

## Chapter 8 Responses to Comments

### 8.0 Introduction

This chapter contains each letter or email commenting on the Draft EIR/EIS, and includes responses to each comment. Revisions to text of the Draft EIR/EIS based on comments are included in these responses. Text revisions in the responses in this chapter are formatted in revision mode for ease of reference: ~~strikeouts~~ indicate removed text and underlines indicate new text. Actual revisions in the Final EIS are denoted by lines on the left side of the margin as explained in Chapter 1. Reclamation and the City of Modesto received 15 comments on the Draft EIR/EIS during the 60-day public review period. The City of Modesto also received correspondence from the State Clearinghouse documenting the completion of the public review period for the Draft EIR. There were no verbal comments made at the meeting held during the public review period. Each comment letter received is listed in Table 8-1 and identified by number, comment author, and date. The full text of all written comments is included in this chapter followed by the response to comments. Each letter is identified by a number (as shown in Table 8-1) and each comment is identified by a comment number in the margin; responses use the same number system. For example, Comment 1 in Letter 1 is designated Comment 1-1. In addition, to facilitate reading the Response to Comments, a summary of each comment is inserted in *italics* just prior to each response. This summary does not substitute for the actual comment; the reader is urged to read the full original text of all comments. The responses are prepared in answer to the full text of the original comment, and not to the abbreviated summary.

Table 8-1: List of Commenters

| Letter # | Comment Author                                                                                                           | Comment Date |
|----------|--------------------------------------------------------------------------------------------------------------------------|--------------|
|          | <b>Federal Agencies</b>                                                                                                  |              |
| 1        | United States Environmental Protection Agency, Region IX, Kathleen Martyn Goforth, Manager, Environmental Review Section | 3/10/15      |
|          | <b>State Agencies</b>                                                                                                    |              |
| 2        | California State Lands Commission, Cy R. Oggins, Chief, Division of Environmental Planning and Management                | 2/23/15      |
| 3        | State Water Resources Control Board, Carina Gaytan, Environmental Scientist                                              | 2/23/15      |
| 4        | State of California, Governor's Office of Planning and Research, State Clearinghouse, Scott Morgan, Director             | 2/24/15      |
| 5        | State of California, Department of Fish and Wildlife, Jeffrey R. Single, Regional Manager, Central Region                | 3/9/15       |
|          | <b>Regional and Local Agencies</b>                                                                                       |              |
| 6        | Central Valley Regional Water Quality Control Board, Trevor Cleak, Environmental Scientist                               | 2/4/15       |
| 7        | San Joaquin Valley Air Pollution Control District, Arnaud Marjollet, Director of Permit Services                         | 3/9/15       |
| 8        | Turlock Irrigation District, submitted through Remy, Moose, Manley LLP, Whitman F. Manley                                | 3/9/15       |
| 9        | Grassland Water District, Ricardo Ortega, General Manager                                                                | 3/10/15      |
|          | <b>Organizations</b>                                                                                                     |              |
| 10       | Patterson Frozen Foods, Inc., and Lakeside Hills, LLC, submitted through The Zumwalt Law Firm, Frank T. Zumwalt, Esq.    | 3/9/15       |
| 11       | Audubon California, Meghan Hertel, Working Lands Director                                                                | 3/10/15      |
| 12       | Ducks Unlimited, Mark E. Biddlecomb, Director, Western Region                                                            | 3/10/15      |
| 13       | State Water Contractors, Terry L. Erlewine, General Manager                                                              | 3/10/15      |
| 14       | Chevron Environmental Management Company, Mike N. Oliphant, Project Manager                                              | 3/9/15       |
|          | <b>Individuals</b>                                                                                                       |              |
| 15       | Robert Martelli                                                                                                          | 2/6/15       |



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

March 10, 2015

Mr. Pablo Arroyave  
 Deputy Regional Director  
 Bureau of Reclamation  
 South-Central California Area Office  
 1243 N Street  
 Fresno, California 93721

---

Subject: North Valley Regional Recycled Water Program Draft Environmental Impact Statement,  
 Stanislaus County, California [CEQ# 20150011]

Dear Mr. Arroyave:

The U.S. Environmental Protection Agency has reviewed the Draft Environmental Impact Statement for the North Valley Regional Recycled Water Program. Our review and comments are pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The North Valley Regional Recycled Water Program would provide recycled wastewater from the Cities of Turlock and Modesto via the Central Valley Project's Delta-Mendota Canal to Del Puerto Water District for irrigation purposes, and would provide annual supplemental water to designated wildlife refuges for wetlands. Three action alternatives are evaluated in the Draft EIS: two alternatives would construct pipelines to convey water from the Cities to the DMC; a third alternative would continue discharges into the San Joaquin River and would use the river and expanded existing facilities for conveyance. 1-1

EPA is generally supportive of water recycling as a way to provide dependable water supplies, as it can have environmental benefits of reducing diversions of water from sensitive ecosystems and reducing pressure to pump groundwater. Such projects must be carefully designed and evaluated to ensure that these benefits are fully realized and any potential adverse impacts are avoided or minimized.

Based on our review of the DEIS, we have rated all the Action Alternatives and the document as *Environmental Concerns – Insufficient Information* (EC-2). Please see the enclosed "Summary of EPA Rating Definitions." Our rating is based primarily on concerns about the potential impacts that may result from further reducing flow in the San Joaquin River, and the potential impacts to waters of the U.S. Furthermore, we believe that additional opportunities exist to reduce air quality impacts. Please find our detailed comments enclosed, which provide recommendations to address these issues.

We appreciate the opportunity to review and comment on this DEIS, and are available to discuss the recommendations provided. When the FEIS is released for public review, please send one hard copy and

one CD to the address above (Mail Code: ENF 4-2). Should you have any questions, please contact me at (415) 972-3521, or contact Jean Prijatel, the lead reviewer for the project. Jean can be reached at (415) 947-4167 or [prijatel.jean@epa.gov](mailto:prijatel.jean@epa.gov).

Sincerely,



Kathleen Martyn Goforth, Manager  
Environmental Review Section

Enclosures: Summary of EPA Rating Definitions  
EPA Detailed Comments

cc: Adam Laputz, Regional Water Quality Control Board (Central Valley Region)  
Andy Gordus, California Department of Fish and Wildlife

## SUMMARY OF EPA RATING DEFINITIONS\*

This rating system was developed as a means to summarize the U.S. Environmental Protection Agency's (EPA) level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the Environmental Impact Statement (EIS).

### ENVIRONMENTAL IMPACT OF THE ACTION

#### *"LO" (Lack of Objections)*

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### *"EC" (Environmental Concerns)*

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

#### *"EO" (Environmental Objections)*

The EPA review has identified significant environmental impacts that should be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### *"EU" (Environmentally Unsatisfactory)*

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the Council on Environmental Quality (CEQ). 1-1 Cont'd

### ADEQUACY OF THE IMPACT STATEMENT

#### *"Category 1" (Adequate)*

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### *"Category 2" (Insufficient Information)*

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### *"Category 3" (Inadequate)*

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640, Policy and Procedures for the Review of Federal Actions Impacting the Environment.

### **Hydrology and Water Quality**

#### *San Joaquin River Flows*

The DEIS states that the proposed project would result in a “slight reduction of stream flows” – approximately 0.5% – in the San Joaquin River with the diversion of wastewater discharges to the Delta-Mendota Canal (page 3.11-20). While EPA agrees that this reduction in flow, itself, is likely a minor reduction, flows in the San Joaquin River system are already well below natural flows. It is estimated that, in a median year, only 31% of the natural flow is allowed to remain in the river channel, i.e. the diversion rate is approximately 69%.<sup>1</sup> In a system that is already impacted by reduced flows, any further reduction in flows -- even a relatively small one -- is likely to have an impact. Efforts are underway to increase flows in the system.

1-2

The State Water Resources Control Board’s 2010 Flows Report<sup>2</sup> underscores the need to increase flows in the San Joaquin River system to support aquatic life, including several endangered species that rely on freshwater flows. The SWRCB is proposing that flow criteria for Delta outflows and the San Joaquin River basin be included in upcoming modifications to the Water Quality Control Plan.<sup>3</sup> It is anticipated that these upcoming flow requirements will require less water be diverted for human consumption and more water be left in the river for aquatic life. Any water transfers in this system would need to be operated in a manner consistent with these requirements.

The Biological Resources chapter of the DEIS discusses the impacts of reduced flows on fish species and their habitats (page 3.4-79) and proposes the following mitigation to support implementation of the Recovery Plan for Central Valley Chinook and Steelhead: improve wastewater treatment in the watershed and augment spawning gravel in the San Joaquin River as part of Reclamation’s San Joaquin River Restoration Program, the U.S. Fish and Wildlife Service’s Anadromous Fish Restoration Program, or other relevant restoration program.

***Recommendation:*** Discuss the implications of the SWRCB’s proposed flow criteria for the San Joaquin River basin, including how the proposed project would operate within these requirements and any changes the criteria would necessitate to the analysis of the cumulative impacts of the action alternatives.

---

#### *CWA 303(d) Impairments*

The DEIS lists Clean Water Act 303(d) impairments for the segment of the San Joaquin River in the project area: alpha BHC, boron, chlorpyrifos, DDT, DDE, diazinon, diuron, E. coli, electrical conductivity, Group A pesticides, mercury, toxaphene, and unknown toxicity (page 3.11-15). The DEIS

---

<sup>1</sup> Flow estimates based on observed flow and unimpaired flow at Vernalis from Tables 2.6 and 2.5 on pp. 2-17 and 2-16 in Appendix C of the Substitute Environmental Document for the Bay Delta Water Quality Control Plan (see link above), as cited in EPA Comments on the Bay Delta Water Quality Control Plan, Phase I SED. March 28, 2013.

Available at: <http://www2.epa.gov/sites/production/files/documents/sfdelta-epa-comments-swrcb-wqcp-phase1-sed3-28-2013.pdf>

<sup>2</sup> State Water Resources Control Board, 3 Aug. 2010, Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem Prepared Pursuant to the Sacramento-San Joaquin Delta Reform Act of 2009, (2010 Flows Report), available at [www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/deltaflow/docs/final\\_rpt080310.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf)

<sup>3</sup> Draft Substitute Environmental Document in Support of Potential Changes to the Water Quality Control Plan for the Bay-Delta: San Joaquin River Flows and Southern Delta Water Quality:

[www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/bay\\_delta\\_plan/water\\_quality\\_control\\_planning/2012\\_sed/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2012_sed/)

notes that this list was based on information from the State Water Resources Control Board in 2010. In EPA's final approval of the 303(d) impairments list on October 11, 2011, temperature was added to the list of impairments for the project area river segment, as well as the next two segments downstream of the project area: Tuolumne River to Stanislaus River and Stanislaus River to Delta Boundary. EPA believes that the reduced flows discussed above could contribute to challenges for reducing temperature impairments.

1-3

**Recommendation:** Update the CWA 303(d) impairments list to include temperature impairments for the San Joaquin River in the project area and downstream of the project area and include temperature in the cumulative effects analysis of reduced flows.

---

### *Regulatory Framework*

The DEIS discusses the Recycled Water Policy adopted by the State Water Resources Control Board in May 2009 and amended in April 2013. This policy encourages the use of recycled water to achieve sustainable local water supplies and reduce greenhouse gas emissions. The Recycled Water Policy includes monitoring requirements for groundwater recharge projects, but does not address the type of project proposed in the action alternatives of this DEIS. On June 3, 2014, the SWRCB adopted a statewide General Order titled "General Waste Discharge Requirements for Recycled Water Use."<sup>4</sup> Page 6 of the General Order states that it applies to "recycled water projects where recycled water for non-potable use is used or transported."

1-4

**Recommendation:** In the regulatory framework section of the Hydrology and Water Quality chapter of the FEIS, include a discussion of the General Waste Discharge Requirements for Recycled Water Use and clarify whether the action alternatives are covered by the General Order.

---

### **NPDES Permit**

The DEIS states that the Cities of Modesto and Turlock are pursuing National Pollutant Discharge Elimination System permits to allow discharges to the Delta-Mendota Canal (page 1-10), and pursuing Wastewater Change Petitions to establish water rights for the recycled water (page 1-11). It further states that both cities would retain their existing discharge locations and access to the San Joaquin River, but that discharges to the SJR would only happen when the DMC was unavailable, which is expected to be a rare event. According to the DEIS, the State Water Resources Control Board will review the Petitions and determine whether "the change would not injure other legal users of water, would not unreasonably harm instream uses, and would not be contrary to the public interest" (page 2-3).

1-5

**Recommendation:** Include in the FEIS the status of the new NPDES permits and Wastewater Change Petitions with the SWRCB. Include any discussion and determination provided by the SWRCB about impacts to existing instream uses.

---

### **Clean Water Act, Section 404**

The DEIS notes that a Clean Water Act section 404 permit will be required for all work proposed in jurisdictional waters of the U.S. A description of types and locations of features likely to be considered jurisdictional waters is included in the DEIS. The document states that a jurisdictional wetlands delineation will be conducted and submitted to the U.S. Army Corps of Engineers for the purposes of determining areas to avoid and calculating required compensatory mitigation. General mitigation measures are provided in the DEIS to avoid, minimize, and mitigate for anticipated impacts, including

1-6

---

<sup>4</sup> [www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2014/wqo2014\\_0090\\_dwq\\_revised.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2014/wqo2014_0090_dwq_revised.pdf)

“compensatory mitigation consistent with the conditions of a CWA Nationwide Permit” and/or the Compensatory Mitigation Rule. The DEIS does not indicate which Nationwide Permit would apply to the project.

**Recommendation:** Identify and describe the CWA Nationwide Permit that would apply to each alternative. Include in the FEIS the wetlands delineation submitted to USACE and identify proposed areas for compensatory mitigation.

### **Air Quality**

As noted in the DEIS, the project is within the boundary of the San Joaquin Valley Air Basin, which is classified as extreme nonattainment for ozone and nonattainment for PM<sub>2.5</sub>, and is subject to the EPA General Conformity Rule. The DEIS provides environmental commitments intended to reduce fugitive dust from construction, as required by the San Joaquin Valley Air Pollution Control District, and indicates that implementation of those commitments will reduce the impacts to PM<sub>2.5</sub> levels to less than significant. The DEIS further states that the action alternatives will require the implementation of Mitigation Measure AIR-1 to reduce NOx emissions below the *de minimus* level of 10 tons per year. This mitigation measure provides several options for on-site reductions from which a combination of measures will be selected. After “all feasible” proposed on-site measures have been implemented, if annual emissions are still expected to be over 10 tons per year for NOx, then the project proponent will fund SJVAPCD’s Emission Reduction Incentive Program to offset emissions to zero tons per year (page 3.3-32).

**Recommendation:** In addition to the measures required to meet applicable local, state, and federal requirements, EPA recommends committing to additional on-site mitigation measures, such as the following, to reduce NOx emissions before determining the need to fund off-site mitigation:

#### **Mobile and Stationary Source Controls:**

- Minimize use, trips, and unnecessary idling of heavy equipment.
- Maintain and tune engines per manufacturer’s specifications to perform at EPA certification levels, where applicable, and to perform at verified standards applicable to retrofit technologies.
- Employ periodic, unscheduled inspections to limit unnecessary idling and to ensure that construction equipment is properly maintained, tuned, and modified consistent with established specifications. The California Air Resources Board has a number of mobile source anti-idling requirements which should be employed (<http://www.arb.ca.gov/msprog/truck-idling/truck-idling.htm>).
- Prohibit any tampering with engines and require continuing adherence to manufacturer’s recommendations.
- In general, commit to the best available emissions control technologies for project equipment:
  - *On-Highway Vehicles* - On-highway vehicles should meet or exceed the US EPA exhaust emissions standards for model year 2010 and newer heavy-duty on-highway compression-ignition engines (e.g., long-haul trucks, refuse haulers, etc.).<sup>5</sup>

<sup>5</sup> <http://www.epa.gov/otaq/standards/heavy-duty/hdci-exhaust.htm>

- *Nonroad Vehicles & Equipment* - Nonroad vehicles & equipment should meet or exceed the US EPA Tier 4 exhaust emissions standards for heavy-duty nonroad compression-ignition engines (e.g., construction equipment, nonroad trucks, etc.).<sup>6</sup>
- *Low Emission Equipment Exemptions* – The equipment specifications outlined above should be met unless: 1) a piece of specialized equipment is not available for purchase or lease within the United States; or 2) the relevant project contractor has been awarded funds to retrofit existing equipment, or purchase/lease new equipment, but the funds are not yet available.

Administrative controls:

- Prepare an inventory of all equipment prior to construction.
- Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.
- Identify where implementation of mitigation measures is rejected based on economic infeasibility.

**Climate Change**

On December 24, 2014, the Council on Environmental Quality released revised draft guidance for public comment that describes how federal departments and agencies should consider the effects of greenhouse gas emissions and climate change in their NEPA reviews. The revised draft guidance supersedes the draft greenhouse gas and climate change guidance released by CEQ in February 2010. This new draft guidance explains that agencies should consider both the potential effects of a proposed action on climate change, as indicated by its estimated greenhouse gas emissions, and the implications of climate change for the environmental effects of a proposed action.

1-8

In describing the need for action, the DEIS discusses how climate change is expected to impact Delta water exports and water availability in the region through more severe weather events and increased temperatures (page 1-4). In the Hydrology and Water Quality chapter, the DEIS discusses the C2VSim model used to estimate changes in San Joaquin River flows. It states that the model considers “cumulative impacts of multiple environmental factors” (page 3.11-27), but does not state whether those factors include modeled impacts of climate change. It is unclear whether the climate change insights that were used to indicate a need for action are included in the cumulative effects analysis of impacts to hydrology and water quality.

***Recommendations:*** Update, in the FEIS, the Regulatory Framework section of the Greenhouse Gas Emissions chapter to reflect the new CEQ draft guidance.

Indicate whether and, if so, how the C2VSim model that was used to estimate San Joaquin River flows considers the impacts of climate change. Describe how the proposed project would impact the cumulative effects of climate change on the hydrology and water quality of the San Joaquin River.

1-9

**Water Allocation between DPWD and Wildlife Refuges**

The Scoping Report in Appendix A acknowledges that EPA’s scoping comment letter requested that the DEIS describe the distribution of project water between irrigation and wildlife refuges, and states that the Project Description of the DEIS will describe this allocation. The Project Description in the DEIS states that Reclamation will work with Del Puerto Water District to obtain supplemental water supplies

1-10

<sup>6</sup> <http://www.epa.gov/otaq/standards/nonroad/nonroadci.htm>

1-10  
Cont'd

through this project for south of the Sacramento-San Joaquin River Delta Central Valley Project Improvement Act designated wildlife refuges (page 2-1), but the DEIS does not contain a description of how water would be allocated between DPWD and the refuges. The Alternatives chapter further states that it is most likely that SOD refuges will receive water during low agricultural-demand periods (page 2-17), but provides no further detail about water quantities, timing of distribution, or how the low agricultural-demand period relates to the refuges' annual water delivery schedules.

***Recommendation:*** In the FEIS, specify the expected distribution of project water between DPWD and wildlife refuges, including timing of deliveries and how that timing relates to the water delivery needs of the refuges.

## **8.1 Comment Letter 1 - United States Environmental Protection Agency, Region IX, Kathleen Martyn Goforth, Manager, Environmental Review Section**

### **8.1.1 Response to Comment 1-1**

*Comment Summary: The comment states that based on review of the Draft EIS, The U.S. Environmental Protection Agency (EPA) has rated the document as “Environmental Concerns – Insufficient Information” based on concerns about reducing river flows and potential impacts to waters of the U.S. EPA also believes that there are opportunities to reduce air quality impacts.*

Responses to detailed comments are provided below, and copies of the Final EIS will be provided to the EPA.

