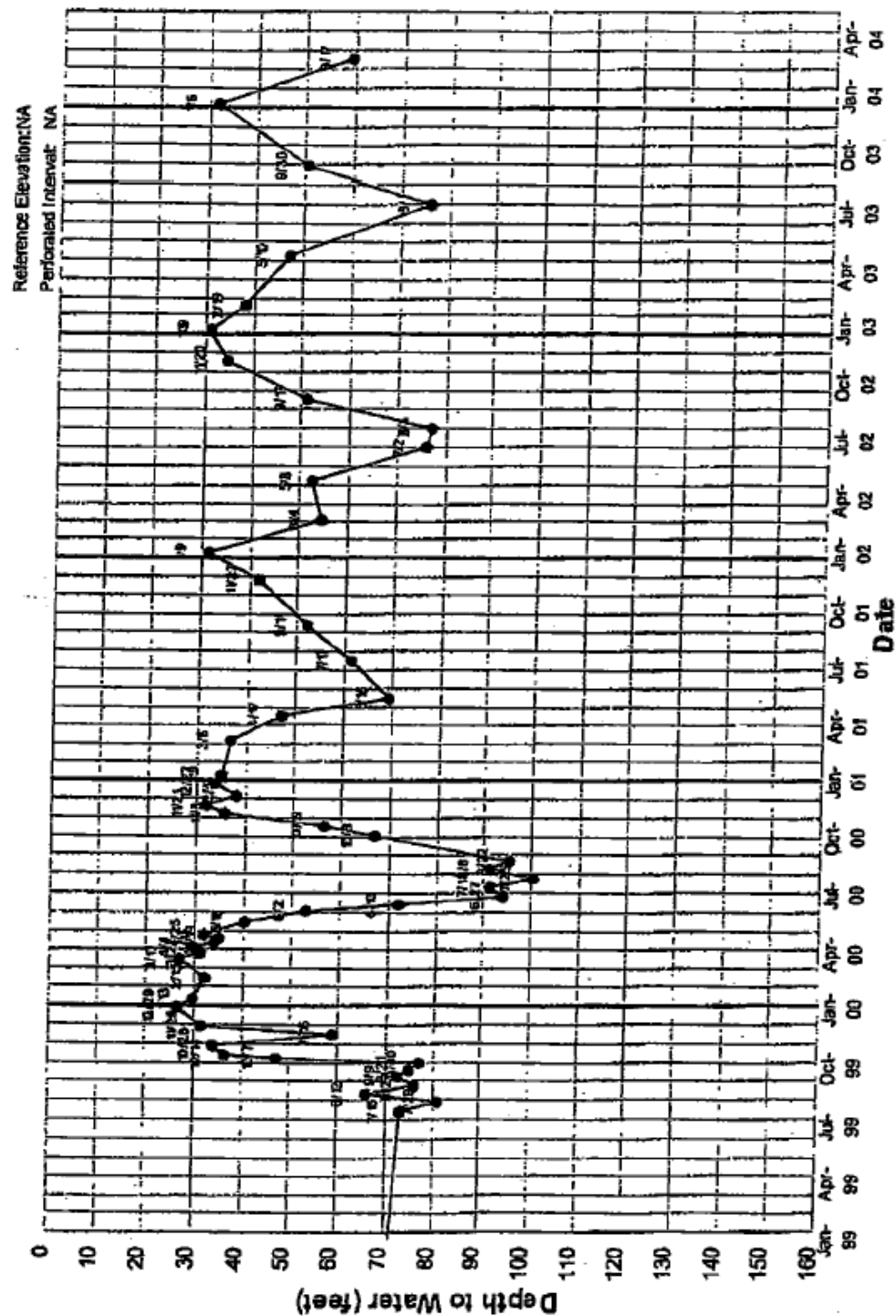
Mendota Area Hydrograph
Columbia Canal Company Well USBR-4



Mendota Area Hydrograph
Mowry Diesel Well No. T13S/R15E-21K1

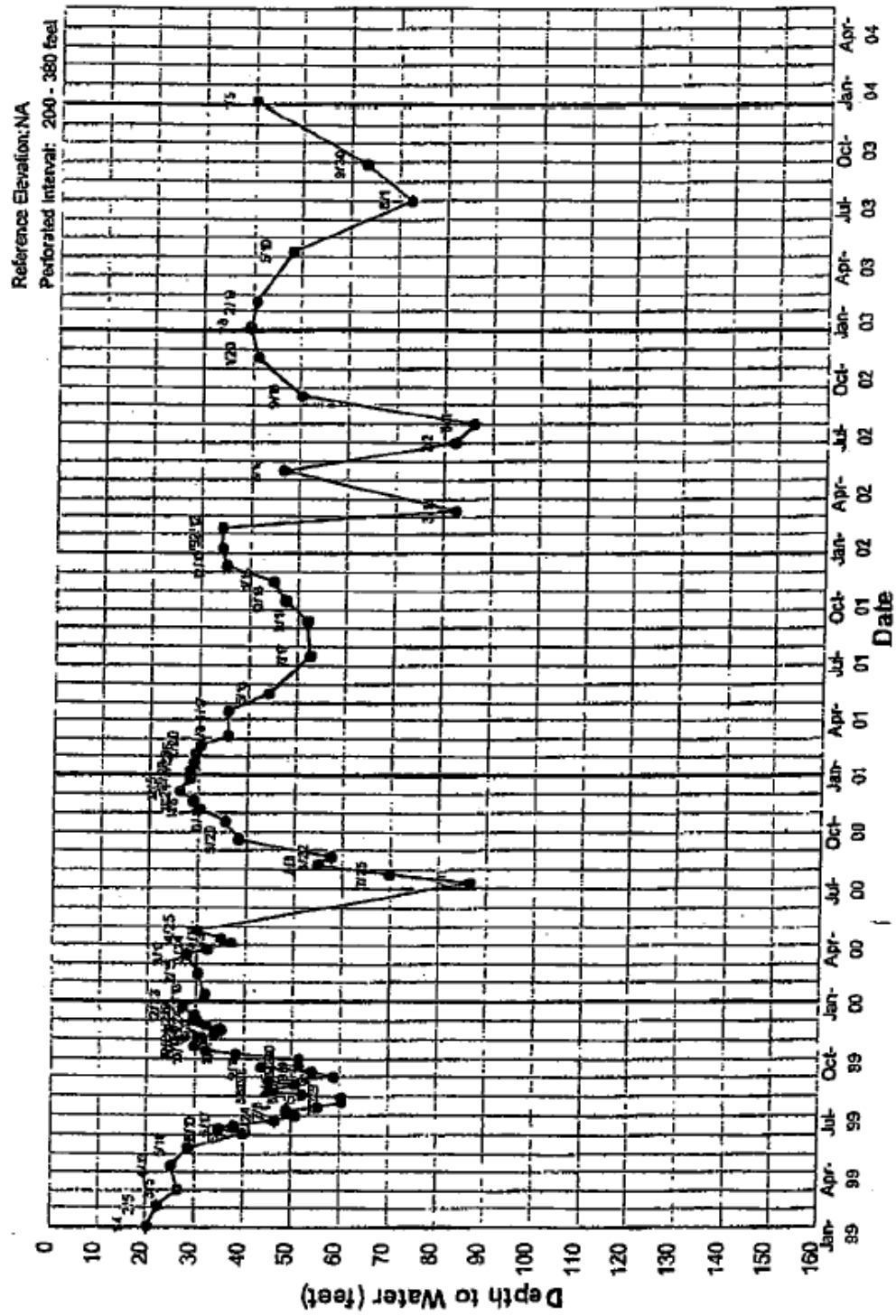


Mendota Area Hydrograph
Mitigation Land Trust West Well

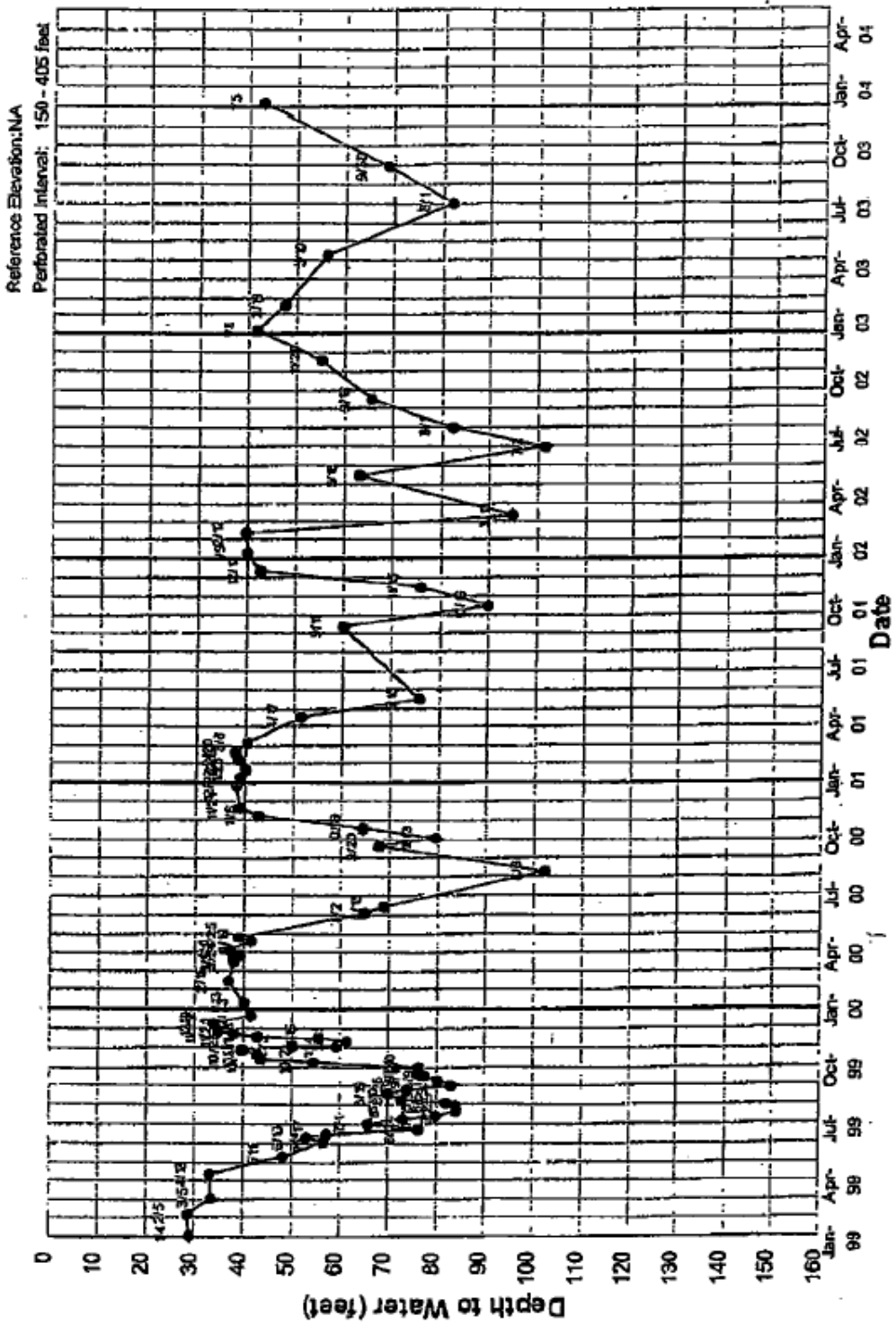




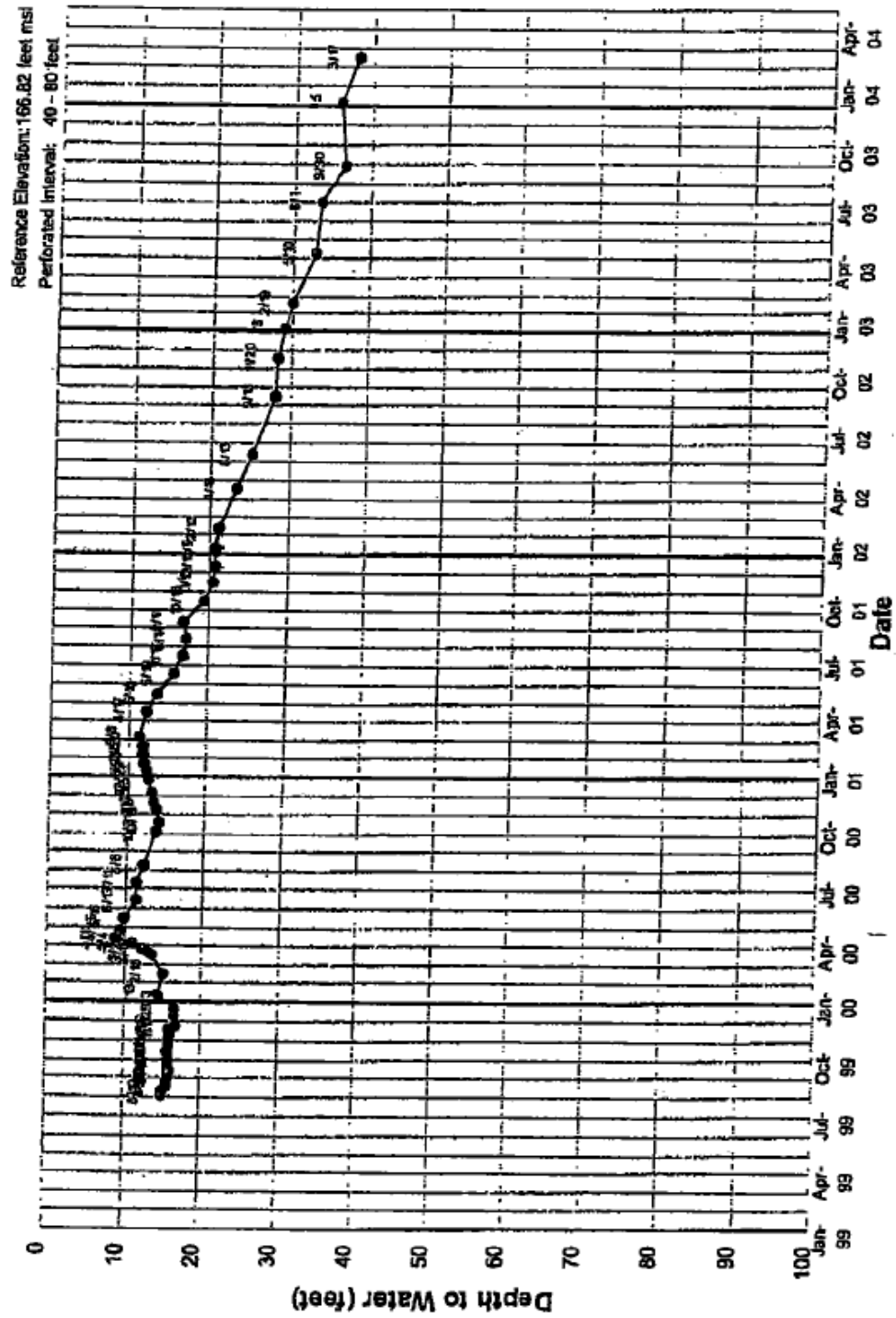
Mendofa Area Hydrograph
Newhall Land and Farming Co. Well No. 74