### **8.1.2 Response to Comment 1-2**

*Comment Summary: The comment requests discussions of the implications of the flow criteria for the San Joaquin River Basin in the SWRCB’s 2010 Flows Report and the potential San Joaquin River flow requirements in the SWRCB’s 2012 Draft Substitute Environmental Document for San Joaquin River flows and Southern Delta Water Quality, including how the project would operate within these requirements, and how any changes in these criteria would require changes in the Draft EIR/EIS’s analysis of cumulative impacts.*

Pages 3.11-24 to 3.11-26 of the Draft EIR/EIS discussed the reductions in San Joaquin River flows that would occur with implementation of the NVRWP and explain why the effects of the estimated reduction of approximately 0.5 percent of the average annual flows on the San Joaquin River and the associated reductions in Delta outflows are considered to be less than significant. The cumulative impacts on San Joaquin River flows are discussed on page 3.11-27, which explains that “the C2Vsim model that was used to estimate changes in the San Joaquin River flows considers cumulative impacts of multiple environmental factors. C2Vsim simulates water movement through the interconnected land surface, surface water and groundwater flow systems in the 20,000 mi<sup>2</sup> of the alluvial Central Valley aquifer”. The C2Vsim modeling for the NVRWP considers cumulative effects of diversions including the following:

- Sacramento River diversion to City of Sacramento.
- Delta diversions for agricultural, municipal and industrial uses.
- Delta diversions to North Bay Aqueduct for agricultural, municipal and industrial uses.
- Delta diversion to North Bay Aqueduct export.
- Delta diversion to Contra Costa Canal.
- Delta diversion to CVP.
- Delta diversion to SWP.
- Stanislaus River riparian diversions for agricultural, municipal and industrial uses.
- Tuolumne River diversion to Modesto Canal.
- Tuolumne River riparian diversions for agricultural, municipal and industrial uses.
- Tuolumne River diversion to Turlock Canal.

- Merced River riparian diversions for agricultural, municipal and industrial uses.
- Merced River to Merced Irrigation District Main Canal diversions for agricultural, municipal and industrial uses.
- Chowchilla River diversion to Chowchilla Water District.
- Chowchilla River riparian diversions for agricultural uses.
- Chowchilla River diversions for spreading.
- Fresno River diversion to Madera Irrigation District.
- Fresno River riparian diversions for agricultural uses.
- Fresno River diversions for spreading.
- San Joaquin River riparian diversions for agricultural, municipal and industrial uses.

The first paragraph of this comment states that any reduction in San Joaquin River flows, even a relatively small one, may have an impact. Similarly, the last sentence of this comment states that the Final EIR/EIS should discuss how any changes in these criteria may affect the EIR/EIS's analysis of cumulative impacts. The modeling of potential impacts considers the fact that there are numerous existing diversions from the system (as listed above) that have cumulatively resulted in reduced flows and considers the effect of the reduction in discharge associated with the NVRWP in the context of those reduced flows. Because of the cumulative impacts of past, present and reasonably foreseeable future actions along the river, the Draft EIR/EIS has concluded that on a cumulative basis, the project's small contribution to the already cumulatively substantial impacts on habitat in the river could contribute to further degradation to habitat and potentially fish survival (see page 3.4-93 of the Final EIS). This analysis, and the conclusions in the Draft EIR/EIS that are based on this analysis, remains valid.

There are times when the City of Modesto cannot discharge to the San Joaquin River, so a reduction in discharge at those times is not a result of the project. Modesto's current NPDES permit prohibits all discharges from June 1 to September 30 in a given year, and restricts discharges during the October 1 to May 31 discharge season. Specifically, Modesto may discharge only when river flows provide a flow ratio equal to or greater than 20:1 (river to effluent) as a daily average. As a result of this restriction, in 2014 Modesto discharged an annual total of only 1,139 AF. From 2000 through 2014 there were 56 months during the discharge season when there was no discharge (i.e. on average there was no discharge during 47 percent of the 8-month period when discharge is allowed if river flows provide sufficient dilution). Although the percentage reduction varies depending on the water year type, all reductions in flows that would result from elimination of wastewater discharges are considered insignificant in comparison to the seasonal and annual variations in flows that were experienced (between 1990 and 2014, flows at Vernalis ranged from about 585,000 AFY to 8,900,000 AFY).

Water Code section 85086, subdivision (c), which was adopted as part of the 2009 Delta Reform Act, required the SWRCB to "develop new flow criteria for the Delta ecosystem necessary to protect public trust resources." Following this directive, the SWRCB prepared an August 3, 2010 report titled "Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem". The report's executive summary contains the following statements about the limitations of the SWRCB's approach for developing the 2010 Flows Report (SWRCB 2010 Flows Report, pp. 2-3.):

***“Limitations of State Water Board Approach***

*When setting flow objectives with regulatory effect, the State Water Board reviews and considers all the effects of the flow objectives through a broad inquiry into all public trust and public interest concerns. For example, the State Water Board would consider other public trust resources potentially affected by Delta outflow requirements and impose measures for the protection of those resources, such as requiring sufficient water for cold water pool in reservoirs to maintain temperatures in Delta tributaries. The State Water Board would also consider a broad range of public interest matters, including economics, power production, human health and welfare requirements, and the effects of flow measures on non-aquatic resources (such as habitat for terrestrial species). The limited process adopted for this proceeding does not include this comprehensive review.*

***Future Use of this Report***

*None of the determinations in this report have regulatory or adjudicatory effect. Any process with regulatory or adjudicative effect must take place through the State Water Board’s water quality control planning, water rights processes, or public trust proceedings in conformance with applicable law. In the State Water Board’s development of Delta flow objectives with regulatory effect, it must ensure the reasonable protection of beneficial uses, which may entail balancing of competing beneficial uses of water, including municipal and industrial uses, agricultural uses, and other environmental uses. The State Water Board’s evaluation will include an analysis of the effect of any changed flow objectives on the environment in the watersheds in which Delta flows originate, the Delta, and the areas in which Delta water is used. It will also include an analysis of the economic impacts that result from changed flow objectives.”*

To date, the SWRCB has not made any regulatory determinations regarding flow requirements for the San Joaquin River that rely on the 2010 Flows Report.

The EPA comment states that “[a]ny water transfers in this system [referring to the San Joaquin River system] would need to be operated in a manner consistent with these requirements.” This comment recommends that the EIR/EIS discuss “the implications” of these flow criteria, “including how the proposed project would operate within these requirements.”

Neither the flow criteria in the 2010 Flows Report nor the potential San Joaquin River flow requirements in the SWRCB’s 2012 Draft Substitute Environmental Document are regulatory requirements. The Draft EIR/EIS analyzes the potential effects of the NVRWP on San Joaquin River flows and the potentially affected biological resources. Because the 2010 Flows Report was only for planning purposes, did not impose any regulatory requirements, and does not indicate what regulatory actions the SWRCB may take in the future regarding San Joaquin River flows, and because the SWRCB has not taken any regulatory actions based on the 2012 Substitute Environmental Document, it is outside the scope of the EIR/EIS to assume that the SWRCB will take any particular specific actions based on either of these documents, therefore, the Draft EIR/EIS does not discuss how possible future San Joaquin River flow requirements might affect the proposed project. However, if the SWRCB takes some future action to increase flows in the river system, this would only reduce the cumulative effect of the reduction in

discharges associated with the NVRRWP. In addition, the Proposed Action would operate within the criteria of current or future SWRCB requirements on transfers within the San Joaquin River system, if applicable.

### 8.1.3 Response to Comment 1-3

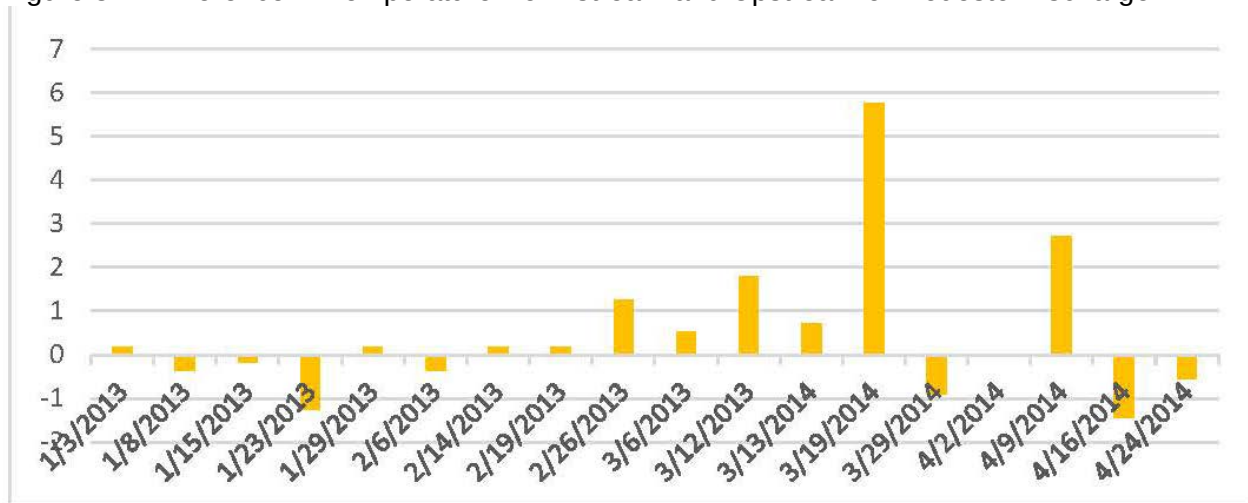
*Comment Summary: The comment states that the list of Clean Water Act 303(d) impairments needs to be updated to include temperature impairment of the San Joaquin River and include temperature in the cumulative effects analysis of reduced flows.*

The Draft EIR/EIS does note, in the discussion of San Joaquin River Water Quality on page 3.11-5, that portions of the river in *“the project area from the Merced River to the Tuolumne River and Tuolumne River to Stanislaus River are listed as impaired water bodies for boron, electrical conductivity, mercury, water temperature and several pesticides”*. Reductions in discharges associated with the NVRRWP are not expected to affect temperature as discussed below.

During the summer months, the City of Modesto does not discharge to the river and the City of Turlock discharges effluent that is about the same temperature as the river. Turlock effluent temperature averages 25.7 degrees Celsius (°C) while the river temperature averages 25.5 °C. Both cities are allowed to discharge in the winter months, when the temperature of the river averages 12.1 °C. During winter Turlock effluent temperatures average 18.3 °C, and removing this discharge would not make the water in the river warmer.

During their discharge season the City of Modesto monitors temperature of their effluent and at upstream and downstream receiving water locations. Review of that data, which is presented in **Figure 8-1** shows that there is no predictable relationship between the temperature of the discharge and the changes in temperature downstream. In 2013, temperatures downstream of the discharge location were warmer than the upstream temperature on ten sampling dates and were colder than the upstream temperature on seven sampling dates (see chart below). On several sampling dates the discharge was warmer than the upstream receiving water temperature, but the downstream receiving water temperature was colder than the upstream temperature. Given the lack of relationship between discharge temperature and receiving water temperature, removing the discharge is not expected to increase temperatures in the river, and would thus not make a contribution to cumulative temperature effects. The minor changes in the volume of water in the river were evaluated in the Draft EIR/EIS. As noted on page 3.11-25, *“reduction in river stage height (a reflection of water depth in the river) associated with curtailment of recycled water discharges is estimated to range from 0.25 inches to 1 inch”* and this is not expected to result in a measurable change in temperature. As noted in the cumulative analysis on page 3.11-27 of the Draft EIR/EIS *“the reduction in San Joaquin River stream flows at Vernalis due to NVRRWP is approximately 0.5 percent of the average annual flows (Appendix G: Evaluation of NVRRWP Impact on Groundwater, 2014). This is considered to be a less than significant impact. The C2Vsim model that was used to estimate changes in San Joaquin River flows considers cumulative impacts of multiple environmental factors.”* Because the change in flows is considered minimal on a cumulative basis, the small changes in flows is not expected to result in a cumulative effect on temperature.

Figure 8-1: Difference in Temperature Downstream and Upstream of Modesto Discharge



The EPA comment requests that temperature be added to the list of CWA 303(d) impairments for the San Joaquin River. The Draft EIR/EIS (Page 3.11-15) is revised as follows (see page 3.11-16 in the Final EIS):

These activities would not be expected to contribute to any of the 303(d) listed impairments of the San Joaquin River in the project area or downstream of the intake (alpha BHC, boron, chlorpyrifos, DDT, DDE, diazinon, diuron, *E. coli*, electrical conductivity, Group A pesticides, mercury, toxaphene, temperature and unknown toxicity)

#### 8.1.4 Response to Comment 1-4

*Comment Summary: The comment requests that a discussion of the General Waste Discharge Requirements for Recycled Water Use be included in the Hydrology and Water Quality Section and asks if the action alternatives are covered by the General Order.*

The NVRRWP would not be covered by the General Waste Discharge Requirements for Recycled Water Use. Although the NVRRWP has been conceived as a recycled water project, from a regulatory standpoint it is more accurately characterized as a wastewater discharge project, as the DMC is listed as a water of the State in the Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins (CVRWQCB, rev October, 2011). To that end, the CVRWQCB is processing an NPDES permit for discharge into the DMC. Thus a Recycled Water Permit is not required nor is it applicable for discharge of tertiary treated wastewater to the DMC for conveyance to DPWD. Water diverted from the DMC is considered surface water, and would not be re-characterized as recycled water based on an approved discharge to the canal. The NPDES permit will establish discharge standards based on the beneficial uses of the receiving water as defined in the Basin Plan. Requirements of the General Order were thus not detailed in the *Hydrology and Water Quality* section of the Draft EIR/EIS because it is not applicable to the NVRRWP. No change is necessary on the Final EIS.

### 8.1.5 Response to Comment 1-5

*Comment Summary: The comment requests information on the status of the new NPDES permits and Wastewater Change Petitions with the SWRCB, including any discussion and determination provided by SWRCB about impacts to existing instream uses.*

As noted in the comment, introduction of the non-CVP water into the DMC would require an NPDES Permit. The Cities of Turlock and Modesto have prepared Reports of Waste Discharge (ROWD) and submitted the ROWD to the CVRWQCB to start the application process for an NPDES permit. As stated on page 1-11 of the Draft EIR/EIS, the City of Modesto has filed a Wastewater Change Petition with the SWRCB, which issued public notice of the Petition on February 10, 2015. The public review period ended on March 12, 2015, and the SWRCB received protests of the Petition from TID and Westlands Water District. The City of Modesto is in the process of resolving those protests and expects to reach an agreement with TID and the Westlands Water District. The SWRCB has not yet made a determination regarding impacts to existing instream uses. The City of Turlock filed a Wastewater Change Petition in mid August 2015.

### 8.1.6 Response to Comment 1-6

*Comment Summary: The comment requests that the CWA Nationwide Permit for each alternative be identified and described. The comment also requests that the Final EIS include the wetlands delineation submitted to U.S. Army Corps of Engineers (USACE) and identify proposed areas for compensatory mitigation.*

Reclamation invited the USACE to be a cooperating agency for preparation of the EIS. USACE declined to be a cooperating agency, but indicated that based on review of the project description it appeared that the project can be authorized under Nationwide Permit number 12, Utility Lines (email from Kathleen Dadey, Chief, California South Branch, Regulatory Division, USACE Sacramento District to Ben Lawrence of Reclamation). As described on page 5-6 of the Draft EIR/EIS, USACE has designated Reclamation as the NEPA lead for permitting under both Section 7 of the ESA and Section 106 of the NHPA. Nationwide Permit 12, which could be used for pipeline construction associated with both Alternatives 1 and 2, allows activities required for the construction of utility lines (such as the proposed recycled water pipelines) provided that the activity does not result in the loss of greater than ½-acre of waters of the U.S. for the entire project. Because Alternative 3 would include both pipelines and expansion of an existing intake on the San Joaquin River, it is expected that an individual 404 Permit would be required for this alternative. As described in Chapter 1, Alternative 1 has been identified as the Preferred Alternative in the Final EIS and a wetlands delineation has been prepared and submitted to USACE. The delineation has not yet been verified and thus it would be premature to include the delineation in the Final EIS. As noted on page 3.4-74 of the Draft EIR/EIS, which described effects on federally protected wetlands, “*Potential adverse impacts to federally protected wetlands would be minimized by using trenchless construction techniques in these areas*”. Where temporary construction impacts at pipeline crossings are unavoidable, **Mitigation Measure BIO-16a** (see page 3.4-75 of the Draft EIR/EIS and page 3.4-88 in the Final EIS) requires that “*After construction, surface topography and drainage shall be restored to pre-construction conditions. Where appropriate, revegetation shall be implemented with site-adapted native*

species.” The Partner Agencies intend to provide mitigation by re-establishing wetlands at any area that has been temporarily affected by construction, which is the type of compensatory mitigation preferred by USACE. As noted in **Mitigation Measure BIO-16b** (see pages 3.4-75 and 3.4-76 of the Draft EIR/EIS and page 3.4-88 of the Final EIS) if required by USACE compensatory mitigation “*may also include purchase of credits at an approved mitigation bank or contribution to an approved in-lieu fee program*”. Details of mitigation would be developed during the 404 Permit process. As additional measures would only further reduce the potential impacts, the inclusion of the wetland delineation would not substantially change the impacts analysis in the Draft EIR/EIS and no change is needed in the Final EIS.

#### **8.1.7 Response to Comment 1-7**

*Comment Summary: The comment suggests additional on-site mitigation measures to reduce NO<sub>x</sub> emissions before determining the need to fund off-site mitigation.*

Several of the suggestions for additions to **Mitigation Measure AIR-1: Reduce NO<sub>x</sub> Emissions** have been added. However, the requirements for specific engine tiers and newer trucks are significantly ahead of CARB implementation schedules. For example CARB does not require all vehicles to be 2010 and newer until January 1, 2023. Tier IV engines may not be readily available at the time of the project construction. In addition, comments received from the SJVAPCD did not suggest that these measures would be necessary. Therefore, the mitigation measure leaves these as measures that the contractor will be encouraged to implement to the extent feasible. There is no change to the significance conclusion and the implementation of voluntary emission offset agreement will ensure that NO<sub>x</sub> emissions are fully mitigated consistent with general conformity requirements.

**Mitigation Measure AIR-1** on page 3.3-35 of the Final EIS has been revised as follows:

#### **Mitigation Measure AIR-1: Reduce NO<sub>x</sub> Emissions** (Alternatives 1, 2 and 3)

NO<sub>x</sub> emissions associated with construction activities shall be reduced to 10 tons per year through on-site equipment and hauling vehicle mitigation measures to the extent feasible. All vehicles and equipment used during construction shall be maintained and properly tuned in accordance with the manufacturer’s specifications to perform at EPA certification levels and to perform at verified standards applicable to retrofit technologies. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure CCR Title 13 Section 2485). Emissions reduction methods may be chosen from any combination of the following measures:

- Minimize the use and trips of construction equipment and trucks by consolidating trips and loads to the extent feasible.
- Minimize unnecessary idling by shutting off equipment and trucks when not in use to the extent feasible and comply with CARB idling regulations.

- Conduct periodic unscheduled inspections to ensure equipment is maintained properly and in accordance with manufacturer's recommendations and excessive idling is not occurring.
- Prepare inventory of all equipment prior to construction consistent with SJVAPCD Indirect Source Review Rule.
- Develop a construction traffic and parking management plan that minimizes traffic interference and maintains traffic flow.

The contractor will be encouraged to implement the following measures to the extent feasible before implementation of off-site mitigation measures and identify why the measures are infeasible if not implemented in particular due to economic infeasibility:

- Use alternative fueled vehicles.
- Use newer tier engines such as EPA Tier 4 exhaust emissions standards for heavy-duty nonroad compression ignition engines.
- Use of newer on-highway vehicles that meet the EPA exhaust emissions standards for model year 2010 and newer heavy-duty on-highway compression ignition engines.
- Use phased material hauling trips.
- Use after-market pollution control devices to reduce emissions.
- Lengthen the construction schedule to reduce the annual intensity of construction activities.

If all feasible on-site measures have been implemented and annual emissions are anticipated to still be above 10 tons per year for NO<sub>x</sub>, then the project proponent shall enter into a Voluntary Emissions Reduction Agreement (VERA) with SJVAPCD. The VERA would provide pound-for-pound mitigation of air emissions increases down to a net zero emissions per year as required under general conformity through a process that develops, funds, and implements emission reduction projects. SJVAPCD would serve as administrator of the emissions reduction projects and verifier of the successful mitigation effort.

### **8.1.8 Response to Comment 1-8**

*Comment Summary: The comment requests that the Regulatory Framework portion of the Greenhouse Gas Emissions chapter be updated to reflect draft guidelines published by the Council on Environmental Quality (CEQ).*

The Draft EIR/EIS included a discussion of the original draft guidance that was published in February 2010. The updated guidance is similar with the earlier guidance and the analysis of GHG impacts that was presented in the Draft EIR/EIS is consistent with the 2014 update. The Draft EIR/EIS has been revised to reflect the newer guidelines. The following text has been added to page 3.9-5 and 3.9-6 of the Final EIS:

On December 18, 2014 the CEQ released revised draft guidance on the consideration of GHG emissions and climate change in NEPA review. This is an update to the previously issued guidance in draft form in February 2010. The Guidance encourages agencies to include a quantitative assessment of GHG emissions for projects expected to have direct GHG emissions of 25,000 metric tons or more on an annual basis. The guidance states

that the assessment of direct and indirect climate change effects should account for upstream and downstream emissions and includes guidance on biogenic sources of GHG emissions from land management actions. The guidance recommends that if a cost-benefit analysis is relevant to the analysis, the Federal social cost of carbon estimates are useful in providing a meaningful NEPA review.

#### **8.1.9 Response to Comment 1-9**

*Comment Summary: The comment asks whether, and if so, how the C2VSim model considers the impacts of climate change, and how the project would impact the cumulative effects of climate change on the hydrology and water quality of the San Joaquin River.*

According to DWR, C2VSim is not designed to consider the impacts of climate change. C2VSim has a drought model, but not a full climate change scenario. Reclamation, in their 2011 SECURE Water Act Report (Reclamation 2011) identifies climate challenges that the Sacramento and San Joaquin River Basins could likely face, which include a potential 4.2 to 5.3 percent reduction in precipitation and a possible 8.7 percent decline in mean annual runoff. The report also predicts that climate-change surface water decreases are likely to increase groundwater demands. Reclamation is dedicated to mitigate risks to ensure long-term water resource sustainability through its WaterSMART Program, and has worked with other federal agencies to develop an Interim Federal Action Plan. The Plan includes alignment of federal, State and local water conservation and recycling efforts. As noted on page 3.11-25 of the Draft EIR/EIS “*The reduction in San Joaquin River stream flows at Vernalis due to NVRRWP is approximately 0.5 percent of the average annual flows*”. **Appendix G** of the Draft EIR/EIS provided the basis for this calculation. Existing discharges from Modesto and Turlock average 18,000 AFY and the average annual discharge of the San Joaquin River is 3,300,000 AFY. If climate change results in a future 8.7 percent reduction in river flows, the annual discharge could be reduced to 3,013,000 AFY. Under this scenario, the Turlock and Modesto flows would represent 0.6 percent of the average annual flows. This is still a very small change in flows that is not likely to represent a meaningful change in river flows. Although cumulative impacts on hydrology were determined not to be significant from a purely hydrologic perspective, it is worthwhile noting that because of the relationship between hydrology and fisheries habitat, cumulative impacts were also evaluated from the standpoint of the effect of hydrologic changes on fisheries. Because of the cumulative impacts of past, present and reasonably foreseeable future actions along the river, the Draft EIR/EIS concluded that on a cumulative basis, the project’s small contribution to the already cumulatively substantial impacts on habitat in the river could contribute to further degradation to habitat and potentially fish survival (see page 3.4-79 of the Draft EIR/EIS).

#### **8.1.10 Response to Comment 1-10**

*Comment Summary: The comment requests that the Final EIS specify the expected distribution of project water between DPWD and wildlife refuges, including timing of deliveries and how that timing relates to the water delivery needs of refuges.*

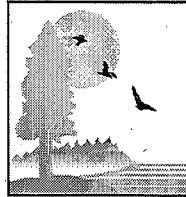
At the time of completion of the Scoping Report it was hoped that additional detail on water allocation between DPWD and the wildlife refuges would be available before publication of the Draft EIR/EIS. However, the type of detailed information that was requested by the EPA was not available at the time of publication of the Draft EIR/EIS nor is it available for publication of the

Final EIS as DPWD does not yet have an agreement with Modesto and Turlock to purchase recycled water, and thus has not been able to negotiate a contract with Reclamation to supply water for refuges. As noted on page 2-17 of the Draft EIR/EIS and page 2-21 of the Final EIS: *“With respect to the SOD refuges, it is most likely water would be delivered to them during low agricultural-demand periods, although this has yet to be determined. Water would be delivered to the refuges via either existing turnouts from the DMC or through other existing private conveyance systems, as appropriate, and in accordance with the refuges’ respective annual water delivery schedules. Water delivered to SOD refuges would be managed on refuge for wetland habitat purposes in accordance with the refuges’ Reclamation approved Refuge Water Management Plans (available at: <http://www.usbr.gov/mp/watershare/wcplans/index.html>).”*

While it is understood that the amount of benefit would vary depending on the exact allocation, it is clear that any allocation would be an improvement over current conditions. When Reclamation and DPWD develop a draft agreement for supplying water to refuges, Reclamation will determine whether any supplemental environmental review is required. Note that no additional infrastructure would be required to serve the refuges. No change in the Final EIS is needed.

**CALIFORNIA STATE LANDS COMMISSION**

100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



*Established in 1938*

February 23, 2015

JENNIFER LUCCHESI, Executive Officer  
(916) 574-1800 Fax (916) 574-1810  
California Relay Service TDD Phone 1-800-735-2929  
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890  
Contact FAX: (916) 574-1885

File Ref: SCH #2014042068

City of Modesto  
William Wong  
1010 Tenth Street, 4<sup>th</sup> Floor  
Modesto, CA 95353

**Subject: Draft Environmental Impact Report/Statement (EIR/S) for North Valley Regional Recycled Water Program in San Joaquin, Stanislaus, and Merced Counties**

Dear Mr. Wong,

The California State Lands Commission (CSLC) staff has reviewed the subject EIR/S for the North Valley Regional Recycled Water Program (Project) being prepared by the city of Modesto. Modesto, as a public agency proposing the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), and the U.S. Bureau of Reclamation (USBR) is the lead agency under the National Environmental Policy Act (NEPA) (42 U.S.C. § 4321 et seq.). The CSLC is a trustee agency because of its trust responsibility for projects that could directly or indirectly affect sovereign lands, their accompanying Public Trust resources or uses, and the public easement in navigable waters. Additionally, because the Project involves work on sovereign lands, the CSLC will act as a responsible agency.

**CSLC Jurisdiction and Public Trust Lands**

2-1

The CSLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The CSLC also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6301, 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the Common Law Public Trust.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat

preservation, and open space. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low water mark and a Public Trust easement landward to the ordinary high water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After reviewing the information contained in the EIR/S, CSLC staff has determined the Project will be located along areas of the natural bed of the San Joaquin River on State-owned sovereign land under the jurisdiction of the CSLC. Therefore, a lease from the CSLC will be required for Modesto to implement the Project on sovereign lands. Please contact Wendy Hall (see contact information below) for further information about the extent of the CSLC's sovereign ownership and leasing requirements.

2-1  
cont'd

Please also be advised that while some of the waterways involved in the Project may not be under the CSLC's leasing jurisdiction, those waterways are still subject to a public navigational easement. This easement provides that the public has the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but are not limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related public uses. The activities completed under the Project must not restrict or impede the easement right of the public.

These comments are made without prejudice to any future assertion of State ownership or public rights, should circumstances change, or should additional information become available. This letter is not intended, nor should it be construed as a waiver or limitation of any right, title, or interest of the State of California in any lands under its jurisdiction.

### **Project Description**

Modesto, along with the Del Puerto Water District (DPWD) and city of Turlock (Partner Agencies), are proposing the Project to implement a regional solution to address water supply shortages within DPWD's service area on the west side of the San Joaquin River in San Joaquin, Stanislaus, and Merced Counties. This service area is located on the south of the Sacramento-San Joaquin River Delta (Delta).

The Project proposes to deliver up to 59,000 acre feet per year of recycled water produced from Modesto and Turlock through pipelines (from their wastewater treatment facilities) crossing the San Joaquin River and ending at the Delta-Mendota Canal (DMC). DMC is a feature of the Central Valley Project owned by the USBR.

As CSLC staff understands it, the Partner Agencies propose the Project to meet the following objectives:

- Establish an alternative, reliable, long-term water supply of up to 59,000 acre feet per year of recycled water for DPWD;

- Maximize the beneficial use of recycled water to DPWD customers and south of Delta Central Valley Project Improvement Act (CVPIA) designated wildlife refuges;
- Maximize Project Partner Agencies' control of operations and delivery of water;
- Establish a long-term water right to allow for the beneficial reuse of recycled water;
- Maximize use of existing facilities for treatment/delivery of recycled water;
- Provide supplemental annual water supplies to south of Delta CVPIA Sections 3406(b)(3) and 3406(d)(2) requirements;
- Avoid or minimize (through incorporation of design constraints and management practices) impacts to environmental resources such as surface water, groundwater levels, land subsidence, groundwater quality and biological resources including sensitive species; and
- Deliver agricultural water to DPWD at a cost that supports regional economic sustainability.

### Project Alternatives

2-1  
cont'd

Proposed work at the San Joaquin River includes three proposed Project alternatives:

- Alternative 1 proposes a combined pipeline alignment that will convey recycled water from the Turlock through a pipeline that will be combined with recycled water from Modesto conveying water to the DMC. The pipeline will cross under the San Joaquin River by Horizontal Directional Drilling (HDD). Once the pipelines are in place, discharges to the San Joaquin River will be discontinued.
- Alternative 2 proposed two separate pipeline alignments to convey flows from Turlock and Modesto crossing under the San Joaquin River. The two pipelines will cross under the San Joaquin River by HDD. Once the pipelines are in place, discharges to the San Joaquin River will be discontinued. Under this alternative, discharges to the San Joaquin River will be discontinued.
- Alternative 3 proposes expansion and upgrading the existing Patterson Irrigation District (PID) intake structure on the San Joaquin River. The conveyance system (existing Modesto and Turlock discharges to the San Joaquin River) is also proposed to be expanded through construction of a new pipeline paralleling the PID main Canal.

---

### Environmental Review

CSLC staff requests that Modesto consider the following comments on the Draft EIR/S.

### Biological Resources

1. Frac-Out Prevention Plan for Horizontal Directional Drilling: Based on the discussion on page 3.4-53 and Appendix F (starting on page F-1), it is not clear if

2-2

2-2  
cont'd

the Frac-Out Prevention Plan (Plan) will be provided for CSLC staff's review before it is finalized. Please note that as part of any lease that may be considered for this Project, CSLC staff would need to review and approve the proposed Frac-out Plan for directional drilling under the San Joaquin River. CSLC staff recommends that the first sentence of Mitigation Measure BIO-1d (on page 3.4-53) be revised as follows:

*Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted to the city of Modesto and the California State Lands Commission for review and approval.*

CSLC staff notes that the city of Modesto may also need to seek review and approval of the Plan from the California Department of Fish and Wildlife and/or appropriate Regional Water Quality Control Board.

---

#### Cultural Resources

2-3

2. Title to Resources: The Mitigation Measure CUL-1 on page 3.5-7 should clearly state that the title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the CSLC. CSLC staff requests that Modesto contact and consult with Assistant Chief Counsel Pam Griggs (see contact information below) if any cultural resources are discovered on state sovereign lands during proposed Project construction.
- 

#### Mitigation Monitoring and Reporting Program

2-4

3. Adoption of a Mitigation Monitoring and Reporting Program (MMRP) is required as part of project approval pursuant to section 15097 of the State CEQA Guidelines. MMRPs are commonly included in Draft EIRs to facilitate public review but are not required to be included; the Draft EIR/S for the Project did not include an MMRP. CSLC staff recommends an MMRP be included as part of the Final EIR/S to ensure transparency and public disclosure.
- 

2-5

Thank you for the opportunity to comment on the Draft EIR/S for the Project. As a responsible agency, the CSLC will need to rely on the Final EIR/S for the issuance of a lease as specified above and, therefore, we request that you consider our comments prior to certification of the EIR/S.

Please send copies of future Project-related documents, including electronic copies of the Final EIR/S, Mitigation Monitoring and Reporting Program (MMRP), Notice of Determination (NOD), CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Afifa Awan, Environmental Scientist, at (916) 574-1891 or via e-mail at [Afifa.Awan@slc.ca.gov](mailto:Afifa.Awan@slc.ca.gov). For questions concerning archaeological or historic resources under CSLC jurisdiction, please contact Assistant Chief Counsel Pam Griggs at (916) 574-1854 or via email at [Pamela.Griggs@slc.ca.gov](mailto:Pamela.Griggs@slc.ca.gov). For questions concerning

CSLC leasing jurisdiction, please contact Wendy Hall, Public Land Manager at (916) 574-0994, or via email at [Wendy.Hall@slc.ca.gov](mailto:Wendy.Hall@slc.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Cy R. Oggins', with a stylized flourish at the end.

Cy R. Oggins, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
A. Awan, CSLC  
J. DeLeon, CSLC  
W. Hall, CSLC  
W. Crunk, CSLC  
P. Griggs, CSLC  
E. Milstein, CSLC

## 8.2 Comment Letter 2- California State Lands Commission, Cy R. Oggins, Chief, Division of Environmental Planning and Management

### 8.2.1 Response to Comment 2-1

*Comment Summary: The comment explains the jurisdiction of the California State Land Commission (CSLC), and summarizes the description of the project and alternatives.*

The Draft EIR/EIS identified the need for a Lease Agreement from the CSLC in **Table 1-3, Responsible and Trustee Agencies and Coordination** (page 1-14 of the Draft EIR/EIS).

### 8.2.2 Response to Comment 2-2

*Comment Summary: The comment states that CSLC staff would need to review and approve a Frac-out Plan for directional drilling under the San Joaquin River and requests revision of Mitigation Measure BIO-1d to acknowledge that.*

If HDD is selected as the construction method for the crossing(s) of the San Joaquin River, the Partner Agencies would submit the proposed Frac-out Plan to CSLC, as requested. Page 3.4-63, **Mitigation Measure BIO-1d** in the Final EIS is revised as follows:

**Mitigation Measure BIO-1d: Develop and Implement a Frac-out Contingency Plan for Trenchless Construction** (Alternatives 1 and 2 only)

Prior to constructing a crossing(s) of the San Joaquin River, a Frac-out Prevention and Contingency Plan shall be developed and submitted by the City of Modesto to the California State Lands Commission for review. At minimum, the plan shall prescribe the measures to ensure protection of aquatic resources, special-status plants and wildlife, including:

- Procedures to minimize the potential for a frac-out associated with HDD.
- Procedures for timely detection of frac-outs.
- Procedures for timely response and remediation in the event a frac-out.
- Monitoring of drilling and frac-out response activities by a qualified biologist.

### 8.2.3 Response to Comment 2-3

*Comment Summary: The comment points out that CSLC holds title to all abandoned shipwrecks, archaeological sites and historic or cultural resources on or in the tide and submerged lands of California, and requests that CSLC be contacted if any such resources are discovered during project construction.*

As noted on page 3.5-5 of the Draft EIR/EIS, collection of background information included a review of the shipwreck database search results through the CSLC. According to CSLC staff, there are no known shipwrecks in the vicinity of the two river crossing locations that were evaluated in the Draft EIR/EIS (personal communication from Pamela Griggs, CSLC Assistant Chief Counsel, email to Robin Cort dated June 6, 2014). Because the PID intake is located

between the two river crossings and the riverbank at that location has been previously disturbed by construction of the existing facility, no shipwrecks would be expected to be found there. To further clarify CSLC jurisdiction over cultural resources the following text is added to page 3.5-5 of the Final EIS:

California State Lands Commission Title to all abandoned shipwrecks, archaeological sites, and historic or cultural resources on or in the tide and submerged lands of California is vested in the State and under the jurisdiction of the CSLC. If any cultural resources are discovered on state sovereign lands during construction activities, CSLC staff must be consulted.

**Mitigation Measure CUL-1** on page 3.5-7 already requires notification of appropriate parties if any cultural resources are encountered during construction. CSLC would be consulted if any cultural resources are encountered on or in the tide and submerged lands of California.

#### **8.2.4 Response to Comment 2-4**

*Comment Summary: The comment recommends that a Mitigation Monitoring and Reporting Program (MMRP) be included in the Final EIR/EIS.*

An MMRP for the project was included in Appendix J of the Final EIR certified by the City of Modesto. It has also been attached as Appendix J to this Final EIS.

#### **8.2.5 Response to Comment 2-5**

*Comment Summary: The comment requests copies of future project-related documents.*

The Partner Agencies will provide the Final EIR, MMRP, Notice of Determination (NOD), CEQA Findings, and Statement of Overriding Considerations to CSLC as requested.

*This page intentionally left blank*

EDMUND G. BROWN JR.  
GOVERNORMATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

FEB 23 2015

William Wong  
City of Modesto  
1010 Tenth Street, 4<sup>th</sup> Floor  
Modesto, CA 95354

Dear Mr. Wong

ENVIRONMENTAL IMPACT REPORT/STATEMENT (EIR/EIS) FOR CITY OF MODESTO (CITY); NORTH VALLEY REGIONAL RECYCLED WATER PROGRAM (PROJECT); STANISLAUS COUNTY; STATE CLEARINGHOUSE NO. 2014042068

We understand that the City is pursuing Clean Water State Revolving Fund (CWSRF) financing for this Project (CWSRF No. C-06-8062-110). As a funding agency and a state agency with jurisdiction by law to preserve, enhance, and restore the quality of California's water resources, the State Water Resources Control Board (State Water Board) is providing the following information on the EIR/EIS to be prepared for the Project.

The State Water Board, Division of Financial Assistance, is responsible for administering the CWSRF Program. The primary purpose for the CWSRF Program is to implement the Clean Water Act and various state laws by providing financial assistance for wastewater treatment facilities necessary to prevent water pollution, recycle water, correct nonpoint source and storm drainage pollution problems, provide for estuary enhancement, and thereby protect and promote health, safety and welfare of the inhabitants of the state. The CWSRF Program provides low-interest funding equal to one-half of the most recent State General Obligation Bond Rates with a 30-year term. Applications are accepted and processed continuously. Please refer to the State Water Board's CWSRF website at:

[www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/index.shtml](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/index.shtml).

The CWSRF Program is partially funded by the United States Environmental Protection Agency and requires additional "CEQA-Plus" environmental documentation and review. Three enclosures are included that further explain the CWSRF Program environmental review process and the additional federal requirements. For the complete environmental application package, please visit:

[http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/srf\\_forms.shtml](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/srf_forms.shtml). The State Water Board is required to consult directly with agencies responsible for implementing federal environmental laws and regulations. Any environmental issues raised by federal agencies or their representatives will need to be resolved prior to State Water Board approval of a CWSRF financing commitment for the proposed Project. For further information on the CWSRF Program, please contact Mr. Ahmad Kashkoli, at (916) 341-5855.

3-1

It is important to note that prior to a CWSRF financing commitment, projects are subject to provisions of the Federal Endangered Species Act (ESA), and must obtain Section 7 clearance from the United States Department of the Interior, Fish and Wildlife Service (USFWS), and/or the United States Department of Commerce National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) for any potential effects to special-status species. Please be advised that the State Water Board will consult with the USFWS, and/or the NMFS regarding all federal special-status species that the Project has the potential to impact if the Project is to be financed by the CWSRF Program. The City will need to identify whether the Project will involve any direct effects from construction activities, or indirect effects such as growth inducement, that may affect federally listed threatened, endangered, or candidate species that are known, or have a potential to occur in the Project site, in the surrounding areas, or in the service area, and to identify applicable conservation measures to reduce such effects.