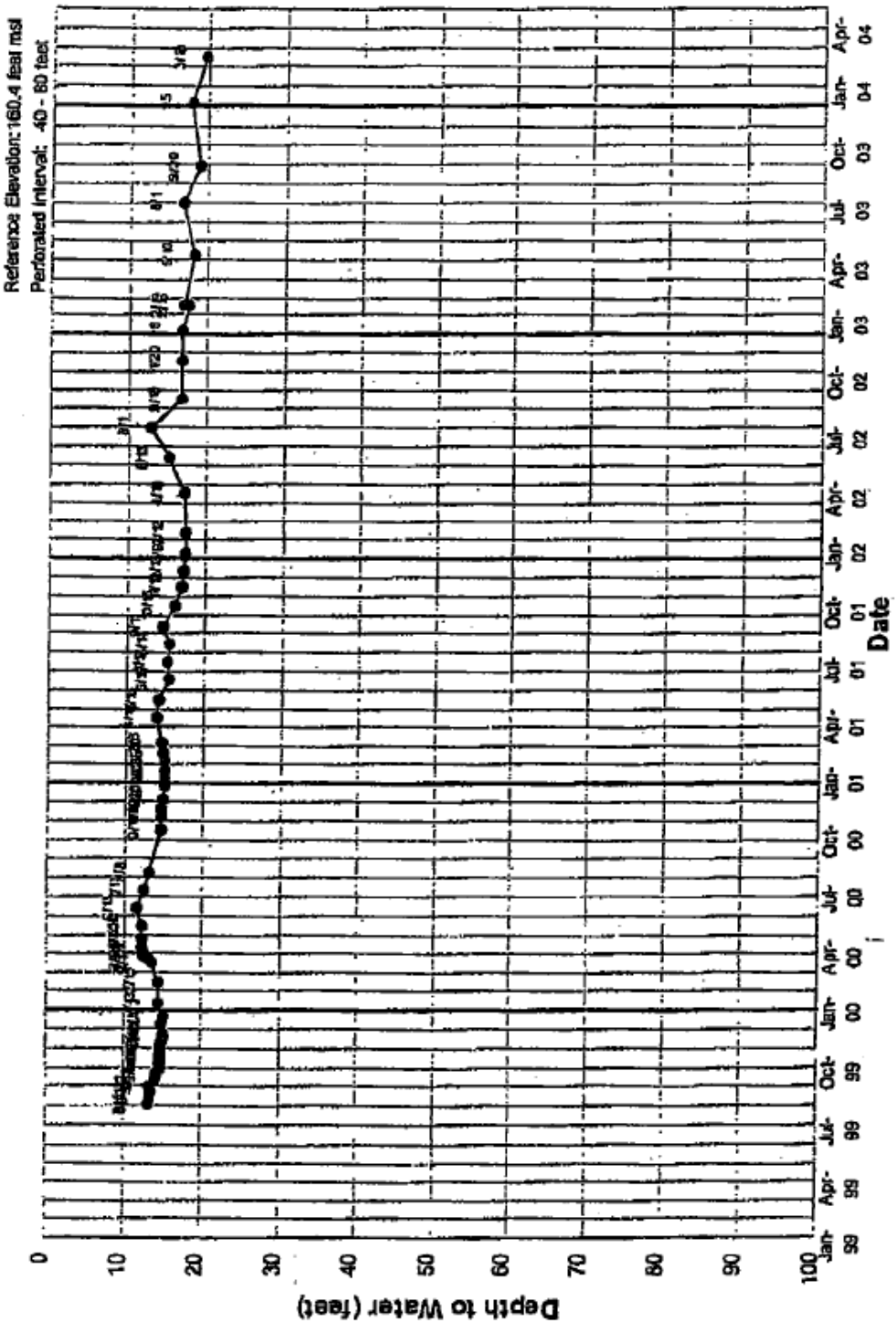
Mendota Area Hydrograph
Newhall Land and Farming Co. Well No. 78



Mendota Area Hydrograph
Newhall Land and Farming Co. MW-2



Mendota Area Hydrograph
Newhall Land and Farming Co. MW-3



RESPONSE

Mendota Pool Group – William V. Pipes, R.G.
August 2, 2004

MPG-1

Generally, the benefits to the individual growers within the Exchange Contractors service area consist of funding better service through system automation and modernization, flexibility in meeting existing and impending Total Maximum Daily Load (TMDL) regulations by the Regional Water quality Control Board, and funding improved on farm irrigation systems.

MPG-2

The developed water will be delivered into the Exchange Contractors distribution system.

MPG-3

Comment noted and considered. Section 1.2 describes the transfer program's purposes and objectives and benefits to those water users who choose to participate.

MPG-4

Water quality and water flow issues are analyzed in detail in Appendix B "Hydrologic Effects of Water Transfers."

MPG-5

The Regional Board is in the process of developing a TMDL implementation plan, which is not final and is likely to change significantly. The Regional Board presently is even considering a management plan being proposed by the San Joaquin River Water Quality Management Group in lieu of the TMDL to meet standards. However, the project will provide the needed flexibility to help meet either of the proposed regulatory approaches being considered. Additional text has been added to Section 1.3 on the status of these plans.

MPG-6

See response MPG-5 above.

MPG-7

The quality of the water discharged to the San Joaquin River is analyzed in the document. The recapture and reuse of tailwater is identified by the Regional Board as a practice to meet TMDLs.

MPG-8

Monitoring is accomplished through the Exchange Contractors' AB 3030 Groundwater Management Plan and other Board Policies such as CCID's "1995 Rules Governing Pumping from Private Wells." (See Section 5.2.2.2.)

MPG-9

Additional groundwater pumping will be up to 14,000 acre-feet from the entire 240,000 acre Exchange Contractors Service area, with the exception of Columbia Canal Company situated within Madera County where no groundwater pumping for transfer will be permitted. Groundwater conditions will be monitored and groundwater pumping will be managed by each entity (through the program outlined within the Exchange Contractors' AB3030 Groundwater Management Plan) to ensure that impacts will not occur.

MPG-10

The fallowing is only as to the consumptive use. In all three project alternatives, up to 50,000 may be fallowed on a rotational basis. All lands within the service area of the Exchange Contractors are eligible to participate in the program. All land fallowing transfers must first be approved by board of directors of the district from where the lands are fallowed, then the transfer must be submitted to the Exchange Contractors Water Transfer committee for consideration. If the transfer is consistent with the Exchange Contractors Water Transfer Policy and is demonstrated to be scientifically sound, it is recommended to the Exchange Contractors Board for their consideration.

MPG-11

Virtually every canal within CCID and SLCC currently accept groundwater for use in-district. The increase volume of pumping of up 14,000 acre-feet represents only about 11 percent increase in pumping and represents only 1.7 percent of water conveyed in the channels. No significant change in water quality will occur.

MPG-12

Documentation and analysis is presented showing that the groundwater within the Exchange Contractors Service area (excluding Madera County) is either stable or rising, no overdraft within the sub-basin exists, and that no new overdraft is expected.

MPG-13

No groundwater pumping for transfer will occur within Madera County.

MPG-14

The hydrographs provided in the attachment to the MPG comment letter are not located in Subarea G as assumed in the comment. They are actually situated in Subarea J. Subarea J is

within Madera County which is reported in overdraft, and no groundwater extraction will be allowed for transfer.

MPG-15

The hydrographs shown are representative of hydrographs within the Exchange Contractors service area.

MPG-16

The Exchange Contractors do not pump wells from within groundwater over-drafted area. The pumping from wells within Madera County and CCC are privately owned wells used on overlying lands.

MPG-17

The municipal pumpage occurs within or adjacent to CCID. The District has agreed with the Cities to update a groundwater conditions study every 5 years to in the area in and adjacent to each one. Groundwater quality, levels, quantities pumped, flow paths and additional yields are estimated and analyzed.

MPG-18

See response MPG-14.

MPG-19

See response MPG-9.

MPG-20

See response MPG-9.

MPG-21

See response MPG-9.

MPG-22

The water transferred from the land fallowing component of the project is limited to the amount that would have been consumptively used by the crop being fallowed. All of the surface water that would have gone to deep percolation or conveyance losses will be retained by CCC. The increased supply due to retention of the deep percolation and conveyance loss water will be utilized by the other users in the District. Each year CCC consumers use all of surface water entitlement and supplements with well water. The reduction in groundwater pumping in CCC will be roughly equivalent to reduced deep percolation.

MPG-23

See response MPG-17.