In addition, CWSRF projects must comply with federal laws pertaining to cultural resources, specifically Section 106 of the National Historic Preservation Act (Section 106). The State Water Board has responsibility for ensuring compliance with Section 106, and must consult directly with the California State Historic Preservation Officer (SHPO). SHPO consultation is initiated when sufficient information is provided by the CWSRF applicant. If the City decides to pursue CWSRF financing, please retain a consultant that meets the Secretary of the Interior's Professional Qualifications Standards ([http://www.nps.gov/history/local-law/arch\\_stnds\\_9.htm](http://www.nps.gov/history/local-law/arch_stnds_9.htm)) to prepare a Section 106 compliance report.

3-1  
Cont'd

Note that the City will need to identify the Area of Potential Effects (APE), including construction and staging areas, and the depth of any excavation. The APE is three-dimensional and includes all areas that may be affected by the Project. The APE includes the surface area and extends below ground to the depth of any Project excavations. The records search request should extend to a 1/2-mile beyond Project APE. The appropriate area varies for different projects but should be drawn large enough to provide information on what types of sites may exist in the vicinity.

Other federal environmental requirements pertinent to the Project under the CWSRF Program include the following (for a complete list of all federal requirements, please visit: [http://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/docs/forms/application\\_environmental\\_package.pdf](http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/forms/application_environmental_package.pdf)):

- A. Compliance with the Federal Clean Air Act: (a) Provide air quality studies that may have been done for the Project; and (b) if the Project is in a nonattainment area or attainment area subject to a maintenance plan; (i) provide a summary of the estimated emissions (in tons per year) that are expected from both the construction and operation of the Project for each federal criteria pollutant in a nonattainment or maintenance area, and indicate if the nonattainment designation is moderate, serious, or severe (if applicable); (ii) if emissions are above the federal de minimis levels, but the Project is sized to meet only the needs of current population projections that are used in the approved State Implementation Plan for air quality, quantitatively indicate how the proposed capacity increase was calculated using population projections.
- B. Compliance with the Coastal Zone Management Act: Identify whether the Project is within a coastal zone and the status of any coordination with the California Coastal Commission.

- C. Protection of Wetlands: Identify any portion of the proposed Project area that should be evaluated for wetlands or United States waters delineation by the United States Army Corps of Engineers (USACE), or requires a permit from the USACE, and identify the status of coordination with the USACE.
- D. Compliance with the Farmland Protection Policy Act: Identify whether the Project will result in the conversion of farmland. State the status of farmland (Prime, Unique, or Local and Statewide Importance) in the Project area and determine if this area is under a Williamson Act Contract. 3-1
- E. Compliance with the Migratory Bird Treaty Act: List any birds protected under this act that may be impacted by the Project and identify conservation measures to minimize impacts. Cont'd
- F. Compliance with the Flood Plain Management Act: Identify whether or not the Project is in a Flood Management Zone and include a copy of the Federal Emergency Management Agency flood zone maps for the area.
- G. Compliance with the Wild and Scenic Rivers Act: Identify whether or not any Wild and Scenic Rivers would be potentially impacted by the Project and include conservation measures to minimize such impacts.

---

Following are specific comments on the City's draft EIR/EIS:

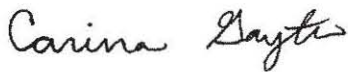
1. Table 3.3-10 on page 3.3-30 is missing emission measurements for reactive organic gases and lead. Please add these to the table or address them in the document. 3-2
- 
2. Table 3.4-2 on page 3.4-39 mentions that a blue elderberry plant is located within the Project area. Please identify where this bush is exactly located on the maps provided in the Biological Resources section of the report. 3-3
- 
3. Please identify what lists were used, and when these lists were generated, that were used to create the biological tables 3.4-1 and tables 3.4-2. 3-4
- 
4. Please identify when the reconnaissance and pre-construction surveys from Biological Resources were completed. 3-5
- 
5. Page 3.5-2 mentions that an Area of Potential Effect was identified. Please provide the measurements of this APE. 3-6
- 
6. Page 3.5-5 states that a 0.25 mile buffer was used to identify cultural resources within or near the APE. Please note that State Waterboard CWSRF Program requires a 0.50 mile buffer around the APE. 3-7
- 
7. To mitigation measure CUL-2, please add that the Native American Heritage Commission shall be notified by phone within twenty-four hours of the discovery of Native American remains as required by Section 7050.5 (c) of the Health and Safety Code. 3-8
-

3-9 Please provide us with the following documents applicable to the proposed Project following the City's California Environmental Quality Act (CEQA) process: (1) one copy of the draft and final EIR/EIS, (2) the resolution adopting the EIR/EIS and making CEQA findings, (3) all comments received during the review period and the City's response to those comments, (4) the adopted Mitigation Monitoring and Reporting Program (MMRP), (5) a Statement of Overriding Considerations and (6) the Notice of Determination filed with the Stanislaus County Clerk and the Governor's Office of Planning and Research, State Clearinghouse. In addition, we would appreciate notices of any hearings or meetings held regarding environmental review of any projects to be funded by the State Water Board.

Thank you for the opportunity to review the City's draft EIR/EIS. If you have any questions or concerns, please feel free to contact me at (916) 341-5642, or by email at [Carina.Gaytan@waterboards.ca.gov](mailto:Carina.Gaytan@waterboards.ca.gov), or contact Ahmad Kashkoli at (916) 341-5855, or by email at [Ahmad.Kashkoli@waterboards.ca.gov](mailto:Ahmad.Kashkoli@waterboards.ca.gov).

---

Sincerely,



Carina Gaytan  
Environmental Scientist

Enclosures (3)

1. Clean Water State Revolving Fund Environmental Review Requirements
2. Quick Reference Guide to CEQA Requirements for State Revolving Fund Loans
3. Basic Criteria for Cultural Resources Reports

cc: State Clearinghouse  
(Re: SCH# 2014042068)  
P.O. Box 3044  
Sacramento, CA 95812-3044

## 8.3 Comment Letter 3 - State Water Resources Control Board, Carina Gaytan, Environmental Scientist

### 8.3.1 Response to Comment 3-1

*Comment Summary: The comment provides information on environmental review requirements for the Clean Water State Revolving Fund (CWSRF) Program.*

The Partner Agencies have submitted a completed environmental application package for the CWSRF Program, which addresses compliance with the CAA, protection of wetlands, compliance with the FPPA, compliance with the MBTA, and compliance with the Flood Plain Management Act. The project area is not within a coastal zone and does not affect a wild and scenic river. Requirements for Section 7 ESA consultation and compliance with Section 106 of the NHPA have been discussed with SWRCB staff, who have agreed that because of the federal actions necessary for implementation of the NVRRWP, it is appropriate for Reclamation to take the lead in both Section 7 and Section 106 consultation. This documentation will be provided to the SWRCB by the Partner Agencies once consultation is complete. Reclamation has already completed Section 106 consultation and the concurrence letter from the State Historic Preservation Officer was provided to the SWRCB.

### 8.3.2 Response to Comment 3-2

*Comment Summary: The comment requests that emissions information for reactive organic gases and lead be added to Table 3.3-10.*

ROG are a subset of VOCs. Therefore the emissions level for VOCs in **Table 3.3-10** includes all project emissions of ROG, and for purposes of this analysis they are considered equal. Lead emissions are not quantified as they are negligible due to fuel regulations limiting lead content in fuel.

To clarify emissions information, the following footnotes have been added to **Table 3.3-10** in the Final EIS:

Table 3.3-10: Combined Alignment Alternative Construction Emissions (tons per year)

| Year                        | Scenario <sup>1</sup> | VOC <sup>2</sup> | NO <sub>x</sub> | CO    | SO <sub>2</sub> | PM <sub>10</sub> | PM <sub>2.5</sub> |
|-----------------------------|-----------------------|------------------|-----------------|-------|-----------------|------------------|-------------------|
| 2016                        | Unmitigated           | 1.45             | 16.34           | 11.09 | 0.021           | 1.61             | 1.03              |
|                             | Phased Reduction      |                  | (1.32)          |       |                 |                  |                   |
|                             | Tier 3 Reduction      |                  | (7.67)          |       |                 |                  |                   |
|                             | Mitigated Potential   |                  | 7.35            |       |                 |                  |                   |
| 2017                        | Unmitigated           | 0.17             | 1.72            | 1.02  | .0025           | 0.20             | 0.087             |
|                             | Phased Reduction      |                  | (0)             |       |                 |                  |                   |
|                             | Tier 3 Reduction      |                  | (0.69)          |       |                 |                  |                   |
|                             | Mitigated Potential   |                  | 1.03            |       |                 |                  |                   |
| 2018                        | Unmitigated           | 0.013            | 0.14            | 0.072 | .00023          | 0.098            | 0.015             |
|                             | Phased Reduction      |                  | (0)             |       |                 |                  |                   |
|                             | Tier 3 Reduction      |                  | (.036)          |       |                 |                  |                   |
|                             | Mitigated Potential   |                  | 0.10            |       |                 |                  |                   |
| CEQA Significance Threshold |                       | 10               | 10              | 100   | 27              | 15               | 15                |

Notes:

1. The amount of reduction that occurs as a result of mitigation (material hauling phasing or Tier 3 equipment) is shown in parentheses for NO<sub>x</sub> only. There may be reductions in other pollutants as well and a minor increase in CO but that would not increase emissions above significance thresholds. Calculations are shown in **Appendix B**.

2. Reactive Organic Gases (ROGs) are a subset of Volatile Organic Gases (VOCs). Emissions level for VOCs includes all project emissions of ROG; for purposes of this analysis they are considered equal

Note: Lead emissions are not quantified as they are negligible due to fuel regulations limiting lead content in fuel.

### 8.3.3 Response to Comment 3-3

*Comment Summary: The comment requests that the location of a blue elderberry bush mentioned in Table 3.4-2 be added to Figure 3.4-1.*

Although some blue elderberry bushes were noted in the field during reconnaissance surveys, they were not mapped because no bushes were found within the proposed construction footprint for the NVRRWP. However, as stated on page 4.3-56 of the Draft EIR/EIS, pre-construction surveys would be conducted as required by **Mitigation Measure BIO-3a: Avoid Impacts to Valley Elderberry Longhorn Beetle**, which requires that “No less than 120 days prior to commencing construction, the locations of elderberry plants within 200 feet of open-cut construction areas shall be identified”. Therefore no change in the Final EIS is needed.

### 8.3.4 Response to Comment 3-4

*Comment Summary: The comment requests that information be provided about lists that were used to create the special status species information in Table 3.4-1 and 3.4-2.*

The lists that were used to create Tables 3.4-1 and 3.4-2 were identified on page 3.4-30 of the Draft EIR/EIS and page 3.4-38 of the Final EIS, which state the following:

*“Background information on special-status plant and wildlife species with potential to occur in the Study Area was compiled from numerous sources including, but not limited to, the following:*

- *U.S. Fish and Wildlife Service (USFWS) List of Federal Endangered and Threatened Species that Occur in or May Be Affected by Projects in Stanislaus County as well as in the USGS 7.5 minute quadrangles for the Study Area, including Patterson, Westley, Brush Lake, Crow’s Landing (USFWS 2014, **Appendix D**).*
- *California Natural Diversity Database (CNDDDB) and CNPS Inventory of Rare and Endangered Plants of California queries for the USGS 7.5 minute quadrangles within the Project Area and the quadrangles immediately adjacent to them, which are: Patterson, Westley, Brush Lake, Crow’s Landing, Copper Mountain, Solyo, Vernalis, Ripon, Salida, Riverbank, Ceres, Hatch, Gustine, Newman, Orestimba Peak and Wilcox Ridge (**Appendix D**).”*

The USFWS list was accessed on May 14, 2014, and CNDDDB list was prepared on May 24, 2014.

### **8.3.5 Response to Comment 3-5**

*Comment Summary: The comment asks when the reconnaissance and pre-construction surveys for biological resources were completed.*

Reconnaissance level surveys were conducted on April 4, May 9 and 22, July 1, and August 8, 2014. Pre-construction surveys have not been completed because construction would not start until spring of 2016. Time frames for pre-construction surveys are specified in mitigation measures and are summarized in **Table 3.4-3** starting on page 3.4-51 of the Draft EIR/EIS, and in **Appendix J, the Mitigation Monitoring and Reporting Program** of the Final EIS. To clarify the timing of reconnaissance surveys, the following has been added at the top of page 3.4-39 of the Final EIS:

Reconnaissance level surveys were conducted on April 4, May 9 and 22, July 1, and August 8, 2014. Tables 3.4-1 and 3.4-2 list the special-status plant and wildlife species known to occur in the vicinity of the Study Area, ...

### **8.3.6 Response to Comment 3-6**

*Comment Summary: The comment requests the measurements of the Area of Potential Effect (APE).*

The APE is identified in the HPSR, which was submitted to the SWRCB along with the Environmental Package that was submitted as part of the Financial Assistance Application. As noted in Section 2.5 of the HPSR, which starts on page 9:

### *“2.5 AREA OF POTENTIAL EFFECTS (APE)*

*The APE for the NVRRWP includes all areas where direct or indirect impacts may occur. The horizontal and vertical APE includes the proposed pipeline alignment within the county road right of way and privately owned agricultural land for cross-county sections as well as the maximum depth of disturbance.*

*In general the construction corridor for proposed open-cut construction (active work area including the trench) would be approximately 45 feet wide in order to accommodate construction equipment and extra work areas. The open-cut trench would range from 6 to 8 feet wide and approximately 8 to 10 feet deep, depending on the pipe size, existing utility locations, and pipe bedding requirements.*

*The areas that will use trenchless construction will have three different vertical APEs depending on the exact method within the NVRRWP. HDD will have with a maximum of 1500 to 3000 square feet to be excavated to a depth of five feet below the current ground surface for the entry and exit pits for HDD. JCB will require 420 square feet of surface area with an approximate depth of 15-20 feet. MTC will require 350 square feet with an approximate excavation depth of 15-20 feet. The APE configuration allows for the use of these methods for crossing SR 33, the CFNR railroad alignment and the San Joaquin River.”*

### **8.3.7 Response to Comment 3-7**

*Comment Summary: The comment states that a 0.5-mile buffer around the APE should be used to identify cultural resources, instead of the 0.25-mile buffer cited on page 3.5-5.*

The records search covered a 0.25-mile radius around the APE for a total 0.5-mile area centered around the APE. Reclamation, as the federal lead agency, has determined that the area for the records search meets the requirements for consultation with State Historic Preservation Officer regarding compliance with the Section 106 of the NHPA. Subsequent communication with staff from the SWRCB has confirmed that because Reclamation will be responsible for Section 106 consultation, the search radius is acceptable (personal communication from Carina Gaytan, SWRCB, phone call on April 1, 2015).

### **8.3.8 Response to Comment 3-8**

*Comment Summary: The comment requests revision of Mitigation Measure CUL-2 to include notification of the Native American Heritage Commission in the event of discovery of Native American Remains.*

**Mitigation Measure CUL-2** in the Final EIS has been revised as follows:

#### **Mitigation Measure CUL-2: Discovery of human burials during construction** (Alternatives 1, 2 and 3)

The treatment of human remains and of associated or unassociated funerary objects discovered during any soil-disturbing activity within the project shall comply with applicable

State and federal laws. This shall include immediate notification of the Stanislaus County Coroner (Stanislaus County Sheriff's Office) and Reclamation.

In the event of the coroner's determination that the human remains are Native American, notification of the NAHC is required. The NAHC shall be notified by phone within 24 hours of the discovery and shall be afforded the opportunity to appoint a Most Likely Descendant (MLD) (Public Resources Code Section 5097.98). The archaeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment, with appropriate dignity, of human remains and associated or unassociated funerary objects (CEQA Guidelines Section 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects. California Public Resources Code allows 48 hours to reach agreement on these matters. If the MLD and the other parties do not agree on the reburial method, the project will follow Public Resources Code Section 5097.98(b) which states that "the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance."

#### **8.3.9 Response to Comment 3-9**

*Comment Summary: The comment requests that documents applicable to the CEQA process be provided and asks to be notified of any hearing or meetings held regarding environmental review of the project.*

A copy of the Draft EIR/EIS has already been provided to the SWRCB. The Partner Agencies also provided the Final EIR (which included all comments received during the review period along with responses to each comment); resolution certifying the EIR and making CEQA findings; the adopted MMRP, and NOD to the SWRCB. Because there were no significant unavoidable impacts identified in the Final EIR, the Partner Agencies have not adopted a Statement of Overriding Considerations. Notice of hearings and meetings has been provided to the SWRCB.

*This page intentionally left blank*



EDMUND G. BROWN JR.  
GOVERNOR

STATE OF CALIFORNIA  
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH  
STATE CLEARINGHOUSE AND PLANNING UNIT



KEN ALEX  
DIRECTOR

February 24, 2015

William Wong  
City of Modesto  
1010 Tenth Street, 4th Floor  
Modesto, CA 95353

Subject: North Valley Regional Recycled Water Program  
SCH#: 2014042068

Dear William Wong:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on February 23, 2015, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

4-1

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Morgan".

Scott Morgan  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency

**Document Details Report  
State Clearinghouse Data Base**

**SCH#** 2014042068  
**Project Title** North Valley Regional Recycled Water Program  
**Lead Agency** Modesto, City of

---

**Type** EIR    Draft EIR  
**Description** Cities of Modesto and Turlock would deliver up to 59,000 acre feet per year of recycled water to the Del Puerto Water District (DPWD). Water would be conveyed through a pipeline, located primarily in public right-of-way, crossing the San Joaquin River to the Delta Mendota Canal for conveyance to DPWD customers. Water could also be made available to wildlife refuges. New facilities constructed for the project would be located in Stanislaus County, but the DPWD service area would also include San Joaquin and Merced Counties.

---

**Lead Agency Contact**

|                |                              |                                  |
|----------------|------------------------------|----------------------------------|
| <b>Name</b>    | William Wong                 |                                  |
| <b>Agency</b>  | City of Modesto              |                                  |
| <b>Phone</b>   | 207 571 5801                 | <b>Fax</b>                       |
| <b>email</b>   |                              |                                  |
| <b>Address</b> | 1010 Tenth Street, 4th Floor |                                  |
| <b>City</b>    | Modesto                      | <b>State</b> CA <b>Zip</b> 95353 |

---

**Project Location**

|                      |                                                                                                 |
|----------------------|-------------------------------------------------------------------------------------------------|
| <b>County</b>        | Stanislaus                                                                                      |
| <b>City</b>          | Modesto, Turlock, Patterson                                                                     |
| <b>Region</b>        |                                                                                                 |
| <b>Lat / Long</b>    |                                                                                                 |
| <b>Cross Streets</b> | S. Carpenter Rd, W. Main St., Jennings Rd, Lemon Ave, Zacharias Rd, W. Marshall Rd, Pomegranate |
| <b>Parcel No.</b>    |                                                                                                 |
| <b>Township</b>      | <b>Range</b> <b>Section</b> <b>Base</b>                                                         |

---

**Proximity to:**

|                  |                   |
|------------------|-------------------|
| <b>Highways</b>  | Hwy 33            |
| <b>Airports</b>  |                   |
| <b>Railways</b>  | CFNR              |
| <b>Waterways</b> | San Joaquin River |
| <b>Schools</b>   |                   |
| <b>Land Use</b>  | Agriculture       |

---

**Project Issues** Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Growth Inducing; Landuse; Cumulative Effects

---

**Reviewing Agencies** Resources Agency; Department of Fish and Wildlife, Region 4; Delta Protection Commission; Department of Parks and Recreation; Central Valley Flood Protection Board; Department of Water Resources; Caltrans, District 10; Air Resources Board; State Water Resources Control Board, Division of Drinking Water; State Water Resources Control Board, Division of Financial Assistance; Regional Water Quality Control Bd., Region 5 (Sacramento); Department of Toxic Substances Control; Native American Heritage Commission; State Lands Commission; Delta Stewardship Council

---

**Date Received** 01/08/2015    **Start of Review** 01/08/2015    **End of Review** 02/23/2015

## **8.4 Comment Letter 4 - State of California, Governor's Office of Planning and Research, State Clearinghouse, Scott Morgan, Director**

### **8.4.1 Response to Comment 4-1**

*Comment Summary: The comment transmits comment letters state agencies, and confirms that the City of Modesto has complied with the State Clearinghouse review requirements for draft environmental documents pursuant to the California Environmental Quality Act.*

The City of Modesto appreciates the assistance of the State Clearinghouse in complying with CEQA requirements for environmental review.