MPG-24

The Exchange Contractors have an active AB 3030 program. Annual water levels are recorded within the Exchange Contractors service area. As stated in the Draft EIS/EIR on page 13-6, the last paragraph clearly states that the “Exchange Contractors will continue to manage groundwater pumping to result in no net depletion of groundwater over the 10-year life of the water transfer program.” Continued monitoring will be accomplished as outlined in the Exchange Contractors’ AB 3030 plan.

MPG-25

See response MPG-13.

**NATURAL RESOURCES DEFENSE COUNCIL/THE BAY INSTITUTE LETTER –
JARED W. HUFFMAN/GARY BOBKER**

NATURAL RESOURCES DEFENSE COUNCIL
THE BAY INSTITUTE

August 2, 2004

Via E-Mail to REckert@mp.usbr.gov and U.S. Mail
Mr. Bob Eckart
Bureau of Reclamation
Mid-Pacific Region, Division of Environmental Affairs
2800 Cottage Way, CA 95825

Re: **DRAFT EIR/EIS FOR SAN JOAQUIN RIVER EXCHANGE CONTRACTORS
WATER AUTHORITY 10-YEAR WATER TRANSFER PROGRAM (SCH. #
2003101106)**

Dear Mr. Eckart:

On behalf of the Natural Resources Defense Council (NRDC) and The Bay Institute (TBI), we submit these comments on the Draft EIS/EIR for the 10-year water transfer program proposed by the Bureau of Reclamation and the San Joaquin River Exchange Contractor Water Authority. Since 1988, NRDC and TBI have been working with a coalition of fishing and environmental groups to restore flows and environmental values to the San Joaquin River, 60 miles of which is dried up by the Bureau's operation of Friant Dam. Our efforts include working closely with leading scientific experts to study water supply strategies that could enable San Joaquin River restoration while meeting the reasonable water needs of Friant Water Users. Through this work, and through other advocacy efforts involving the Bay-Delta and its tributaries, NRDC and TBI have developed considerable expertise regarding the environmental and water quality impacts that have resulted from the Bureau's management of the San Joaquin River, and the broad benefits that could result from restoration.

For these reasons, we are keenly interested in the current proposal by the Exchange Contractors – who, along with the Friant Water Users, consistently and passionately argue that there is no water available to restore flows to the San Joaquin River – to sell up to 130,000 acre feet per year of their surplus Central Valley Project water.

As explained in our joint scoping comments last fall, a 10-year commitment of such large quantities of CVP water, in a region that is suffering severe environmental and water quality impacts caused by CVP operations, raises serious questions that require careful and extensive environmental analysis in an EIS/EIR. Unfortunately, the Draft EIS/EIR fails to provide such an analysis. Indeed, it raises far more questions than it answers.

1

From its outset, the Draft EIS/EIR is premised on an inaccurate description of “existing conditions” which fails to acknowledge that the Exchange Contractors are already selling approximately 70,000 acre feet of surplus water each year to various buyers. The Exchange Contractors receive their water for free from the Bureau, and unlike some other CVP water users

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NRDC/TBI Comments on Draft EIS/EIR for Exchange Contractor 10-Year Water Transfer
August 2, 2004
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1 they are generally provided all or nearly all of their contract amount. Because the re-sale of this water by the Exchange Contractors represents such a financial windfall at the expense of federal taxpayers, the need for an accurate accounting of baseline conditions is important so that readers can determine how much, if any, of this water truly comes from conservation and land idling, and how much represents water that would have gone to other water users or the environment. In the Draft EIS/EIR, the existing condition and the No Action/No Project alternative are misleadingly characterized as being the same, when they are in fact different.

2 The Draft EIS/EIR is extremely vague about the specific transfers that would occur.¹ Indeed, there is so little specific information about what is being proposed that it is impossible to evaluate the impacts of the project or to consider a proper range of alternatives. The project's impacts, including the extent to which it impacts downstream water quality and water supplies (e.g., by increased releases from New Melones to address water quality problems) will depend in large part on how and where the water is used. But instead of specifics, the Draft EIS/EIR provides broad ranges of water sales that shed little light on who will actually buy the water and how and where it will be used. For example, anywhere from zero to 100 percent of the 130,000 acre feet per year could be sold to the Westlands Water District for irrigation use. There is no information on the location(s) within Westlands where the water would be put to use, so all of it could conceivably be applied to drainage impacted lands. Yet the document says nothing about the obviously significant impact of increasing the amount of toxic drain water from drainage impacted lands within Westlands.

3 Similarly, anywhere from zero to 130,000 acre feet per year could be sold to the Santa Clara Valley Water District for some combination of agricultural, industrial, and/or municipal uses. We are not told where the water will be used, though it is presumably somewhere in Santa Clara County. The Draft EIS/EIR gives short shrift to growth inducing impacts by simply stating that the transfers would make up for "shortfalls" in Santa Clara's M&I contract for CVP water. We question the apparent assumption that Santa Clara County planners have premised their growth decisions on the rosy scenario of full CVP contract deliveries every year. They almost certainly have not. Thus, if the proposed water transfer enables Santa Clara to receive its full M&I contract amount each year for the next 10 years, there is a very real prospect of growth inducement that must at least be identified and considered.

4 Although the Draft EIS/EIR spends considerable time discussing the project's environmental water supply benefits, the lack of detail makes it unclear whether this is anything more than packaging. Specifically, while listing refuge water supplies as one of the "project purposes," the Draft EIS/EIR acknowledges that all of the water could be sold to Westlands or other agricultural or municipal water users, leaving no refuge water supply benefit at all. And even if water is made available for refuges, we are left to guess from a sizeable list of refuges – some draining into the San Joaquin River, others in the Tulare Basin – which one(s) would actually get

¹ A related defect is the document's vagueness and inconsistency about the extent of NEPA/CEQA coverage it is intended to provide. While suggesting at one point that it would "provide substantial NEPA/CEQA compliance for many of the transfers," it also states that the impacts associated with "a specific combination of transfers/exchanges" will be determined through more specific annual environmental compliance similar to what has occurred to date. It is impossible to tell which transfers would purport to enjoy substantial compliance under this Draft EIS/EIR, and which would be subject to more specific annual NEPA/CEQA analysis.

Appendix E

Comments and Responses

NRDC/TBI Comments on Draft EIS/EIR for Exchange Contractor 10-Year Water Transfer
August 2, 2004
Page 3 of 4

- 4 the water and what the impacts and benefits would be. It is equally unclear whether the Environmental Water Account (EWA) would get any water from the project.
- 5 With so little specific information, the transfers cannot be properly evaluated for their potentially far-reaching impacts on the San Joaquin River, Delta water supplies, water quality in the lower San Joaquin River and the Delta, and New Melones operations, among other impacts. For example, if a transfer provides 130,000 acre feet per year to irrigate drainage impacted land in Westlands, the required impact analysis and mitigation measures would need to be very different than what is provided in the current draft EIS/EIR. And because that scenario is entirely possible within the broad sideboards of this draft EIS/EIR, the failure to evaluate and mitigate for the increase in polluted drainage and other impacts would appear to be a fatal flaw.
- 6 More specifics are also needed to conduct a proper alternatives analysis. In the case of water for refuges, for example, both the impacts and the alternatives will depend on the specific refuge. For some refuges, the San Joaquin River could be used as conveyance for water deliveries, opening up opportunities for exchanges with Friant water users that could not only reduce and/or mitigate for the project's water quality impacts but significantly improve water quality throughout the San Joaquin River system, while also providing environmental benefits. The same opportunity to use the San Joaquin River for conveyance exists with sales to the EWA. Yet this alternative conveyance strategy is not even mentioned in the Draft EIS/EIR.
- 7 Along similar lines, previous scoping comments by NRDC and TBI urged the Bureau and the Exchange Contractors to consider creative exchanges to accomplish the water supply purposes of the project by using releases into the San Joaquin River from Friant Dam. Unfortunately, this alternative is summarily dismissed in the Draft EIS/EIR because it would "not help to meet the purpose and need/project objectives." By stating that releasing water into the San Joaquin River would involve "a different purpose than water released for specific state and federal wildlife refuges" and that river restoration is "not a project objective," the Draft EIS/EIR completely misses the point. If the same purpose can be accomplished using the river itself to convey the water, why not explore that alternative? The Draft EIR acknowledges that up to 70,000 acre feet per year of additional CVP water can be delivered to the Friant Water Users. Obviously, therefore, a similar amount could be exchanged for releases from Friant Dam, which could then be routed down the river for delivery to most of the prospective buyers identified in the Draft EIS/EIR, including several of the wildlife refuges. These deliveries would do double duty by improving water quality, and would also benefit the environment. Restoration may not be the purpose of the project, but if it results as a side benefit of using the river to convey water deliveries, then so much the better. Indeed, given the significant and unmitigated water quality and water supply impacts of several potential scenarios under the Draft EIS/EIR, using clean source water from Friant Dam may be the only way for this program to pass environmental muster.
- 8 The Draft EIS/EIR is also deficient in its explanation of the programs that will be used to produce the transferable water. Various actions such as tailwater recovery and groundwater substitution are discussed in the most general terms, with no detail as to where or how this will occur. The map provided in the document is almost unintelligible. No information is provided as to how water gets into the Mud and Salt Slough system, though the Draft EIS/EIR assumes