*This page intentionally left blank*



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Central Region  
 1234 East Shaw Avenue  
 Fresno, California 93710  
 (559) 243-4005  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN JR., Governor  
 CHARLTON H. BONHAM, Director



March 9, 2015

William Wong, City of Modesto  
 Utilities Department  
 1010 10<sup>th</sup> Street, 4<sup>th</sup> Floor  
 Modesto, California 95353  
 E-mail: [wwong@modestogov.com](mailto:wwong@modestogov.com)

Ben Lawrence  
 United States Bureau of Reclamation  
 1234 "N" Street  
 Fresno, California 93721  
 E-mail: [blawrence@usbr.gov](mailto:blawrence@usbr.gov)

---

**Subject: Draft Environmental Impact Statement / Report,  
 EA/UP&P No. 2014-02, SCH No. 2014042068  
 North Valley Regional Recycled Water Program**

Dear Messrs. Wong and Lawrence:

The California Department of Fish and Wildlife (Department) has reviewed the Draft Environmental Impact Statement/Environmental Impact Report (Draft EIR/EIS) for the North Valley Regional Recycled Water Program (Project).

The United States Department of the Interior, Bureau of Reclamation (Reclamation) is the Lead Agency pursuant to the National Environmental Protection Act (NEPA). The City of Modesto is the Lead Agency pursuant to the California Environmental Quality Act (CEQA). The City of Modesto and Reclamation jointly prepared the Draft EIS/EIR for the proposed Project. The City of Modesto, City of Turlock, and Del Puerto Water District (DPWD) (Partner Agencies) propose to implement the proposed Project to address water supply shortages in DPWD's service area on the west side of the San Joaquin River (SJR) in San Joaquin, Stanislaus, and Merced counties. The Project would deliver up to 59,000 acre feet per year (AFY) of recycled water produced by the cities of Modesto and Turlock via the Delta-Mendota Canal (DMC). Instead of discharging into the SJR, recycled water would be conveyed by the cities of Modesto and Turlock through pipelines from their wastewater treatment facilities, crossing the SJR, ending at the DMC. The recycled water would then be conveyed to DPWD. The Project also proposes to provide Incremental Level-4 (IL4) water to Central Valley Project Improvement Act (CVPIA) designated wildlife refuges. 5-1

The Draft EIS/EIR evaluates three (3) Project alternatives, plus a No Action alternative. Two alternatives would use different pipeline alignments to convey water to the DMC. A third alternative would continue river discharge, and then divert and convey water to the DMC through expanded facilities owned by the Patterson Irrigation District.

5-1  
Cont'd The Preferred Project Alternative (Alternative 1) is the Combined Alignment Alternative. Alternative 1 would convey recycled water from the City of Turlock through a pipeline beginning at the end of the existing Harding Drain Bypass Pipeline north to the City of Modesto's Jennings Water Quality Control Facility (Jennings Plant). From there the flow would be combined with recycled water from Modesto. From the Jennings Plant the pipeline would cross under the SJR and convey water to the DMC.

This following provides the Department's comments and recommendations on the Draft EIS/EIR.

---

## **Impacts to Sensitive Biological Resources**

### **1.1.3 South of the Delta Refuges Water Needs and Descriptions**

5-2 The Project proposes to make recycled water available to certain South of Delta (SOD) Central Valley Project Improvement Act (CVPIA) designated federal National Wildlife Refuges (NWRs), State Wildlife Areas (SWAs), and one privately-managed wetland (Grassland Resource Conservation District), collectively referred to as "Refuges". This section along with Figure 1-5 implies that IL4 water would be supplied to the Refuges, but does not describe the amount of IL4 that would be delivered annually to Refuges. The Project description should detail the amount of IL4 water that would be dedicated annually to the Refuges, and clarify whether or not IL4 water is considered mitigation for other Project-related impacts.

---

### **2.4.1 Operations**

5-3 The timing of IL4 water delivery to SOD refuges would likely be during low agricultural-demand periods, although this has yet to be determined. The EIS/EIR should discuss when low agricultural-demand periods would occur within the DPWD, and whether the expected timing of IL4 delivery would be beneficial to refuge management.

---

## **3.11 Hydrology and Water Quality**

### **Impact HYD-5 Reduction of Flows in San Joaquin River**

The hydrology and water quality analysis uses SJR flow data from the Vernalis and Newman gages as the baseline flow conditions for Project analysis. The Newman gage

is upstream of Turlock, and the Vernalis gage is downstream of Modesto. The hydrology analysis discusses impacts to flow at the Vernalis gage. The Draft EIS/EIR should include an analysis of direct and indirect impacts to biological resources and fisheries along the SJR reach between Turlock and Modesto resulting from permanent diversion of up to 59,000 acre-feet of recycled wastewater. Such analysis should include the impacts due to loss of potential SJR surface flow and groundwater recharge in this reach during critically dry years such as the current drought years of 2012 through 2014.

5-4

---

### 3.18.3 Socioeconomics Impact Analysis/Environmental Consequences

The document states that, *"At buildout the project could result in 572 additional jobs, with \$31,665,665 in total income and \$74,669,302 in total output each year."* No impact analysis has been done to show the Project benefits of refuge water supply use. If direct benefits in habitat value, increased acreage, or bird use days cannot be shown, then perhaps showing the opportunity costs of forgoing Project water could be done instead.

5-5

---

## 3.4 Biological Resources

### Impact BIO-6: Effects on giant garter snake.

The document states that, *"If giant garter snake (GGS) are present in upland areas during construction, injury or mortality to individuals could result while operating construction equipment for site preparation (i.e. clearing and grubbing). However, harm or mortality of individual GGS is considered unlikely because snakes would likely sense vibration from construction equipment and disperse from the work area."* It cannot be assumed that GGS will disperse from the work area in advance of encroaching construction equipment, and the foregoing language should be removed from the Draft EIS/EIR.

5-6

---

### Mitigation Measure BIO-6 (Page 3.4-61)

Mitigation Measure BIO-6 would require preconstruction surveys, onsite biological monitoring, and restrict location of construction activities. If GGS are observed during preconstruction biological surveys, site preparation activities, or during construction activities, consultation with the Department would be warranted to discuss how to implement the Project and avoid take ("take" defined in Fish and Game Code Section 86). An Incidental Take Permit (ITP) from the Department may be required if the project, project construction, or any project-related activity during the life of the project will result in "take" (Fish and Game Code Sections 86, 2080, 2081 (b)(c)).

5-7

---

### Impact BIO-10 & BIO 12: Effects on Tricolored Blackbird and Swainson's Hawk

5-8 Tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*) have been documented nesting in the immediate vicinity of the Project area. The Department recommends that a habitat assessment be conducted by a qualified biologist familiar with these species to determine if the Project would impact potential breeding grounds. An adequate habitat assessment would include the Project site including a ½-mile buffer. If potential breeding grounds are identified then surveys would need to be conducted during the appropriate time of year to determine if tricolored blackbirds and Swainson's hawk are nesting within the Project site or the surrounding area. If these species are identified within a ½ mile of the Project site, consultation with the Department would be warranted to discuss how to implement the Project and avoid take ("take" defined in Fish and Game Code Section 86). If "take" cannot be avoided, an ITP would be necessary pursuant to the California Endangered Species Act (CESA) (Fish and Game Code Sections 86, 2080, 2081 (b)(c)).

5-9 **Mitigation Measures BIO-12:** Swainson's hawks are more susceptible to human activities that result in nest failure and abandonment. This mitigation measure should be changed to require a ½-mile no-disturbance buffer around Swainson's hawk nests. Consultation with the Department is recommended if an alternative nesting season no-disturbance buffer is proposed. Any such buffer would need to avoid "take."

### 4.4 Environmentally Preferable/Superior Alternative

5-10 This section fails to analyze the environmental alternative impact of using recycled water for wildlife refuges. The IL4 is currently being met partly through groundwater use, similar to DPWD's current use of groundwater resources and therefore should show similar impacts. Improving the economics of wetland restoration and optimization will also help offset CVP biological impacts which are to be met with Full Level 4 water supplies. Short-term impacts of construction on biological resources can be offset by long-term water use at wildlife refuges resulting in improved habitat values.

An analysis should be made to consider the environmental impacts of possible expanding agricultural use as compared with the No Project alternative. The Draft EIS/EIR should consider whether agricultural use is expected to increase because of this additional recycled water supply or whether these supplies would be expected to replace existing groundwater use. A similar analysis should be made for refuge water use.

### **Suggested Additional Changes by Chapter and Page Number**

1-8: The header for Table 1-1 "Wildlife Areas" should be changed to "State Wildlife Areas" to match the description in Section 1.1.3.

5-11

3-13-1: There is no direct conveyance route for Kern National Wildlife Refuge to receive recycled water and it should be removed from consideration.

3.14-1: "(sound power)" should be replaced with "(volume)".

3.16-2: "Delta Puerto Water District" should be replaced with "Del Puerto Water District".

3.17-2: "birdwatching, wildlife viewing, hiking, biking, boating, and fishing" opportunities should also include "waterfowl hunting and camping" to match Table 3.17-1 activities.

---

If you have any questions regarding these comments, please contact Annette Tenneboe, Senior Environmental Scientist (Specialist), at (559) 243-4014, extension 231; annette.tenneboe@wildlife.ca.gov, or by writing to the California Department of Fish and Wildlife at 1234 East Shaw Avenue, Fresno, California 93710.

Sincerely,

for 

Jeffrey R. Single, Ph.D.  
Regional Manager  
California Department of Fish and Wildlife, Central Region

cc: Paul Forsberg  
James Rosauer  
Jeffrey Shu  
Gerald Hatler  
Dean Marston  
Julie Vance  
Andy Gordus  
Bill Cook  
Annette Tenneboe  
California Department of Fish and Wildlife

## **8.5 Comment Letter 5 - State of California, Department of Fish and Wildlife, Jeffrey R. Single, Regional Manager, Central Region**

### **8.5.1 Response to Comment 5-1**

*Comment Summary: The comment summarizes the project and alternatives that are considered in the Draft EIR/EIS, and states that the letter provides comments on the Draft EIR/EIS.*

The summary provided in the comment is generally correct, but it has not yet been determined if the supplemental water that could be provided to certain SOD refuges would be considered to be IL4 water. Water supplied by the NVRWP may be considered to be either L2 or IL4 water.

### **8.5.2 Response to Comment 5-2**

*Comment Summary: The comment states that the Draft EIR/EIS should describe the amount of IL4 water that would be dedicated annually to refuges and clarify whether or not IL4 water is considered mitigation for other project-related impacts.*

See Responses to Comments 1-10 and 5-1 regarding water delivery to refuges. Provision of supplemental water to refuges is a component of the Proposed Action and is not proposed as mitigation for project impacts.

### **8.5.3 Response to Comment 5-3**

*Comment Summary: The comment requests that the EIR/EIS discuss when low agricultural demand periods would occur with DPWD and whether the expected timing of IL4 delivery would be beneficial to refuge management.*

Please refer to **Figure 1-4** on page 1-6 of the Draft EIR/EIS, which shows a monthly graph of recycled water production, DPWD agricultural demand, and refuge demand. Agricultural demand is highest in April through October with far less demand from November through February. The refuges have need for water throughout the year, and can make use of water that is produced in the fall and winter months, when recycled water production is highest. Storage in the federal facilities would also facilitate year-round use of recycled water. Reclamation has determined that water deliveries from the project would be beneficial for refuge management (Reclamation 2013), and that maximizing flexibility of annual transfers would provide the greatest benefit.

### **8.5.4 Response to Comment 5-4**

*Comment Summary: The comment states that the EIR/EIS should include an analysis of direct and indirect impacts to biological resources and fisheries along the San Joaquin River (SJR) reach between Turlock and Modesto resulting from diversion of 59,000 acre-feet of wastewater, and should include impacts due to loss of SJR surface flow and groundwater recharge during critically dry years.*

Impacts to biological resources and fisheries associated with changes in river flows were discussed beginning on page 3.4-59 of the Draft EIR/EIS, and a detailed assessment was presented in Appendix E. Impacts are also discussed in the hydrology section beginning on page 3.11-24 of the Draft EIR/EIS. The existing combined discharges from Modesto and Turlock do not currently total 59,000 AFY. The project's ultimate capacity of 59,000 AF is based on the total estimated flow projections at buildout of the two cities projected to be in 2045. As shown in **Appendix E** of the Draft EIR/EIS, the Modesto and Turlock combined wastewater discharges to the San Joaquin River currently average 25 cfs (which represents a current annual discharge of about 18,000 AFY), with a range of average monthly flows of 12.9 to 51.4 cfs.

Turlock discharges an average of about 10,000 AFY, and because of discharge permit limitations (Modesto cannot discharge to the river at all between June and September) Modesto only discharges an average of about 8,000 AFY. The project would thus eliminate an average of 18,000 AFY of current discharges to the San Joaquin River, not 59,000 AFY. As noted on page 3.11-25 *"The reduction in San Joaquin River stream flows at Vernalis due to NVRWP is approximately 0.5 percent of annual flows"*. Additional information about potential changes in flows in critically dry years, and in portions of the river upstream of Vernalis (C2VSim analysis) was presented in **Appendix G** of the Draft EIR/EIS.

As noted in Response to Comment 1-2, in dry years, existing discharges from the City of Modesto are severely limited. Modesto's current NPDES permit prohibits all discharges from June 1 to September 30, and it restricts discharges during the October 1 to May 31 discharge season. Specifically, Modesto may discharge only when river flows provide a flow ratio equal to or greater than 20:1 (river to effluent) as a daily average. As a result of this restriction, in 2014 Modesto discharged an annual total of only 1,139 AF. Although the percentage reduction varies depending on the water year type, all reductions in flows that will result from elimination of these discharges are considered insignificant in comparison to the seasonal and annual variations in flows that are experienced (between 1990 and 2014, flows at Vernalis ranged from about 585,000 AFY to 8,900,000 AFY).

It should be noted that flows at the Newman gage were not used for the analysis of impacts on fisheries because, as noted in **Appendix E** of the Draft EIR/EIS, *"the flows at Vernalis were selected since the existing biological relationships between river flow and juvenile salmon survival, river flow and subsequent adult escapement, and Vernalis flows are a key driver in the SalSim lifecycle model."*

Changes in groundwater recharge associated with these minor reductions in discharges are also expected to be minimal. Results of modeling conducted for an 88-year simulation period, which includes a number of critically dry years, are reported starting on page 3.11-20 of the Draft EIR/EIS. The Draft EIR/EIS specifically provided information for the reach between Modesto and Turlock. As shown in **Figure 3.11-4** of the Draft EIR/EIS, the portion of the river between the two discharge locations is bordered by the Turlock groundwater subbasin on the east side of the San Joaquin River, and by the Delta-Mendota subbasin on the west side. **Table 3.11-6** on page 3.11-22 of the Draft EIR/EIS shows the change in groundwater storage in each subbasin along the river on average annual and cumulative bases. The Turlock subbasin is projected to have a 2 AFY reduction in average annual groundwater storage, while the Delta-Mendota

subbasin could experience a reduction of 5 AFY. When compared to the estimated total groundwater storage in the Turlock subbasin, which DWR estimates as 12,800,000 AF of groundwater to a depth of 300 feet (DWR 2003), a 2 AFY reduction in storage represents a 0.000016 percent change in storage. For the Delta-Mendota subbasin, which is estimated to store 26,600,000 AF of groundwater to a depth of 300 feet (DWR 2003), the reduction represents a 0.000019 percent change. DWR (2003) also provides estimates of average annual pumping for the Turlock subbasin, with 65,000 AFY estimated for urban extraction and 387,000 AFY for agricultural pumping. A 2 AFY reduction in recharge is only 0.0004 percent of the amount of water that is extracted from the Turlock subbasin by pumping. The reduction in recharge would occur in a portion of the subbasin near the river that currently experiences high groundwater levels, not in the eastern portion of the basin where pumping has created a cone of depression. The reduction in groundwater recharge is thus considered to be less than significant.

#### 8.5.5 Response to Comment 5-5

*Comment Summary: The comment states that the socioeconomic analysis in the Draft EIR/EIS does not show the project benefits of refuge water supply use.*

The comment is correct that the Draft EIR/EIS has not attempted to calculate a monetary benefit associated with providing water to refuges. An evaluation of economic benefits of providing water to refuges would be highly speculative and is outside the scope of the EIR/EIS. The purpose of the environmental document is to provide an assessment of the environmental impacts associated with constructing and implementing the project. While it is acknowledged that water for refuges has potential economic benefits, quantifying those benefits or determining the opportunity cost of forgoing water would require more information than is currently available.

#### 8.5.6 Response to Comment 5-6

*Comment Summary: The comment states that it cannot be assumed that giant garter snake (GGS) will disperse from the work area in advance of encroaching construction equipment, and that this statement should be removed from the EIR/EIS.*

We concur with CDFW's assessment that it cannot be assumed that GGS, if present, would disperse from the work area. The Final EIS has been revised to remove this language. Potential direct impacts to GGS due to construction activities are still considered less than significant with mitigation because aquatic habitat would be crossed using trenchless construction techniques, and scheduling of construction adjacent to aquatic habitats would be done only during the snake's active season (May 1 to October 1). Specifically, **Mitigation Measure BIO-6: Avoid and Minimize Impacts to Giant Garter Snake** requires avoidance of work in GGS habitat, to the extent feasible, and provides measures to protect GGS during any construction within 200 feet of potential GGS habitat.

The paragraph under the Combined Alignment Alternative starting on page 3.4-72 of the Final EIS is updated, as follows:

*Combined Alignment Alternative (Alternative 1)*

Potential impacts to GGS would be minimized by using trenchless construction techniques in aquatic habitats where GGS may occur. Potential upland habitat adjacent to aquatic habitat in the San Joaquin River would be avoided because entry and pullback pits for HDD construction would be on the land-side of the river levees and greater than 200 feet from suitable aquatic habitat. To the extent feasible, construction is expected to take place in the active season for GGS, which is from May 1 to October 1. The proposed pipeline alignment would cross the natural drainage on the east side of the San Joaquin River up to three times (**Figure 3.4-1**, Stations 373+00, 436+00, and 562+50). Approximately 54,000 square feet (1.24 acres) of potential GGS upland habitat would be temporarily disturbed during construction. This would temporarily reduce the amount and quality of upland habitat available to GGS. If GGS are present in upland areas during construction, injury or mortality to individuals could result while operating construction equipment for site preparation (i.e., clearing and grubbing). ~~However, harm or mortality of individual GGS is considered unlikely because snakes would likely sense vibration from construction equipment and disperse from the work area.~~

#### **8.5.7 Response to Comment 5-7**

*Comment Summary: The comment requests consultation with the Department if GGS are observed during preconstruction surveys and states that an Incidental Take Permit may be required if the project would result in “take”.*

**Mitigation measure BIO-6**, as presented in the Draft EIR/EIS, would avoid and minimize potential impacts to GGS due to construction activities. If GGS are observed during preconstruction biological surveys, site preparation activities, or during construction activities, the Partner Agencies will be responsible for consultation with CDFW to discuss how to avoid take and/or acquire an Incidental Take Permit for GGS if take cannot be avoided. Reclamation is consulting with the USFWS and NMFS on the project pursuant to Section 7 of the ESA. Issuance of a Record of Decision will not be done until consultations are complete.

#### **8.5.8 Response to Comment 5-8**

*Comment Summary: The Department states that Tricolored blackbird (*Agelaius tricolor*) and Swainson's hawk (*Buteo swainsoni*) have been documented nesting in the immediate vicinity of the project area, and the Department recommends that a habitat assessment be conducted by a qualified biologist familiar with these species to determine if the project would impact potential breeding grounds. The comment requests consultation with the Department if tricolored blackbird or Swainson's hawk are observed during preconstruction surveys and states that an Incidental Take Permit may be required if the project would result in “take”.*

Habitat assessments for these species were conducted as part of the reconnaissance biological surveys for the Proposed Action alternatives. Suitable breeding habitat for Swainson's hawk occurs along the San Joaquin River corridor, the natural drainage to the west of the river, and in isolated or small groves of mature trees in agricultural fields (See **Table 3.4-3** in the Draft EIR/EIS). Tricolored blackbird may breed in drainage/irrigation channels with emergent vegetation and agricultural fields cultivated in silage or grain (See **Table 3.4-3** in the Draft EIR/EIS for locations where these habitats occur).