Appendix E Comments and Responses

NRDC/TBI Comments on Draft EIS/EIR for Exchange Contractor 10-Year Water Transfer
August 2, 2004
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8

that nearly all of the surplus applied water currently flows into that system. There are no maps or descriptions of exactly where the 20,000 acres of land idling -- nearly 10 percent of the total land in the Exchange Contractor service area -- will occur. In short, there is no way to determine from the Draft EIS/EIR how and where the current 70,000 acre feet of annual transfers has been made available, much less how and where the proposed 10-year transfer of 130,000 acre feet per year will be made available. In the absence of these details, it is impossible to verify whether these are legitimate transfers or whether the Exchange Contractors are simply converting their unneeded CVP water into a profit center.

9

Finally, the Draft EIS/EIR is flawed by its failure to even mention, much less consider, "place of use" restrictions under California water rights law that may limit some or all of the potential transfers. For example, the Draft EIR acknowledges that the water at issue in this proposed transfer program is provided by the CVP to "substitute" for water that was historically drawn from the San Joaquin River by the Exchange Contractor. The Exchange Contractors have a combination of riparian and appropriative water rights that are limited to "use on their lands." See SWRCB Decision 935, at pp. 39-40. The EIS/EIR should explain how the Bureau and/or the Exchange Contractors propose to change the place of use for this water without first obtaining approval from the State Water Resources Control Board, which presumably would consider the consistency of the proposed transfers with public trust obligations, Fish & Game Code §5937, and the needs of area of origin water users, among other things.

Thank you for considering our comments.

Very truly yours,



Jared W. Huffman, Senior Attorney
Natural Resources Defense Council



Gary Bobker, Program Director
The Bay Institute

CC: Mr. Steve Chedester, San Joaquin River Exchange Contractors

RESPONSE

**Natural Resources Defense Council/The Bay Institute –
Jared W. Huffman/Gary Bobker
August 2, 2004**

NRDC-1

The EIS/EIR begins with a summary of transfers of developed water occurring from 1999 through 2003, Table 1-1. Section 2.2 describes how No Action is similar to existing conditions for most resources, and Section 4.1 and Appendix B provide a more detailed discussion of the baseline for the hydrologic analyses. How the water would be developed and how it would be used is explained in exhaustive detail from the perspective of type of development and type of use. The water market will help to determine water disposition, and specific districts likely to participate are identified.

Under CEQA and NEPA, legal enactments and programs approved by Congress are not subject to discretion or change. Further, in January of 2001 a Final EA/IS on the San Joaquin Valley Refuge Supply Alternatives was completed by the Bureau of Reclamation (Reclamation 2001), and the environmental impacts and alternatives of supplying water to the Refuges was fully examined.

Under NEPA 40 CFR 1502.14, 1500.1(a), in some circumstances an EIS must examine alternatives that are outside an agency's jurisdiction or power and in conflict with law or Court orders if they are reasonable. However, this is not a basis for ignoring the current physical environment, which includes water transfers from the Exchange Contractors for refuge use. If this EIS/EIR were to examine an alternative in which no refuge water was available or no transfer of Exchange Contractor water would be provided for refuge use, the objects of NEPA and CEQA of providing a scientific and accurate description of the current human environment and the likely changes in that environment from the project or its reasonable alternatives would be ignored. As 46 *Federal Register* 18026 as amended 51 *Federal Register* 15618: "Forty Most Asked Questions Concerning NEPA Regulations," Question 3, states:

"Therefore, the 'no action' alternative may be thought of in terms of continuing with the present course of action until that action is changed. Consequently, project impacts of alternative management schemes would be compared in the EIS to those impacts projected for the existing plan. In this case, alternatives would include management plans of both greater and lesser intensity, especially greater and lesser levels of resource development."

NRDC-2

The EIS/EIR evaluates water development and water use as can best be identified at this time. Numerous districts/water users could participate in the program. It is expected that as each potential user requests participation in the program, the document would serve as the basis for NEPA/CEQA compliance but may need to be supplemented if the "plumbing" of the specific proposal is not addressed. For example, conveyance between Reclamation/Exchange

Contractors/most districts has not been evaluated. Each transfer application will be examined by Reclamation to see if the proposal's compliance can be tiered off the EIS/EIR, with the supplemental document (if necessary) only looking at those specific impacts not previously considered.

The analysis contained in the DEIS/EIR does evaluate the potential impacts on the San Joaquin River. It analyzes both the impacts from the generation of the water for transfer and combines this with the range of potential recipients of the transferred water (see Section 4.2). All transfers are subject to the water transfer policy of the Exchange Contractors and requirements contained therein to reduce potential impacts from the water transferred upslope.

NRDC-3

The effect of Santa Clara Valley Water District receiving their full M&I contract amounts is addressed in Reclamation's *Central Valley Project Long-Term Water Service Contract Renewal for San Felipe Division* (Reclamation 2000b).

NRDC-4

The analysis is structured to address "all water to refuges" or "all water to agriculture" combined with water development activities by the Exchange Contractors to ensure that a worst case analysis of environmental effects is done. It is not known at this time if the EWA would purchase water, but this possibility is part of the proposed transfer program and this EIS/EIR in order to facilitate this disposition, subject to whatever limitations are adopted to implement the EWA and the purpose of the proposed transfer program. Furthermore, the impacts of the refuges receiving full Level 4 supplies and the CVP water users getting their full contract amounts are evaluated in other NEPA documents incorporated by reference (see Section 1.3). The other documents address the disposition but do not consider the effect of water development by the Exchange Contractors.

NRDC-5

If a water transfer of 130,000 acre-feet was proposed to irrigate Westland's drainage-impacted lands, the proposal would be reviewed to determine the need for supplemental analysis. The issue of how to resolve drainage problems in the San Joaquin Valley is being addressed in separate NEPA documentation, while Westlands is engaging in environmental studies associated with taking some drainage-impaired lands out of irrigated agricultural production. See also response SDWA-26 regarding subsurface flows and Westlands WD.

NRDC-6

A proper alternatives analysis has been done. See response SEWD-5. The comment suggests a modification to the assumed facilities to deliver water to the refuges, because such a delivery option might broaden the scope of the project to include other sources of water. The project is dependent upon known existing conveyance mechanisms that are currently used to deliver water to the refuges. There is no duty to examine alternative or other mechanisms, particularly for the reason to incorporate analysis of "opportunities" not included within the project purpose.