Swainson's hawks are likely to nest within the vicinity of the proposed construction areas, and Tricolored blackbirds may also nest within the vicinity of the construction areas. **Mitigation Measures BIO-10** and **BIO-12** establish measures to avoid take of Tricolored blackbirds and Swainson's hawks, which include consultation with CDFW, as appropriate. In addition, **Mitigation Measure BIO-13** requires measures to avoid and minimize impacts to birds protected under the MBTA, which include consultation with USFWS, as appropriate. With implementation of these mitigation measures (as modified per Response to Comment 5-10), take of these species would be unlikely. If take of either species cannot be avoided, Reclamation will consult with USFWS pursuant to the MBTA and the Partner Agencies will consult with CDFW pursuant to Fish and Game Code Sections 2080 and 2081.

#### 8.5.9 Response to Comment 5-9

*Comment Summary: The comment requests a 1/2-mile no disturbance buffer around Swainson's hawk nests.*

As specified in **Mitigation Measure BIO-12**, "Surveys shall cover a minimum of a 0.5-mile radius around potentially suitable nesting habitat for Swainson's hawk. ... If nesting raptors are detected a no-disturbance buffer shall be established around the nest". The biologist shall have the discretion to determine the appropriate buffer, which may involve consultation with the CDFW, as appropriate. **Mitigation Measure BIO-12** (page 3.4-82) has been revised in the Final EIS as follows:

- If nesting raptors are detected, a no-disturbance buffer shall be established around the nest. Buffers shall be established by a qualified biologist, with consultation with the CDFW and/or USFWS, as appropriate ~~0.25-mile for Swainson's hawk and white-tailed kite, and 500 feet for northern harrier and non-listed raptors. A qualified biologist may identify an alternative buffer based on a site specific evaluation and in consultation with CDFW.~~ No construction activities shall be initiated within the buffer until fledglings are fully mobile and no longer reliant upon the nest or parental care for survival. Construction must either be started before nests are established, or if nesting birds are already present, construction within the buffer zone would have to be delayed until nesting is done for the season.

#### 8.5.10 Response to Comment 5-10

*Comment Summary: The comment states that the EIR/EIS fails to analyze the impact of using recycled water for wildlife refuges and cites the potential benefits of using water at refuges. The comment also states that the alternatives analysis should consider the impact of expanding agricultural use as compared to the No Project Alternative.*

It is understood that the adverse groundwater impacts associated with the No Action Alternative could include additional groundwater use both for irrigation in DPWD and to supply water for refuges; this is discussed on page 3.11-22 of the Draft EIR/EIS. DPWD irrigators in the northern portion of the Delta-Mendota subbasin have needed to increase groundwater pumping to make up for reductions in CVP supply. Refuges have also had to depend on groundwater to make up water supply shortages.

The Proposed Aciton alternatives are not relying on benefits to the refuges to provide mitigation for short-term construction impacts; however, the provision of supplemental water to refuges would definitely contribute to improved habitat values. The recycled water supplied by the NVRRWP is not intended to support expanded agricultural use. As described on page 4-2 of the Draft EIR/EIS, the NVRRWP would provide water to support existing DPWD agricultural uses and its customers who are not receiving their full allocation of water from the CVP. Similarly, water supplied to refuges would be intended to make up for existing shortfalls in supplemental water supplies. It is expected that agricultural water supplies from the project would enable a reduction in groundwater pumping in the northern portion of the Delta-Mendota subbasin, which would be beneficial to the region.

#### **8.5.11 Response to Comment 5-11**

*Comment Summary: The comment suggests several editorial changes to the Draft EIR/EIS, and suggests that it is not possible to provide water to the Kern National Wildlife Refuge.*

Although there is not a direct conveyance route to the Kern National Wildlife Refuge, water can be supplied to that refuge via an exchange of water from the CVP for water from the SWP. The Refuge Water Supply Program presently delivers CVP water to the Kern Wildlife Refuge via an exchange for SWP water, and could do the same with the NVRRWP water, which would be conveyed through the CVP system. An exchange of water supplies is not part of the Proposed Action alternatives covered in this EIS and may need additional environmental review prior to implementation.

The remainder of the editorial changes requested have been accommodated in the Final EIS. The heading for the second column **Table 1-1** on page 1-9 is revised as follows:

#### **State Wildlife Areas**

The second sentence of the fourth paragraph on page 3.14-1 is revised as follows:

... (sound power or volume)...

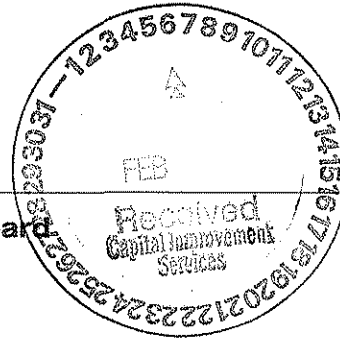
The first sentence of the fifth paragraph on page 3.16-2 is revised as follows:

~~Delta Puerto Water District~~ (DPWD) serves the remainder of the proposed project, .....

The first line on page 3.17-2 is revised as follows:

...birdwatching, wildlife viewing, hiking, biking, boating, waterfowl hunting, camping and fishing.

*This page intentionally left blank*

EDMUND G. BROWN JR.  
GOVERNORMATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION**Central Valley Regional Water Quality Control Board**

4 February 2015

William Wong  
City of Modesto  
Utilities Department  
1010 Tenth Street, 4<sup>th</sup> Floor  
Modesto, CA 95354

CERTIFIED MAIL  
7014 2120 0001 3978 4696

**COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT ENVIRONMENTAL IMPACT  
REPORT/ENVIRONMENTAL IMPACT STATEMENT, NORTH VALLEY REGIONAL  
RECYCLED WATER PROGRAM PROJECT, SCH#: 2014042068, STANISLAUS COUNTY**

Pursuant to the State Clearinghouse's 8 January 2015 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Draft Environment Impact Report/Environment Impact Statement* for the North Valley Regional Recycled Water Program Project, located in Stanislaus County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

6-1

**Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit), Construction General Permit Order No. 2009-009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP).

For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/constpermits.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml).

### **Phase I and II Municipal Separate Storm Sewer System (MS4) Permits<sup>1</sup>**

6-2 The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/municipal\\_permits/](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/).

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

[http://www.waterboards.ca.gov/water\\_issues/programs/stormwater/phase\\_ii\\_municipal.shtml](http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml)

---

### **Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 97-03-DWQ.

6-3 For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/water\\_issues/storm\\_water/industrial\\_general\\_permits/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml).

---

### **Clean Water Act Section 404 Permit**

6-4 If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACOE). If a Section 404 permit is required by the USACOE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements.

If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACOE at (916) 557-5250.

---

<sup>1</sup> Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

### **Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACOE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications.

6-5

---

### **Waste Discharge Requirements**

If USACOE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project will require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation.

6-6

For more information on the Water Quality Certification and WDR processes, visit the Central Valley Water Board website at:

[http://www.waterboards.ca.gov/centralvalley/help/business\\_help/permit2.shtml](http://www.waterboards.ca.gov/centralvalley/help/business_help/permit2.shtml).

---

### **Regulatory Compliance for Commercially Irrigated Agriculture**

If the property will be used for commercial irrigated agricultural, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program.

There are two options to comply:

1. **Obtain Coverage Under a Coalition Group.** Join the local Coalition Group that supports land owners with the implementation of the Irrigated Lands Regulatory Program. The Coalition Group conducts water quality monitoring and reporting to the Central Valley Water Board on behalf of its growers. The Coalition Groups charge an annual membership fee, which varies by Coalition Group. To find the Coalition Group in your area, visit the Central Valley Water Board’s website at: [http://www.waterboards.ca.gov/centralvalley/water\\_issues/irrigated\\_lands/app\\_approval/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/irrigated_lands/app_approval/index.shtml); or contact water board staff at (916) 464-4611 or via email at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).
2. **Obtain Coverage Under the General Waste Discharge Requirements for Individual Growers, General Order R5-2013-0100.** Dischargers not participating in a third-party group (Coalition) are regulated individually. Depending on the specific site conditions, growers may be required to monitor runoff from their property, install monitoring wells, and submit a notice of intent, farm plan, and other action plans regarding their actions to comply with their General Order. Yearly costs would include State administrative fees (for example, annual fees for farm sizes from 10-100 acres are currently \$1,084 + \$6.70/Acre); the cost to prepare annual monitoring reports; and water quality monitoring costs. To enroll as an Individual Discharger under the Irrigated Lands Regulatory

6-7

Program, call the Central Valley Water Board phone line at (916) 464-4611 or e-mail board staff at [IrrLands@waterboards.ca.gov](mailto:IrrLands@waterboards.ca.gov).

---

**Low or Limited Threat General NPDES Permit**

6-8

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Dewatering and Other Low Threat Discharges to Surface Waters* (Low Threat General Order) or the General Order for *Limited Threat Discharges of Treated/Untreated Groundwater from Cleanup Sites, Wastewater from Superchlorination Projects, and Other Limited Threat Wastewaters to Surface Water* (Limited Threat General Order). A complete application must be submitted to the Central Valley Water Board to obtain coverage under these General NPDES permits.

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0074.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0074.pdf)

For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/general\\_orders/r5-2013-0073.pdf](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2013-0073.pdf)

If you have questions regarding these comments, please contact me at (916) 464-4684 or [tcleak@waterboards.ca.gov](mailto:tcleak@waterboards.ca.gov).



Trevor Cleak  
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

## **8.6 Comment Letter 6 - Central Valley Regional Water Quality Control Board, Trevor Cleak, Environmental Scientist**

### **8.6.1 Response to Comment 6-1**

*Comment Summary: The comment states that a project with a construction area larger than one acre must obtain coverage under the General Permit for Storm Water Discharges Associated with Construction Activities (Construction General Permit).*

The Draft EIR/EIS acknowledges that the project will need to obtain coverage under the Construction General Permit because the construction area will be more than one acre. The permit is included in the list of approvals in **Table 1-3** on page 1-14 of the Draft EIR/EIS. Requirements of the permit are also discussed in greater detail on page 3.11-9 of the Draft EIR/EIS, which describes the need for a SWPPP.

### **8.6.2 Response to Comment 6-2**

*Comment Summary: The comment states that Phase I and II MS4 Permits require Permittees to reduce pollutants and runoff flows from new development using Best Management Practices.*

The project does not propose new development and would therefore not require MS4 permits. As noted on page 3.11-13 of the Draft EIR/EIS “*The proposed project would add very little impervious surface to the landscape as the above-ground facilities are limited to air valves along the new pipelines (housed in 4 foot by 4 foot steel cages), modifications to the existing Jennings Plant Pump Station that would not increase the total footprint of the pump station, and, in the case of Alternative 2, a small building (building footprint 40 feet by 50 feet) that would house a new pump station at the end of the Harding Drain Bypass Pipeline. These facilities are too small to have any appreciable impact on surface runoff.*”

### **8.6.3 Response to Comment 6-3**

*Comment Summary: The comment states that storm water discharges associated with industrial sites must comply with the Industrial Storm Water General Permit Order No. 97-03-DWQ.*

As noted in Response to Comment 4-1, the majority of the project consists of buried underground pipelines, which would not require coverage under the Industrial Storm Water General Permit. Modifications to the existing Jennings Plant Pump Station would take place entirely within the existing Jennings Plant, where stormwater generated onsite is captured and routed through the on-site treatment system. The recycled water pump station that would be constructed at the end of the Harding Drain Bypass Pipeline as part of Alternative 2 is not a type of facility that would require coverage under the Industrial Storm Water General Permit.

### **8.6.4 Response to Comment 6-4**

*Comment Summary: The comment states that the project would require a Clean Water Act Section 404 Permit if there would be any discharge of dredged or fill materials in navigable waters or wetlands, and that the Department of Fish and Wildlife should be consulted regarding a Streambed Alteration Permit.*

The Draft EIR/EIS acknowledges that the project will need to obtain a 404 Permit because construction of pipelines would require crossings of waters of the U.S. and jurisdictional wetlands. The permit is included in the list of approvals in **Table 1-3** on page 1-14 of the Draft EIR/EIS. Requirements of the permit are also discussed in greater detail on page 3.4-23 of the Draft EIR/EIS, which describes the need for a 404 Permit. Impacts to federally protected wetlands are discussed starting on page 3.4-74 of the Draft EIR/EIS. **Table 1-3** also identified the need for a Streambed Alteration Agreement.

#### **8.6.5 Response to Comment 6-5**

*Comment Summary: The comment states that if a 404 Permit is required, then a 401 Water Quality Certification must be obtained.*

The Draft EIR/EIS lists federal permits in **Table 1-3**, which notes that a 404 Permit and Section 10 permit would be required. However, a Section 9 Permit from the U.S. Coast Guard is not expected to be needed because no structures would be constructed within a navigable water. The Draft EIR/EIS acknowledges that the project would need to obtain a Section 401 Water Quality Certification. The permit is included in the list of approvals in **Table 1-3** on page 1-14 of the Draft EIR/EIS. Requirements of the Water Quality Certification are also discussed in greater detail on page 3.4-23 of the Draft EIR/EIS, which describes Section 401 requirements.

#### **8.6.6 Response to Comment 6-6**

*Comment Summary: The comment states that if only non-jurisdictional waters of the State (“non-federal” waters) are present, the project would require a Waste Discharge Requirements permit.*

Based on the evaluation of waters and wetlands in the Proposed Action area, the Draft EIR/EIS (starting on page 3.4-74) identified that there are jurisdictional waters. A wetland delineation was prepared and submitted to the USACE. It is expected that the USACE will take jurisdiction over any affected waters.

#### **8.6.7 Response to Comment 6-7**

*Comment Summary: The comment states that if the property will be used for commercial irrigated agriculture, the discharger will be required to obtain regulatory coverage under the Irrigated Lands Regulatory Program*

As described on page 4-2 of the Draft EIR/EIS, the project would serve existing agricultural users in the DPWD, and would not include development of any new agricultural lands. Recycled water would be introduced into the DMC for existing agricultural purposes within DPWD. All of the District’s irrigated lands already have coverage under the Irrigated Lands Regulatory Program as part of the Westside San Joaquin River Watershed, and have since its inception.

#### **8.6.8 Response to Comment 6-8**

*Comment Summary: The comment states that construction dewatering would require coverage under an NPDES Permit, and specifies two General Orders under which coverage could be obtained.*

The Draft EIR/EIS acknowledges that the project would need to obtain a coverage for dewatering during construction and for pipeline discharges during testing and startup. **Table 1-3** on page 1-14 of the Draft EIR/EIS identifies the need to file a NOI for coverage under the Low-Threat Discharge Order for Dewatering During Construction. Requirements of the Limited Threat General Order are also discussed in greater detail on pages 3.11-9 and 3.11-14 of the Draft EIR/EIS.

*This page intentionally left blank*



**San Joaquin Valley**  
AIR POLLUTION CONTROL DISTRICT



March 9, 2015

William Wong  
City of Modesto  
Utility Planning and Projects Department  
1010 Tenth Street, 4<sup>th</sup> Floor  
Modesto, CA 95353

**Agency Project: North Valley Regional Recycled Water Program - Draft  
Environmental Impact Report/Environmental Impact Statement  
EA/UP & P No. 2014-02, SCH# 2014042068**

**District CEQA Reference No: 20150016**

Dear Mr. Wong:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the North Valley Regional Recycled Water Program (NVRWP). The City of Modesto, Del Puerto Water District (DPWD) and City of Turlock (Partner Agencies) propose to implement a regional solution to address water supply shortages within DPWD's service area on the west side of the San Joaquin River in San Joaquin, Stanislaus and Merced Counties, south of the Sacramento-San Joaquin River Delta (Delta). The project would deliver up to 59,000 acre feet per year of recycled water produced by the cities of Modesto and Turlock via the Delta-Mendota Canal, a feature of the Central Valley Project owned by the Bureau of Reclamation. Instead of discharging into the San Joaquin River, recycled water would be conveyed from Modesto and Turlock through pipelines from their wastewater treatment facilities, crossing the San Joaquin River, and ending at the Delta-Mendota Canal. The water would then be conveyed directly to Del Puerto Water District customers. The project also proposes to provide water to Central Valley Project Improvement Act designated refuges located south of the Delta to meet their need for water supply. The project facilities consist of pipelines and pump stations. The District offers the following comments:

**District Comments:**

7-1

1. Based on information provided to the District, with implementation of Mitigation Measure AIR-1, project specific emissions of criteria pollutants are not expected to exceed District significance threshold of 10 tons/year NOx, 10 tons/year ROG, and

**Seyed Sadredin**  
Executive Director/Air Pollution Control Officer

**Northern Region**  
4800 Enterprise Way  
Modesto, CA 95356-8718  
Tel: (209) 557-6400 FAX: (209) 557-6475

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: 661-392-5500 FAX: 661-392-5585

15 tons/year PM10. Therefore, the District concludes that project specific criteria pollutant emissions would have no significant adverse impact on air quality.

**Mitigation Measure AIR-1**, pages 3.3-32 and 33, states:

- 7-1
- “NOx emissions associated with construction activities shall be reduced to 10 tons per year through on-site equipment and hauling vehicle mitigation measures to the extent feasible.”
  - “If all feasible on-site measures have been implemented and annual emissions are anticipated to still be above 10 tons per year for NOx, then the project proponent shall enter into a Voluntary Emissions Reduction Agreement (VERA) with SJVAPCD. The VERA would provide pound-for-pound mitigation of air emissions increases down to a net zero emissions per year as required under general conformity ...”

The VERA is an instrument by which the project proponent provides monies to the District, which is used by the District to fund emission reduction projects that achieve the reductions required by the lead agency. District staff is available to meet with project proponents to discuss a VERA for specific projects. For more information, or questions concerning this topic, please call District Staff at (559) 230-6000.

- 
- 7-2
2. The Air Quality Section of the DEIR/EIS, page 3.3-17, states: “Portable equipment used at project sites for less than 6 consecutive months must be registered with SJVAPCD.”

The District offers the following clarification. Portable emission units (including portable drilling rigs) are required to be registered with either the California Air Resources Board (CARB) or with the District (Rule 2280 Portable Equipment Registration).

- 
- 7-3
3. The Air Quality Section of the DEIR/EIS, page 3.3-18, states that the EPA withdrew approval of the *2004 Extreme Ozone Attainment Demonstration Plan* in 2012 and that the District is revising the plan to seek Board approval in 2014. However, the District already adopted the *2013 Plan for the Revoked 1-Hour Ozone Standard* in September 2013 to address the revoked 1-hour ozone standard. The District recommends this statement be revised. The 2013 plan can be found on the District’s website at:  
[http://www.valleyair.org/Air\\_Quality\\_Plans/Ozone-OneHourPlan-2013.htm](http://www.valleyair.org/Air_Quality_Plans/Ozone-OneHourPlan-2013.htm)

- 
- 7-4
4. A 5 minute idling time was assumed for trucks. There was no indication that such a limitation would be included as a mitigation measure. Despite the Airborne Toxic Control Measure (ATCM) for idling, the District believes that there are no enforcement measures to ensure that trucks will idle for only 5-minutes unless such

measures are included as mitigation measures in the California Environmental Quality Act (CEQA) process or in the land use permit. The ATCM includes numerous exceptions to the 5-minute idling limitation.

---

### **District Rules and Regulations**

- 7-5      5. The proposed project may be subject to District Rules and Regulations, including: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), and Rule 4702 (Internal Combustion Engines). The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this project, the District recommends the applicant contact the District's Small Business Assistance (SBA) office. SBA staff can be reached at (209) 557-6446.