NRDC-7

See response NRDC-6. “Using the river itself to convey the water” is not explored because Reclamation conveys CVP water only through existing facilities. Conveyance of CVP water to the refuges was evaluated in other San Joaquin Basin Action Plan NEPA documents. Generally there is no capability to deliver water to the refuges from the San Joaquin River, with the exception of East Bear Creek Unit. Use of Friant water to provide Incremental Level 4 supplies is not practical and may not be permissible under the Friant permits or under the CVPIA.

NRDC-8

See response FBF-2. The Exchange Contractors have had transfers approved by the Bureau of Reclamation since 1993. The transfers are in accordance with the Bureau of Reclamation’s transfer Policy and Procedures and are scientifically based with solid data backup.

All land fallowing transfers must also be approved by the Board of Directors of the Exchange Contractors and will be consistent with the Water Transfer Policy.

NRDC-9

The water delivered to the Exchange Contractors out of the Delta-Mendota Canal is subject to the Bureau Appropriative water rights. The place of use of those waters includes the whole of the Central Valley. The exchange or substitution of riparian or pre-1914 water of the Exchange Contractors occurs on a moment-by-moment basis with the Exchange Contractors’ water being available at Friant Dam to the Bureau until there is a failure to deliver the substituted water. No change in place of use with the SWRCB is required of either the Bureau or the Exchange Contractors under the SWRCB regulations or California law. Ongoing operations of a water project such as the Central Valley Project are not subject to CEQA or NEPA analysis.

Nacimiento & Regional Water Management Advisory Commission v. Monterey County Water Resources Agency (2nd Dist. 1993) 15 Cal.App.4th 2000, 205-8; *Westlands Water District v. U. S. Department of Interior*, 850 F. Supp. 1388 (Ed Cal. 1994).

See response NRDC-8 above.

TULARE BASIN WETLANDS ASSOCIATION LETTERS –
JACK G. THOMSON AND ROBERT F. BOWMAN



TBWA

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Mr. Bob Eckart
Project Director, U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Dear Bob,

We here in the Lower Tulare Basin who are interested in preserving the remaining private wetlands for wintering waterfowl are concerned about your EIS-EIR for the Environmental Water Account Project for the San Joaquin Exchange contractors which would export additional water from the Basin.

The Reclamation Improvement Act recognized in Sec. 3406-D6 that there were unmet needs in the Lower Tulare Basin.

The streams which have historically produced winter wetlands in this area have been utilized by either Corps of Engineers or Bureau of Reclamation projects. At the same time, the beneficiaries of these projects have been paying millions in restoration funds yet none of this money has been used to help the remaining private wet lands in this area.

We feel the Federal Government should either provide water for these wetlands, power to pump water, or funds to help defray the cost of pumping water before these last remaining wetlands go out of existence as so many have over the last half century.

We feel your EIR-ERS should address the effects water exports have had on the private wetlands in the Lower San Joaquin Valley and what measures can be taken to help preserve and restore these wetlands.

Sincerely yours,

Jack G. Thomson

Jack G. Thomson
TBWA Water Committee
2000 Ashe Road #3
Bakersfield, CA 93309
Phone: 661 398 7106

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Appendix E Comments and Responses



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July 30, 2004

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Ms. Joann Toscano
Exchange Contractors
Post Office Box 2115
Los Banos, California 93635-1122

RE: Draft EIS/EIR Impact Report

Dear Ms. Toscano,

The Tulare Basin Wetlands Association would like to comment on the many uses this water could have on the environmental resources of the Southern San Joaquin Valley.

It is no secret that the available water, for use by migrating birds, has become extremely costly and in short supply in the counties of Kern, Tulare and Kings. This could be corrected and the process partially reversed if some of this water was exchanged by east-west transfers and delivered through the State or Federal Facilities.

The Friant Division of the C.V.P. pays many millions in environmental fees each year and only a small portion is returned for habitat restoration.

We support the project and approve the Draft Environmental Impact Statement. Now, it will be interesting to see if any water -at an affordable price- becomes available to the private wildlife clubs of the Lower San Joaquin Valley.

Sincerely Yours,

Robert F. Bowman
Bowman Preserve
3141 Avenue 136
Corcoran, CA 93212

RESPONSE

Tulare Basin Wetlands Association – Jack G. Thomson and Robert F. Bowman
July 30, 2004

TBWA-1

The comment goes beyond the scope of this EIS/EIR. CVPIA does not create any obligation to provide water to privately owned lands in the Tulare Basin.

TBWA-2

Comment noted and considered. See response TBWA-1.

TRANSCRIPT OF PUBLIC HEARING

WATER TRANSFER PROGRAM
FOR THE
SAN JOAQUIN RIVER EXCHANGE
CONTRACTORS WATER AUTHORITY
2005 - 2014
DRAFT EIS/EIR
PUBLIC HEARING

JULY 7, 2004, 5:09 PM

ORIGINAL

Reported by: ZOEDI LYNNE NEWMILL, CSR #12263

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1 PRESENT:

2 STEVE CHEDESTER

3 JOANN TOSCANO

4 SUSAN HOOTKINS

5 CHRIS WHITE

6 JEFF BRYANT

7 JIM STAKER

8 RANDY HOUK

9 MARK RHODES

10 JERRY O'BANION

11 DON MARCHIOCHI

12 JOSE I. FARIA

13 PAUL OLMSTEAD

14 DAVE MCCABE

15 BOB ECKART

16 SHERYL CARTER

17
18 --o0o--

19
20 MR. CHEDESTER: Well, why don't you grab a seat.
21 Looks like it's about ten after. Again, my name is Steve
22 Chedester. I'm with the San Joaquin River Exchange
23 Contractors Water Authority, and we want to thank you for
24 being here tonight. We're here again for the water
25 transfer program for the San Joaquin River Exchange

1 Contractors Water Authority, draft EIR/EIS. It's a
2 public hearing here at Miller & Lux from 5:00 to 7:00.

3 I'd like to do a couple of introductions and
4 just kind of give a little bit of a background, again, of
5 what we're doing with this EIR, why we're putting it out,
6 and then go to introductions and then turn it over to
7 Susan and let her get into the specifics of how we're
8 going to conduct the meeting, I guess.

9 This is a ten-year document to evaluate the
10 impact of transfers from the Exchange Contractors Water
11 Authority to a variety of agencies, the Bureau of
12 Reclamation for incremental 4, for Westside CVP for
13 contractors for Santa Clara Valley Water District, or the
14 -- or the -- or for the Friant Water Users Association --
15 or Friant Water Users Authority Service area. Ten years.
16 Could be a one-year transfer or a ten-year transfer.
17 It's wide open.

18 It has components of tail water recapture,
19 conservation projects, developed water that can be up to
20 80,000 acre feet on an annual basis. In addition to, it
21 can be up to 50,000 acre feet of water generated from
22 land fallowing. So a total program on an annual basis of
23 130,000 acre feet. But those two programs are not
24 interchangeable. It's either/or. It's 80,000 acre feed
25 maximum and/or 50,000 increment feet maximum from land

1 following.

2 You can't interchange 20,000 foot of land
3 fallowing to make it a 100,000 acre foot of developed
4 water conservation. There's maximums on each. That's
5 very key. I've had some questions on that, phone calls.
6 And it's been one of the common themes through all the
7 questions.

8 with that, I'd like to introduce -- you pretty
9 much know everyone -- introduce the staff who put the
10 document together, then Exchange Contractor staff, and
11 we'll go from there.

12 First, Susan Hootkins. She's with URS, and
13 she's been the major crafter of this document. She's
14 going to be continuing the rest of the hearing tonight.
15 We've got Bob Eckert and Sheryl Carter from the Bureau of
16 Reclamation. Bob is from the Sacramento office; Sheryl
17 is from the Fresno office. We've got Randy Houk. We've
18 got Jeff Bryant, Chris White, and that's all we have.