More information regarding District rules and regulation can be obtained by:

- Visiting the District's website at <http://www.valleyair.org/rules/1ruleslist.htm> for a complete listing of all current District rules and regulation, or
  - Visiting the District's website at [http://www.valleyair.org/busind/comply/PM10/compliance\\_PM10.htm](http://www.valleyair.org/busind/comply/PM10/compliance_PM10.htm) for information on controlling fugitive dust emissions
- 

- 7-6      6. Based on the information provided to the District, the proposed project does not meet the definition of a development project. Therefore, the District concludes the proposed project is not subject to District Rule 9510 (Indirect Source Review).
- 

- 7-7      7. The District recommends that a copy of the District's comments be provided to the project proponent.

If you have any questions or require further information, please contact Georgia Stewart at (559) 230-5937.

Sincerely,

Arnaud Marjollet  
Director of Permit Services



For: Chay Thao  
Permit Services Manager  
AM: gs

## 8.7 Comment Letter 7 – San Joaquin Valley Air Pollution Control District, Arnaud Marjollet, Director of Permit Services

### 8.7.1 Response to Comment 7-1

*Comment Summary: The comment states that the San Joaquin Valley Air Pollution Control District (SJVAPCD) concludes that the project would have no significant adverse impact on air quality based on criteria pollutant emissions, and offers that the SJVAPCD staff is available to meet with the Partner Agencies to discuss a Voluntary Emissions Reduction Agreement (VERA).*

Comment noted. As described in **Mitigation Measure AIR-1** in the Draft EIR/EIS (page 3.3-32), the NVRWP would implement a VERA if it is not possible to reduce construction-period NO<sub>x</sub> emissions to 10 tons per year or less. If a VERA is necessary this would be coordinated with the SJVAPCD.

### 8.7.2 Response to Comment 7-2

*Comment Summary: The comment offers clarification about requirements for portable emissions units, which are required to be registered with either the California Air Resources Board (CARB) or with the District (Rule 2280 Portable Equipment Registration).*

Comment noted. The state registration program operated by CARB is described on page 3.3-16 of the Draft EIR/EIS in the section about State Regulations and Policies under the heading “Portable Equipment Registration Process”. That section explains that “The statewide Portable Equipment Registration Program establishes a system to uniformly regulate portable engines and portable engine-driven equipment units. After being registered in this program, engines and equipment units may operate throughout the state without the need to obtain individual permits from air districts.”

### 8.7.3 Response to Comment 7-3

*Comment Summary: The comment provides updated information about the revoked 1-hour ozone standard and suggests that the description on page 3.3-18 of the Draft EIR/EIS should be revised.*

Page 3.3-18 of the Draft EIR/EIS is revised in the Final EIS as follows:

SJVAPCD is revising the plan currently and plans to seek District approval in 2014.  
for the Revoked 1-hour O<sub>3</sub> Standard in September 2013.

### 8.7.4 Response to Comment 7-4

*Comment Summary: The comment notes that although 5-minute idling time for trucks is required by CARB, there is no mechanism for enforcement, and suggests that it would be appropriate to include this restriction as a mitigation measure.*

The Final EIS has been revised to accommodate the District's request to include idling restrictions as mitigation. **Mitigation Measure AIR-1: Reduce NO<sub>x</sub> Emissions** (page 3.3-35), is revised as follows:

**Mitigation Measure AIR-1: Reduce NO<sub>x</sub> Emissions** (Alternatives 1, 2 and 3)

NO<sub>x</sub> emissions associated with construction activities shall be reduced to 10 tons per year through on-site equipment and hauling vehicle mitigation measures to the extent feasible. All vehicles and equipment used during construction shall be maintained and properly tuned in accordance with the manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure CCR Title 13 Section 2485). Emissions reduction methods may be chosen from any combination of the following measures:

**8.7.5 Response to Comment 7-5**

*Comment Summary: The comment states that the project may be subject to additional District Rules and Regulations, including Regulation VIII (Fugitive PM<sub>10</sub> Prohibitions), Rule 4102 (Nuisance) and Rule 4702 (Internal Combustion Engines), and suggests that the applicant contact the District's Small Business Assistance office to determine other District rules and regulations that may apply.*

Page 3.3-17 of the Draft EIR/EIS does note that "Operations, including construction operations, must control fugitive dust emissions in accordance with SJVAPCD Regulation VIII." Rule 4702 does not apply to portable engines, which would be used during construction, or to stand-by generators, which are the only internal combustion engines that are expected to be used as part of construction and/or operation of the NVRRWP. While it is anticipated that compliance with existing regulations and **Mitigation Measure AIR-1** would prevent nuisance conditions described in Rule 4102, the Partner Agencies will comply with all applicable District Rules and Regulations.

**8.7.6 Response to Comment 7-6**

*Comment Summary: The comment states that the NVRRWP does not meet the definition of a development project and is thus not subject to District Rule 9510 (Indirect Source Review).*

As described on page 1-1 of the Draft EIR/EIS, the project is a water supply project, not a development project.

**8.7.7 Response to Comment 7-7**

*Comment Summary: The SJVAPCD requests that a copy of their comments be provided to the project proponent.*

The SJVAPCD comments have been provided to the NVRRWP Partner Agencies, which include the City of Modesto, City of Turlock, and DPWD.

*This page intentionally left blank*



Whitman F. Manley  
wmanley@rmmenvirolaw.com

March 9, 2015

*VIA ELECTRONIC & REGULAR MAIL*

U.S. Department of the Interior  
Bureau of Reclamation, SCCAO  
Attn: Ben Lawrence, Natural Resource Specialist  
1243 N Street  
Fresno, CA 93721-1813  
Email: blawrence@usbr.gov

City of Modesto, Utilities Department  
Attn: William Wong, Engineering Division Manager  
1010 Tenth Street, Suite 4500  
Modesto, CA 95354  
Email: wwong@modestogov.com

---

Re: North Valley Regional Recycled Water Program (SCH No. 2014042068) -  
Comments on the Draft EIR/EIS

Dear Mr. Lawrence and Mr. Wong:

This firm represents Turlock Irrigation District ("TID") with regard to the North Valley Regional Recycled Water Program ("Project"). This letter and attachments provide TID's comments on the Project and the associated Draft Environmental Impact Report/Environmental Impact Statement (hereafter "DEIR" for ease of reference).

8-1

We submit this letter to inform the U.S. Department of Interior, Bureau of Reclamation ("Bureau") and City of Modesto that the Project does not meet the minimum standards of adequacy under the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.), the CEQA Guidelines (Cal. Code Regs., titl.14, § 15000 et seq.), and the National Environmental Policy Act ("NEPA") (42 U.S.C. § 4321 et seq.).<sup>1</sup>

---

<sup>1</sup> / The Bureau and City of Modesto as lead agencies for the Project prepared the January 2015 DEIR. The Partner Agencies for the Project include the Cities of Modesto and Turlock and the Del Puerto Water District. On April 18, 2014, the City of Modesto issued a Notice of Preparation ("NOP") for the DEIR. TID submitted "scoping comments" on May 20, 2014.

One of the primary purposes of CEQA is to provide the public and decision makers with a complete analysis and full disclosure of the proposed project’s potentially significant environmental impacts. With regard to the subject DEIR, the Bureau and City of Modesto have not made a sufficient effort at disclosing the full nature and extent of the Project’s environmental impacts to the public.

The EIR is “the heart of CEQA.” (Guidelines, § 15003, subd. (a); *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights I*”).) It “is an ‘environmental “alarm bell” whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.’” (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 392.) “Because the EIR must be certified or rejected by public officials, it is a document of accountability” that ensures “the public will know the basis on which its responsible officials either approve or reject environmentally significant action.” (*Ibid.*) Likewise, NEPA requires that federal agencies “‘consider every significant aspect of the environmental impact of a proposed action’” and “‘inform the public that [they have] indeed considered environmental concerns in [their] decisionmaking process[es].’” (*Earth Island Institute v. US. Forest Service* (9th Cir. 2003) 351 F.3d 1291, 1300.)

8-1

Where, as here, the environmental review document does not fully and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, the document does not satisfy the basic goals of either CEQA or NEPA. (See Pub. Resources Code, § 21061 [“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”].)

As discussed in detail below and in the attached technical comments, the DEIR is replete with serious flaws. The DEIR does not provide an adequate description of the Project and contains so little information about the Project's potential environmental impacts to groundwater that, in many instances, it is difficult to evaluate the accuracy of the environmental analysis. Nor does the DEIR provide the necessary evidence or analysis to support its conclusions that cumulative impacts to groundwater would be less than significant. Consequently, the Bureau and City of Modesto will need to prepare and recirculate a revised EIR/EIS if they choose to proceed with the proposed Project. We also have the following, specific comments on the DEIR.

---

#### **A. The DEIR Does Not Provide an Adequate Description of the Whole of the Project.**

“As section 15378 of the CEQA Guidelines explains: “(a) ‘Project’ means the whole of an action, which has the potential for resulting in [an environmental change.]” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 129, fn. 8.) Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed project is critical to meaningful public review. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) The court in *Inyo* explained why a thorough project description is necessary:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.

(*Id.* at pp. 192-93.) Thus, “[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

The DEIR presents inconsistent information regarding Project features and fails to describe aspects of the Project critical to its analysis. For example, the DEIR fails to adequately describe the recently constructed Harding Drain Bypass pump station and pipeline or to summarize the relevant conclusions of the Harding Drain Bypass Project EIR (SCH No. 2003062002). The Harding Drain was constructed and is currently operated and maintained by TID as an agricultural irrigation conveyance drain system to intercept and convey irrigation return flows. (Harding Drain Bypass Draft EIR, July 2004, at p. 2-3.) Along with treated wastewater from the City of Turlock, flow in the Harding Drain consists of a combination of TID surface water, operational spill water, and agricultural and urban drainage water during the irrigation season and urban storm drainage water at other times during the year. (*Ibid.*)

8-2

In 2013 and 2014, TID pumped 3,166 AF and 2,295 AF respectively out of the Harding Drain. This water is delivered to up to 3,275 acres within a portion of TID's irrigation service area each year. This irrigation in turn allows the groundwater that the Cities of Turlock and Ceres and other drinking water purveyors within the Turlock Subbasin pumped to return to its subbasin of origin through deep percolation.<sup>2</sup> The removal of these waters from the Turlock Groundwater Subbasin will have foreseeable adverse consequences to agricultural water supplies and groundwater.

Operation of the Harding Drain Bypass Pipeline is central to the Project's proposed exportation of recycled water outside of the water's groundwater basin of origin.

---

<sup>2</sup> / “Deep percolation of irrigation water is the largest inflow to the [Turlock] groundwater basin and plays an important role in maintaining groundwater storage. Surface water from the Turlock Irrigation District, and to a lesser extent, the Merced Irrigation District is used to supply more than half of the total irrigation water applied within the Basin. Hence, under current conditions the continued use of surface water for agricultural irrigation is vital for sustaining recharge in the Subbasin. Future changes to inflows or outflows resulting from shifts in land use patterns have the potential to reduce recharge and create reductions in groundwater storage.” (Turlock Groundwater Basin Groundwater Management Plan, March 18, 2008, at p. 4.)

To the extent that the Project’s DEIR relies on the analysis and mitigation measures in the prior analysis, the DEIR must incorporate the Harding Drain Bypass EIR and any related addenda by reference and briefly summarize the relevant discussions. (Guidelines, § 15150, subd. (b) [“[w]here part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building”]; and *id.*, subd. (c) [“the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized”].) The agency cannot leave it to the public or decision-makers to piece together analyses scattered in different documents. (See *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412.)

Moreover, if the Harding Drain Bypass Project EIR does not adequately analyze or mitigate the potentially significant impacts to groundwater and agricultural resources that would result from the currently proposed Project, then the Bureau and City of Modesto must include in the DEIR an analysis of the combined impacts of the Harding Drain Bypass and Recycled Water projects, and consider mitigation measures and alternatives addressing those combined effects. Such impacts to the Turlock Subbasin are foreseeable and must be considered.

---

**B. The DEIR Does Not Provide an Adequate Description of the Environmental Setting.**

CEQA requires an EIR to “delineate environmental conditions prevailing absent the project, defining a ‘baseline’ against which predicted effects can be described and quantified.” (*Neighbors for Smart Rail v. Exposition Metro Line Construction Auth.* (2013) 57 Cal.4th 439, 447.) The baseline is normally “existing conditions” in the vicinity of the project “as they exist at the time the [NOP] is published.” (*Id.* at p. 448.) “Knowledge of the regional setting is critical to the assessment of environmental impacts.” (Guidelines, § 15125, subd. (c).) Thus, CEQA Guidelines section 15125 provides that EIRs “must include a description of the physical environmental conditions in the vicinity of the project . . . from both a local and *regional* perspective.” (*Id.* at subd. (a), emphasis added.) Furthermore, “[s]pecial emphasis should be placed on environmental resources that are rare or unique to that region and *would be affected by the project.*” (*Ibid*, emphasis added.)

An EIR’s description of a project’s environmental setting plays a critical role in all of the subsequent parts of the EIR because it provides “the baseline physical conditions by which a Lead Agency determines whether an impact is significant.” (Guidelines, § 15125, subd. (a).) Longstanding case law upholds this fundamental principle by recognizing that “[a]n EIR must focus on impacts to the *existing environment*, not hypothetical situations.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955, emphasis added.)

“If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA.” (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 87.) Here, as is explained below, the EIR’s “description and consideration” of the regional setting “is so incomplete and misleading that it fails to meet

the standard set forth in . . . Guidelines section 15125.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 723.)

In particular, the DEIR fails to accurately:

|                                                                                                                                                                                                                                                                                                                                                                                                                                         |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| (1) describe and identify the Turlock Groundwater Subbasin as the source of the City of Turlock’s recycled water that the Project proposes to export to Del Puerto Water District (“DPWD”) in the Delta Mendota Subbasin (see DEIR, p. 1-8 [providing estimate of total recycled water available “at buildout” without providing description of or figures for the tertiary treated recycled water available in 2014 to sell to DPWD]); | 8-3 |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|

---

|                                                                                                                                                                                                                                                                                                               |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| (2) describe the City of Turlock’s use of the Harding Drain in 2014, and use by TID and others of the City’s recycled water from the Harding Drain in 2014 (see DEIR, p. 1-9 [misleading statement by implication that no City of Turlock recycled water was discharged into the Harding Drain in 2014]); and | 8-4 |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|

---

|                                                                                                                                                                                                                                                                                                                                                                    |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| (3) describe the City of Modesto’s application of its tertiary and secondary treated wastewater to agricultural lands leased to farmers within TID’s service area boundary, or when the application of tertiary water will be reduced or curtailed entirely (see DEIR, p. 1-9 [brief mention of application of treated wastewater to “Modesto-owned ranch land”]). | 8-5 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|

---

These omissions obscure the Project’s potentially significant impacts to groundwater and agricultural resources. (See DEIR, pp. 3.11-20 to 3.11-23 [analyzing only the “slight reduction of stream flows in the San Joaquin River” that result from the termination of the “current discharges from the Cities of Modesto and Turlock”].)

*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 121-122 is on point. In that case, the court explained that CEQA requires “preparers of [an] EIR [to] conduct the investigation and obtain documentation to support a determination of pre-existing conditions” because “the impacts of the project must be measured against the ‘real conditions on the ground.’” There, the developer of a proposed residential subdivision on ranch lands had pumped a significant amount of water in the years right before the start of environmental review, presumably in an effort to establish that water use in existing baseline conditions was already high. The court concluded that “this treatment of baseline water use violated the basic principles of CEQA” because “some of these figures, although generated from recent pumping on the property, did not reflect water actually used for irrigating the property.” (*Id.* at pp. 120-121.) The EIR was defective for the further reason that the EIR did not provide a clear, consistent description of historic groundwater use, and thus left the public to guess at the baseline conditions against which the project’s impacts were measured.

8-6

Here, the DEIR does not provide a straightforward description of existing groundwater conditions and groundwater uses in the area, at the time the agencies commenced the environmental review process by releasing an NOP.

8-6

Similarly, the term “Available Recycled Water” is used both in the DEIR’s Table 1-2 and in the Feasibility Study’s Table ES-1, but the DEIR does not provide a clear explanation of what that term means. The DEIR must disclose the quantity of water – the “Net Available Recycled Water” – proposed to be sold to DPWD. The amount of the water proposed to be sold should be disclosed both at the outset of the Project, and at Project buildout, presumably in 2045.

The DEIR should also disclose existing uses of this water that will be displaced by virtue of the sale to DPWD. Absent this information, the DEIR fails to provide basic information about what the Project entails.

As a result of the EIR’s inadequate description of baseline conditions, the DEIR fails to consider potential impacts to agricultural entities and the Turlock Subbasin currently dependent on the recycled water proposed to be exported to DPWD.

---

### **C. The DEIR Fails to Adequately Analyze the Project's Impacts on Groundwater.**

8-7

CEQA requires that an EIR be detailed, complete, and reflect a “good faith effort at full disclosure.” (Guidelines, § 15151; see also *Coalition for Canyon Preservation v. Bowers* (9th Cir. 1980) 632 F.2d 774, 782 [“[S]ubjective good faith is not the test for determining the adequacy of an EIS. The test is an objective one.”].) The EIR must analyze both direct and indirect impacts, “‘giving due consideration to both the short-term and long-term effects’ of the project.” (*Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 454.) “An indirect physical change in the environment is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment.” (Guidelines, § 15064, subd. (d)(2).)

Here, the DEIR fails to adequately analyze both direct and indirect impacts to groundwater. First, the Project will have foreseeable direct impacts from the termination of an important groundwater recharge mechanism in the Turlock Subbasin. The Project effectively allows the City of Turlock to pump groundwater from the Turlock Subbasin for municipal uses, and then to export all the recycled wastewater to DPWD in the Delta Mendota Subbasin. This export will interrupt the beneficial, historical practice that exists in the relevant baseline setting of allowing the City of Turlock’s recycled water to recharge the Turlock groundwater basin through application of that water to agricultural lands within the same basin.

---

Second, the Project will have foreseeable indirect impacts from curtailment of the City of Modesto’s application of its treated wastewater to Modesto ranch lands. As detailed in TID’s

attached technical comments, the City of Modesto’s ranch lands <sup>3</sup> consist of approximately 2,500 acres, of which approximately 1,350 acres lie within TID’s service boundaries. If the City of Modesto stops providing treated wastewater to the Modesto ranch lands, then the entire 2,500 acres will need to identify a replacement water supply for their irrigation needs. For the lands within TID’s service boundaries, the source of replacement water would likely be surface water and/or groundwater. For the lands outside of TID’s service boundaries, the source of replacement water would likely be groundwater from the Turlock Subbasin. These additional demands on the Turlock Subbasin and surface waters that interconnect with the Turlock Subbasin will have potentially significant impacts that should have been analyzed and mitigated in the DEIR.

8-8

An EIR should provide a “sufficient degree of analysis” to inform the public about the proposed project’s adverse environmental impacts and to allow decision-makers to make intelligent judgments. (*Ibid.*) Meaningful analysis of impacts effectuates one of CEQA’s fundamental purposes: to “inform the public and responsible officials of the environmental consequences of their decisions *before* they are made.” (*Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (“*Laurel Heights II*”).) To accomplish this purpose, an EIR must contain facts and analysis, not just an agency’s bare conclusions. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) An EIR’s conclusions must be supported by substantial evidence. (*Laurel Heights I, supra*, 47 Cal.3d at p. 409.)

As documented in the attached technical comments, the project DEIR does not identify, analyze, or support its conclusions regarding the Project’s significant environmental impacts to groundwater. The DEIR analyzes only impacts to groundwater that would result from the average reduction in San Joaquin River flows of 18,000 AFY, which the DEIR asserts is the average amount of treated wastewater discharged by the Cities of Turlock and Modesto into the San Joaquin River in the relevant baseline setting. (DEIR, p. 3.11-20; DEIR, Appendix G, pp. 4-5 [“The average annual streamflows at Vernalis station would be reduced by approximately 18,000 AF/year”].) The DEIR fails to include any analysis of the extraction of the groundwater from the Turlock Subbasin, which ends up as sewage treated at both the Turlock and Modesto Wastewater Treatment Plants (WWTPs).