19 Most of the rest of you know each other. I want
20 to thank Supervisor O'Banion for being here, Merced
21 County supervisor. Then we have our water transfer
22 administrator, Joann Toscano. She is back here. And
23 she's the one that's lost all of her hair keeping it
24 altogether. So it was a different color when she
25 started. With that, I'll let -- go into how we're going

1 to conduct the hearing, and try to go forward from there.
2 MS. HOOTKINS: Okay. Just a few housekeeping
3 comments. The restrooms are here behind us. The -- at
4 the end of the meeting, help yourself to coffee and water
5 and candy courtesy of the Exchange Contractors. Please,
6 if you have any cell phones with you, turn them off. For
7 just a little while.

8 And then also refrain from any, what I call,
9 side-bar discussions or whispering back and forth. Zoedi
10 is recording all of your comments, so we would ask that
11 you look towards her if you're going to make a comment
12 tonight, go ahead and stand up and state your name and
13 spell your name and help -- help Zoedi out.

14 Also, how many folks just plan to comment
15 tonight on any -- got any? Okay. We've got Paul
16 Olmstead who -- okay. Well, Paul, you can take as long
17 as you want. I don't think we have too many folks here.

18 MR. OLMSTEAD: Won't be that long.

19 MS. HOOTKINS: So we'll have a period of formal
20 comment. There may be some formal discussion back and
21 forth, if you want to do that, and Zoedi will get that
22 down. But once that's over, we will close the public
23 hearing and she'll pack up, and you're free to stick
24 around and engage in some informal discussion.

25 I would like to say that there will be a written

1 transcript of this hearing, and the consultant team,
2 Exchange Contractors, and reclamation will be preparing
3 written responses to your comments. We're not planning
4 to go into any detail to your responses tonight. We've
5 got quite a technical team. So be aware that we will
6 respond in writing.

7 The close of comments is August 2nd. For any of
8 you that have had any trouble downloading the document,
9 the detailed instructions on how to download it from the
10 reclamation website is back there behind the table. And
11 let's see. With that, I think we could get started. So
12 -- and I'm going to record, just real briefly, any
13 comments that are made and might stimulate some
14 additional comments.

15 So with that, I'm going to open the public
16 hearing to anyone who would like to comment.

17 MR. OLMSTEAD: That's me.

18 MS. HOOTKINS: That's Paul.

19 MR. OLMSTEAD: I'm Paul Olmstead,
20 O-L-M-S-T-E-A-D, with the Sacramento Municipal Utility
21 District of Sacramento, and we're representing the
22 Central valley project preferred powered customers. And
23 I -- our comment is pretty generic and straightforward.

24 First of all, I'd like to say I'm proud of this
25 effort. It's an -- if -- it's a big endeavor that you

1 folks are doing out here, and it's probably been well
2 needed for a long time. And the power community supports
3 this effort. But we do want to have the impacts to the
4 power resources identified in this document. And I will
5 be submitting some comments in more detail before the
6 close of the -- of the comment period.

7 But basically it's my understanding right now
8 that this is all CVP customers using CVP water, moving it
9 through the Central Valley Project facilities, and
10 therefore, it will come under the auspices of CVP power
11 and the power covers that action. And those actions
12 which are outside that, there are certain parameters.
13 And the Bureau of Reclamation and the Sacramento Central
14 Valley Project office has identified a matrix of which
15 identified those conditions where it is considered
16 covered under the CVP preferred fallow or not.

17 So with that in mind, I'll forward that. If you
18 don't already have it, I will forward that matrix to the
19 -- to Bob here and Susan for reference and inclusion of
20 the document. But we just want to make sure that there's
21 no harm done to the CVP preferred customers with the
22 recognition that the timing of water transfers, the
23 timing of the power, that the power may be used of some
24 -- of significant impacts, particularly in late summer
25 when the power resources are low and the demands for

1 pumping water may be high. There may not be that
2 preference power excess, preference power available, and
3 that already will have to be worked out amongst the
4 users.

5 so there are conditions and we'll -- you can
6 address them more.

7 MS. HOOTKINS: Okay.

8 MR. OLMSTEAD: And you know where I can be
9 located at, and so does Bob. So if they -- there's any
10 questions, I'll just drop it at that. And good luck with
11 the project.

12 MS. HOOTKINS: Thank you, Paul.

13 MR. OLMSTEAD: How's that?

14 MS. HOOTKINS: Fine.

15 MR. OLMSTEAD: Yeah.

16 MS. HOOTKINS: Okay. Anybody else? Got a
17 couple of deep breaths. Okay.

18 MR. RHODES: Actually I --

19 THE REPORTER: What's your name, sir?

20 MR. RHODES: Mark Rhodes, Westland Water
21 District.

22 Actually one housekeeping. Table 1-9 and table
23 4, dash, 9, both -- both are water transfers somewhere,
24 or history. And the -- they appear to come from two
25 different sources, and they have different information

1 too.

2 MS. HOOTKINS: Okay.

3 MR. RHODES: In other words, some of the
4 problems have the exact same information, and other
5 problems have different information. So I would suggest
6 either using one source and/or one table, and/or just
7 kind of clearing that up.

8 MS. HOOTKINS: Yeah. I --

9 (Unintelligible.)

10 MS. HOOTKINS: Okay. Anything else that anybody
11 finds? Anything else that's in the document that's of
12 concern or not clear or -- okay. Okay.

13 MR. FARIA: My name is Jose Faria. This is just
14 a question I'm imposing. I didn't read the entire
15 document. But I read that part of this water is -- comes
16 out of groundwater. It's groundwater. And I'm -- I know
17 that Fresno County is one of the few counties to have
18 groundwater ordinances. And I'm interested in the -- I
19 think that relates to, you know, the transfer of the
20 groundwater outside Fresno County. Is this another --
21 going to be in the report or --

22 (Unintelligible.)

23 MS. HOOTKINS: Okay. There was a response
24 there. Could you speak up a little bit, Randy, so --

25 MR. HOUK: Randy Houk, Columbia Canal Company.

1 Madera County has the ordinance that he's speaking to.
2 Fresno County's groundwater ordinance is different.

3 MR. FARIA: It's different?

4 MR. HOUK: Yes.

5 MR. FARIA: But they do have one?

6 MR. HOUK: They do have an ordinance, but it is
7 different to this county.

8 MR. FARIA: Okay. I'm just curious about it.

9 MR. WHITE: Jose, the Exchange Contractors
10 have --

11 THE REPORTER: Sir, what's your name?

12 MR. WHITE: Chris White. The Exchange
13 Contractors have a groundwater board or groundwater MOU
14 with Fresno County relative to the ordinance. In fact,
15 I think we're one of the only entities to have one. So
16 work with the county when they develop the ordinance. We
17 also developed an MOU which sets out a certain process
18 that we need to work through with the County to do
19 transfers. And we just notify them ahead of time.
20 They're very pleased with our watering, groundwater
21 management practices in the County. So we have an MOU
22 with them that allows us to do this type of things.

23 MR. FARIA: All right.

24 MR. CHEDESTER: We actually met with Fresno
25 County to make sure we were consistent with that, so we

1 have been.

2 MR. FARIA: Okay. Thanks.

3 MS. HOOTKINS: Okay. And Steve made a comment
4 about your premeeting with Fresno before we got this
5 project going.

6 MR. CHEDESTER: (Nods head.)

7 MS. HOOTKINS: Okay. Any other observations,
8 comments, questions? All right. well, shall I go ahead
9 and close the public hearing then?

10 MR. CHEDESTER: (Nods head.)

11 MS. HOOTKINS: The public hearing is officially
12 -- oh, before we close it. I want to just be sure
13 everyone knows comments are due by August 2nd to Joanne
14 or to Bob Eckert. And the press releases and notice of
15 availability have all the addresses in there at the back
16 of the room. Also we expect that the final EIS/EIR will
17 be available by Thanksgiving. That will include the
18 written responses to the comments received.

19 with that, thank you for participating. And if
20 you wish to hang out, you can. And the public hearing is
21 closed.

22 (Time noted: 5:21 PM.)
23
24
25

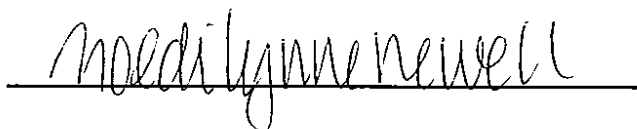
1 STATE OF CALIFORNIA,)

2)

3 COUNTY OF MERCED.)

4
5 I, ZOEDI LYNNE NEWELL, a Certified
6 Shorthand Reporter of the State of California, do hereby
7 certify:

8 That on July 7, 2004, at the hour of 5:09
9 PM thereof, I took down in shorthand notes the said
10 proceedings had; that I thereafter transcribed my
11 shorthand notes of such proceedings by computer-aided
12 transcription, the above and foregoing being a full,
13 true, and correct transcript of all proceedings had.

14
15 

16 ZOEDI LYNNE NEWELL, CSR #12263

17 Certified Shorthand Reporter
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RESPONSE

Transcript of Public Hearing July 7, 2004

Three members of the public commented at the public hearing, while others present and involved in the discussion were associated with the lead agencies. The three members of the public who commented were:

Paul Olmstead, Sacramento Municipal Utility District

Mr. Olmstead's comments on impacts to power resources are addressed in the responses to SMUD's written comments.

Mark Rhodes, Westlands Water District

Mr. Rhodes comment on the different sources is addressed in response WWD-5.

Jose Faria, Department of Water Resources

Mr. Faria's comment on the transfer of water outside of Fresno County was addressed by Mr. Houk and Mr. White (representing member districts of the Exchange Contractors) in the transcript and in Section 5.1.2 of the EIS/EIR.

Attachment E-1
IOP for New Melones Reservoir

Stanislaus River enclosed

United States Department of the Interior

BUREAU OF RECLAMATION
Central Valley Operations Office
3310 El Camino Avenue, Suite 300
Sacramento, California 95821

MAY 31 1997

IN REPLY
REFER TO:

CVO-400
WTR-4.10

To: Stanislaus River Basin Stakeholders
Other Interested Parties
(See Attached List)

From: Lowell F. Ploss
Operations Manager, Central Valley Operations

Subject: Transmittal of New Melones Interim Plan of Operation

Attached is the interim plan of operation for New Melones Reservoir. The interim plan was developed as a joint effort between The Bureau of Reclamation (Reclamation) and the Fish and Wildlife Service (FWS) in conjunction with the Stanislaus River Basin Stakeholders. This process began in 1995 with a goal to develop a management plan with clear operating criteria for available water supplies in the Stanislaus Basin on a long-term basis. In 1996, that effort was continued with a group of Stanislaus stakeholders; however, the focus shifted to an interim plan for 1997 and 1998 operations. During a meeting of the stakeholders on January 29, 1997, a final interim plan of operation for New Melones Reservoir was agreed to in concept. The details of this plan are attached. Also attached are examples of operations under the 50 percent probability of exceedance (most probable) and 90 percent probability of exceedance (90 percent chance of having increased inflows) hydrologic conditions which include Water Years 1997 and 1998. This plan is contingent upon all elements as described in this document. It was also decided at the January 29, 1997, meeting that between now and late 1998 additional work on a long-term plan would continue.

If you have any questions regarding this interim plan, please call Dave Read (Reclamation) at 979-2684 or Roger Guinee (FWS) at 979-2760.

Attachments

cc: Fish & Wildlife: Maria Macoi
Joel Medlin
Dick Jewell

New Melones Interim Plan of Operation

Annual Water Supply Categories

Table 1 shows the five annual water supply categories to be used in the interim plan of operation and the corresponding ranges of February end of month storage plus March through September forecast of inflow to New Melones Reservoir.

Table 1

Annual Water Supply Category	Mar.-Sept. Forecast plus Feb. End of Month Storage (TAF)	
	From	To
Low	0	1,400
Medium-Low	1,400	2,000
Medium	2,000	2,500
Medium-High	2,500	3,000
High	3,000	6,000

Water Distribution

Table 2 shows the distributions of annual (March through February) water supplies measured at Goodwin Dam, based on Table 1 categories, for fishery, Vernalis water quality, Bay-Delta, and Central Valley Project (CVP) contractors. The annual deliveries for these purposes will be determined by interpolating user allocation against the corresponding Table 1 hydrologic category. Allocations to Oakdale and South San Joaquin Irrigation Districts will be pursuant to their 1988 agreement with Bureau of Reclamation (Reclamation). It was agreed that Reclamation and Fish and Wildlife Service (Service) will acquire water from Oakdale and South San Joaquin Irrigation Districts (up to 50 TAF per year during 1997 and 1998) for fishery purposes. The release patterns for fishery purposes will be developed by Service and Reclamation in cooperation with the California Department of Fish and Game (DFG) and in consultation with interested agencies/parties. As part of the interim plan, it was negotiated that CVP contractors will receive 50 TAF per year during 1997 and 1998; therefore, this interpolation procedure will not apply to them for the interim period. The allocation in Table 2 for CVP Contractors is presented for information only. It should be noted that the low water supply category has been deleted from Table 2, because it is not anticipated that it will be reached during 1997 and 1998.

Table 2
(1,000 acre-feet)
(measured at Goodwin)

New Melones Storage plus Inflow		Fishery		Vernalis Water Quality		Bay-Delta		CVP Contractors	
From	To	From	To	From	To	From	To	From	To
1,400	2,000	98	125	70	80	0	0	0	0
2,000	2,500	125	345	80	175	0	0	0	59
2,500	3,000	345	467	175	250	75	75	90	90
3,000	6,000	467	467	250	250	75	75	90	90

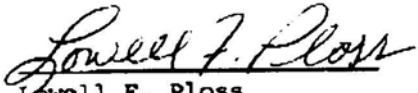
Preliminary water supply allocations will be announced by February 15 of each year, with updates by the 15th of each subsequent month through June. Although an initial fishery release pattern has been developed by the Service in consultation with the DFG, Reclamation will continue to request annual schedules from DFG pursuant to the June 1987 agreement between Reclamation and DFG. The Service will consult with DFG to schedule additional quantities allocated pursuant to this plan. The terms of the 1987 agreement will continue to be met during 1997 and 1998.

Stanislaus River Releases

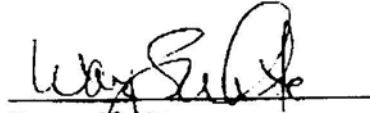
The derived release patterns for each purpose (from Goodwin Dam to the Stanislaus River) must be consistent with Table 2. All river releases up to the amount of the fishery pattern will be included in the annual fishery allocation. All river releases up to the amount of the Bay-Delta pattern excluding fishery will be included in the annual Bay-Delta allocation. All river releases up to the amount of the Vernalis water quality requirement excluding fishery and Bay-Delta will be included in the annual Vernalis water quality allocation. Water quality criteria as stated on pages 17 and 19 of the May 1995, Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary will be met up to the maximum indicated allocation. If necessary, additional Goodwin river releases will be made to meet the Ripon dissolved oxygen requirement. Additional releases for fishery purposes (temporary water acquisition during 1997 and 1998) will be made on top of all other releases. Releases from Goodwin Dam to the Stanislaus River (except for flood control) shall not exceed 1,500 ft³/s.

It should be noted that Table 2 yields quantities that are additive. However, Table 2 does not show the total benefit to fishery, Vernalis water quality, and Bay-Delta. Releases for these purposes yield multiple benefits. For example, a release to meet fishery may also benefit Bay-Delta and/or Vernalis water quality even though it is included only in the fishery allocation.

During 1997 and 1998, it is anticipated that all objectives will be met according to the understanding that was reached in the Stanislaus Stakeholders meeting, and pursuant to Reclamation's April 4, 1997, letter to the Service and the Service's April 8, 1997, response (both attached). However, should extremely dry conditions or some unforeseen circumstance occur, Reclamation and the Service will convene a meeting with the Stakeholders to seek a solution.



Lowell F. Ploss
Operations Manager, Central
Valley Operations Office
Bureau of Reclamation



Wayne White
Field Supervisor
Fish and Wildlife Service

Note: There is no page 3.