8-9

In fact, the DEIR mentions the “extraction of groundwater” in only one place: the DEIR’s unsupported and conclusory statement at pages 3.11-22 to 3.11- 23 regarding the No Action Alternative’s compliance with the Sustainable Groundwater Management Act:

Extraction of groundwater would be conducted within the bounds of existing regulations, including recently passed legislation, specifically SB 1168, AB 1739, and SB 1319, which together enacted the Sustainable Groundwater Management

8-10

---

<sup>3</sup> / On November 3, 2010, the City of Modesto entered into a certain “Agreement for Lease of Agricultural Land – Jennings Ranch” with a Wendel Trinkler, Jr., Lessee. This lease is discussed further in TID’s technical comments.

Act providing a framework for improved management of groundwater supplies by local authorities

(DEIR, pp. 3.11-22 to 3.11-23 [discussion of the No Action Alternative].)

This brief mention is inadequate. Extraction of groundwater from the Turlock Subbasin is currently occurring, and is therefore part of the existing, environmental setting. The extraction of groundwater from this subbasin will continue to occur and increase under the Project, not just under the No Action Alternative. The DEIR does not acknowledge these facts. As a result of the defects in the DEIR's project description and baseline discussed above, the DEIR fails to properly analyze the Project's impacts to groundwater.

8-10

The Turlock Subbasin is a separate and distinct subbasin within the larger San Joaquin Valley Groundwater Basin. (Turlock Groundwater Basin's Groundwater Management Plan,<sup>4</sup> March 18, 2008, p. 2.) The Turlock Subbasin underlies an area of approximately 347,000 acres, with irrigated crops (245,000 acres), native vegetation (69,000 acres), and urban development (20,000 acres) as the predominant land uses. (*Id.* at p. 1.) As the Groundwater Management Plan explains, the water balance for the Turlock Subbasin depends in part on inflows from the deep percolation of agricultural water.

Outflows from the Turlock Subbasin result from municipal, domestic, and agricultural supply and drainage well pumping, discharge to the local rivers, discharges from subsurface agricultural drains, and consumption by riparian vegetation. The estimated average total outflow for the 1997-2006 period is 541,000 AF/yr. The majority of outflow comes from estimated agricultural, municipal and rural residential, and drainage well pumping, which collectively averaged 457,000 AF/yr for the 1997- 2006 period. Inflows to the Subbasin result primarily from deep percolation of agricultural and landscape irrigation water and infiltration of precipitation. The estimated average total inflow for the 1997- 2006 period is 519,000 AF/yr. Approximately 72 percent of this quantity occurs on 245,000 irrigated acres of cropland within the Subbasin.

(*Id.* at p. 3.)

Under the Sustainable Groundwater Management Act (Wat. Code, § 10720 et seq.), the Turlock Subbasin is a high-priority basin. The Groundwater Management Act requires high and medium-priority basins to achieve sustainable management within 20-30 years of implementation of a Groundwater Sustainability Plan. (Wat. Code, § 10727.2, subd. (b).)

---

<sup>4</sup> The 2008 Turlock Groundwater Basin's Groundwater Management Plan is available in its entirety at [http://www.tid.com/sites/default/files/documents/tidweb\\_content/Groundwater%20Management%20Plan.pdf](http://www.tid.com/sites/default/files/documents/tidweb_content/Groundwater%20Management%20Plan.pdf) (last visited March 9, 2015).

“Sustainable groundwater management” is defined as “the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.” (Wat. Code, § 10721, subd. (u).) The statute defines “undesirable result” to mean one or more of several enumerated effects, including the chronic lowering of groundwater levels, significant and unreasonable degraded water quality, or significant and unreasonable reduction of groundwater storage. (Wat. Code, § 10721, subd. (w).)

8-10

As noted in TID’s technical comments, the Turlock Subbasin is already suffering from a cone of depression that has formed and continues to expand on the eastern side of the Subbasin, where irrigation use exceeds recharge. The Project will further disrupt the water balance of the Turlock Subbasin by exporting to DPWD in the Delta Mendota Subbasin recycled water that originates from the Turlock Subbasin. As mentioned above, the Project’s recycled water was being used to recharge groundwater in this subbasin through application of the recycled water to agricultural lands within the Turlock Subbasin boundaries in the relevant baseline setting. The Project will have foreseeable, significant impacts to the Turlock Subbasin that further threaten the region’s chances of achieving sustainable groundwater management by the deadlines in the Sustainable Groundwater Management Act.

---

#### **D. The DEIR’s Analysis of the Project’s Cumulative Impacts to the Turlock Groundwater Subbasin is Inadequate.**

An EIR must analyze cumulative impacts because “the full environmental impact of a proposed project cannot be gauged in a vacuum.” (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 114 (“*CBE v. Resources Agency*”).) The CEQA Guidelines define cumulative impacts to be “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.” (Guidelines, § 15355, subd. (b).) Thus, impacts that are “individually minor” may be “collectively significant.” (*Ibid.*) Similarly, cumulative impacts under NEPA are defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” (40 C.F.R. § 1508.7.)

8-11

As explained in the attached technical comments, the DEIR’s analysis of cumulative impacts violates CEQA and NEPA in two important ways. First, the cumulative impacts analysis for groundwater impacts simply references the discussion of project-specific groundwater impacts from the elimination of an average annual discharge of 18,000 AF of treated wastewater into the San Joaquin River and adopts the same less than significant conclusion reached for Impact HYD-3 (Substantial Depletion of Groundwater Supplies or Substantial Interference with Groundwater Recharge). (DEIR, pp. 3.11-20 to 3.11-23.) This approach is inadequate. Second, the DEIR does not identify and adequately discuss other reasonably foreseeable projects in the region, even though those other projects have the potential to affect the same resources as the

Project. The DEIR does not address cumulative impacts to the Turlock Subbasin or to TID's surface water supplies. As a result, the EIR does not accurately consider whether the Project's impacts to the Turlock Subbasin are cumulatively considerable.

CEQA requires a lead agency to undertake a two-step cumulative impacts analysis. First, the agency must consider whether the combined effects from the proposed project and other projects would be cumulatively significant. Second, the agency must then consider whether the "proposed project's incremental effects are cumulatively considerable." (*CBE v. Resources Agency*, *supra*, 103 Cal.App.4th at p. 120; Pub. Resources Code, § 21083, subd. (b)(2); Guidelines, §§ 15355, subd. (b), 15064, subd. (h)(1).) This two-part analysis reflects the legal and empirical reality that "the greater the existing environmental problems are, the lower the threshold should be for treating a project's contribution to cumulative impacts as significant." (*CBE v. Resources Agency*, *supra*, at p. 120.) Cursory statements of an agency's conclusions are inadequate under both CEQA and NEPA. (*Laurel Heights II*, *supra*, 6 Cal.4th at p. 1124; *Delaware Riverkeeper Network v. F.E.R.C.* (D.C. Cir. 2014) 753 F.3d 1304, 1320 [disapproving of conclusory, "cursory statement" in EIS that cumulative impacts would not be significant].)

Instead of following CEQA's mandate, the DEIR here betrays a fundamental misunderstanding of the statute. The document contains a single sentence on the Project's cumulative groundwater impacts, stating simply that, "[a]s discussed under **Impact HYD-3**, cumulative or long-term impacts of reduced San Joaquin River flows on groundwater storage would be less than significant." (DEIR, p. 3.11-27.) Thus, the EIR assumes that if the Project's impacts related to groundwater are less than significant (which they are not), then the impacts could not be cumulatively considerable. This approach turns cumulative analysis on its head and is a plain violation of CEQA and NEPA. An EIR may not conclude that a project will not contribute to cumulative impacts simply because it has a less than significant impact on a project level. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21.)

Aside from a lack of analysis or discussion of cumulative impacts to groundwater, the DEIR also includes an improperly narrow list of cumulative projects. (See DEIR, pp. 3-3 to 3-5.) In determining the universe of related probable projects to consider, CEQA gives a lead agency two options. An EIR can specifically identify "past, present, and probable future projects producing related or cumulative impacts." (Guidelines, § 15130, subd. (b)(1)(A).) Or the agency can rely on "[a] summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan." (Guidelines, § 15130, subd. (b)(1)(B).) Moreover, an EIR must "define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." (Guidelines, § 15130, subd. (b) (3).)

Here, the DEIR appears to use the "list method," but the DEIR's cumulative projects list is an "unduly narrow" list that "prevent[s] the severity and significance of the cumulative

impacts from being accurately reflected.” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1215; DEIR, pp. 3-3 to 3-5 [not including the Harding Drain Bypass Project and other projects relevant to groundwater impacts and the Turlock Subbasin].) For example, surface water supplies historically available to TID for irrigation are expected to be reduced significantly due to additional instream flow mandates as part of regulatory processes before the State Water Resources Control Board (SWRCB) and the Federal Energy Regulatory Commission. As noted in TID’s technical comments, the SWRCB’s December 2012 Draft Substitute Environmental Document analyzing Phase 1 of the Board’s Bay-Delta Water Quality Control Plan includes the Board’s Preferred Lower San Joaquin River Alternative. This Preferred Alternative would take 35% of the unimpaired February through June flows from the Tuolumne, Stanislaus, and Merced Rivers each year for environmental purposes.

8-11

It was reasonable and practical for the DEIR to include the omitted “past, present, and probable future projects producing related or cumulative impacts,” and “their exclusion prevented the severity and significance of the cumulative impacts from being accurately reflected.” (Guidelines, § 15130, subd. (b)(1)(A); 124 Cal.App.4th at p. 1215.)

---

#### **E. The DEIR Must Analyze Alternatives to Exporting the Recycled Water Outside the Groundwater Basin of Origin.**

CEQA requires an EIR to “describe a range of reasonable alternatives to the project . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects . . . and evaluate the comparative merits of the alternatives.” (Guidelines, §§ 15126.6, subd. (a), 15002, subd. (a)(3); see also 42 U.S.C. 4332(C)(iii) [NEPA requiring same].) The evaluation of alternatives must “contain analysis sufficient to allow informed decision making.” (*Laurel Heights I, supra*, 47 Cal.3d at pp. 404, 406 [requiring “meaningful detail”]; *Kings County, supra*, 221 Cal.App.3d at p. 735 [finding EIR lacked “quantitative, comparative analysis” of alternatives].)

The alternatives analyzed in the DEIR all consist of alignment alternatives: (1) Combined Alignment Alternative, (2) Separate Alignment Alternative, and (3) PID Conveyance Alternative. (DEIR, pp. 2-1 to 2- 6.) Because the Project Objectives are crafted to be artificially narrow, the DEIR improperly fails to consider reasonable alternative uses of recycled water from the Cities of Turlock and Modesto that avoid exporting the water outside of its groundwater basin of origin. (See DEIR, p. 1-12 [project objectives include “[d]eliver[ing] agricultural water to DPWD at a cost that supports regional economic sustainability”].) There are many potential uses of the recycled water by the cities and water purveyors, which can send their sewage to either the Turlock or Modesto WWTPs. For example, the recycled water can be applied to agricultural uses within the Turlock Subbasin, especially within the eastern portion of the Subbasin experiencing a substantial drawdown of groundwater levels.

8-12

As explained above, the DEIR failed to adequately analyze impacts to agricultural water supplies and groundwater, including cumulative impacts to the Turlock Subbasin. Because these

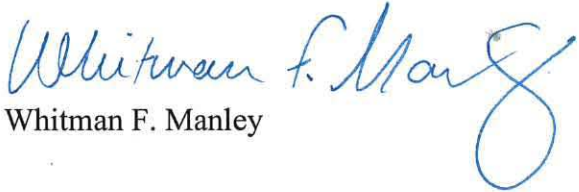
U.S. Bureau of Reclamation – attn. Ben Lawrence  
City of Modesto – attn. William Wong  
March 9, 2015  
Page 12

impacts are significant, the DEIR must consider additional alternatives that would avoid or substantially lessen these significant effects. (See Guidelines, §§ 15126.6, subd. (a), 15002, subd. (a)(3) [one basic purpose of CEQA is to “[p]revent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible”].)

### CONCLUSION

TID recommends that the agencies revise the DEIR to address these problems, and recirculate the DEIR for further public review and comment. We appreciate the opportunity to provide these comments and look forward to your responses.

Very truly yours,

  
Whitman F. Manley

#### Attachments:

- Exhibit A: TID's March 9, 2015 technical comments on the North Valley Regional Recycled Water Program Draft EIR, and associated attachments
- Exhibit B: TID's May 20, 2014 Scoping Comments for the Proposed North Valley Regional Recycled Water Program EIS/EIR
- Exhibit C: Excerpts from the Turlock Groundwater Basin's Groundwater Management Plan, March 18, 2008



SUBMITTED VIA E-MAIL ( [blawrence@usbr.gov](mailto:blawrence@usbr.gov) and [wwong@modestogov.com](mailto:wwong@modestogov.com) ) AND U.S. MAIL

March 9, 2015

United States Bureau of Reclamation  
Attn: Benjamin Lawrence  
1243 N Street, SCC-412  
Fresno, CA 93721

William Wong  
City of Modesto  
Deputy Director, Utility Planning & Projects Department  
1010 Tenth Street, 4th Floor  
Modesto, CA 95354

---

**Subject: Comments on Draft Environmental Impact Report/Environmental Impact Statement for the Proposed North Valley Regional Recycled Water Program**

Dear Mr. Lawrence and Mr. Wong:

Turlock Irrigation District ("TID") is appreciative of the opportunity to provide the following comments on the Draft EIR/EIS (collectively "DEIR") for the Proposed North Valley Regional Recycled Water Program ("NVRWP").

Formed in 1887 as the first publicly owned irrigation district in California, TID today serves water to approximately 5,800 growers who irrigate approximately 150,000 acres within TID's irrigation boundary within southern Stanislaus County and northern Merced County. Additionally TID provides electric service to nearly 100,000 accounts.

8-13

The conjunctive use of Tuolumne River surface water applied on farmland to recharge groundwater resources is a key water management strategy that has been employed by TID for decades. Planned recharge in wet years, combined with strategic pumping in dry years has been to the long-term benefit of the 347,000 acres that overlie the Turlock Subbasin.

TID filed Scoping Comments on the NVRWP May 20, 2015. In its Scoping Comments, TID identified several key areas in which the environmental analysis of the project would need to address. TID's Scoping Comments are enclosed and attached to the letter from our legal counsel.

TID's Scoping Comments were not adequately addressed in the DEIR. Based upon the reasons outlined below and in the letter from our legal counsel, the DEIR is narrowly focused and legally deficient. The focus must be broadened and these deficiencies must be reconciled within a recirculated Draft EIR/EIS or a more comprehensive Final EIR/EIS.

---

## **I. The DEIR Fails to Adequately Describe the Physical Environmental Setting and Baseline Conditions**

In particular, the DEIR fails to accurately:

8-14 (1) describe and identify the Turlock Groundwater Subbasin as the source of the City of Turlock's recycled water that the Project proposes to export to Del Puerto Water District (DPWD) in the Delta-Mendota Subbasin (see DEIR, p. 1-8 [providing estimate of total recycled water available "at buildout" without providing description of or figures for the currently available recycled water]);

---

8-15 (2) describe the City of Turlock's use of the Harding Drain in 2014, and use by TID and others of the City's recycled water from the Harding Drain in 2014 (see DEIR, p. 1-9); and

---

8-16 (3) describe the City of Modesto's application of its tertiary and secondary treated wastewater to agricultural lands leased to farmers within TID's irrigation service boundaries and when the tertiary water application will be reduced or curtailed entirely (see DEIR, p. 1-9 [brief mention of application of treated wastewater to "Modesto-owned ranch land"]).

---

### **A. The Turlock Groundwater Subbasin is the Area of Origin of the City of Turlock's Recycled Water and a Portion of the City of Modesto's Recycled Water**

The Turlock Subbasin is the area of origin for most Turlock wastewater treatment plant ("WWTP") sewer flows and a portion of the City of Modesto's sewer flows.

8-17 The Turlock Subbasin is described in the 2008 Turlock Groundwater Basin Groundwater Management Plan ("GWMP"). The GWMP was adopted by TID on March 18, 2008 and by the City of Turlock on Feb. 26, 2008. Figures 1, 5 and 6 of the GWMP shows the location, boundaries, and characteristics of the Turlock Subbasin and are attached for reference (Attachments 1, 2 and 3, respectively). The Subbasin is bounded by the Tuolumne River on the north, the Merced River on the south, the San Joaquin River on the west, and on the east by the western extent of the outcrop of crystalline basement rock in the foothills of the Sierra Nevada Mountains. The City of Turlock, the City of Ceres, the portion of the City of Modesto located south of the Tuolumne River ("South Modesto"), and the communities of Denair and Keyes are all within this Subbasin and within TID's irrigation boundaries. As of 2008, the Subbasin underlies an area of approximately 347,000 acres, with irrigated crops (245,000 acres), native

vegetation (69,000 acres), and urban development (20,000 acres) as the predominant land uses. Urban development and irrigated lands have expanded since 2008, most of which are in 100% groundwater-dependent areas.

Except for a small amount of recycled water use, the water source for municipal and industrial water (“M&I”) uses within the cities of Turlock and Ceres, South Modesto, and the communities of Denair and Keyes is groundwater pumped from the Turlock Subbasin. Much of that groundwater ends up as sewer flows to the Turlock WWTP. South Modesto and some of Ceres’ sewer flows go to the Modesto WWTP. Figure 15i of the GWMP (Attachment 4) shows the annual pumping from municipal wells for Turlock from 1952 to 2006. The following table summarizes the amount of potable groundwater pumped, in acre-feet (AF) by those four public entities during 2012:

| Turlock   | Ceres    | Denair   | Keyes  | 2012 Total |
|-----------|----------|----------|--------|------------|
| 21,668 AF | 8,056 AF | 1,522 AF | 927 AF | 32,173 AF  |

In addition to the above potable groundwater amount, the City of Turlock also pumped 398 AF for landscape irrigation.

8-17  
Cont'd

Average local rainfall within the Turlock Subbasin is about 13 inches per year. Overall averages are slightly higher on the eastern side, and slightly lower to the west. Recharge is mainly from irrigation water imported by TID from the Tuolumne River, and to a lesser extent from the Merced River by others. See GWMP Figure 19 (Attachment 5). Historically predominant rangeland on the eastern side of the Subbasin without access to surface water supplies continues to transition to permanent crops, increasing demand on the Turlock Subbasin’s groundwater supply. As more and more Tuolumne River surface water is required for instream flow requirements and other uses, water users within the Turlock Subbasin will become more reliant upon groundwater to compensate for future surface water supply shortages.

A cone of depression has formed and continues to expand and deepen on the eastern side of the Turlock Subbasin, where irrigation use exceeds recharge. The cone continues to expand, extending to the west to Denair and Turlock and toward the rivers as additional lands go into production. Recent groundwater contour maps indicate that while the community of Denair is located in the area of the Subbasin where groundwater flows eastward (i.e. toward the cone of depression). Turlock, Keyes, and Ceres are located to the west of the cone, in an area where the gradient causes groundwater to flow toward the SJR, including groundwater within the freshwater confined aquifer. GWMP Figure 7 showing the groundwater movement within the Subbasin (Attachment 6) and a map showing the Subbasin’s 2010 groundwater levels and a graphic (Attachment 7) showing estimated groundwater level profiles for 1960, 2005, and 2010 are attached for reference.

The Turlock Subbasin has significant groundwater issues and groundwater-related environmental concerns. These are widely recognized but are not addressed in the DEIR.

8-17  
Cont'd

While the proposed transfer to Del Puerto Water District (“DPWD”) would help alleviate impacts to DPWD from reduced water supplies from the Delta, it will result in redirected impacts to the Turlock Subbasin. While TID is sympathetic to the situation within DPWD, there is a significant local demand for water supplies by both municipal water purveyors and growers within the Turlock Subbasin. The export of recycled water to DPWD will eliminate the ability to reuse this recycled water within the Turlock Subbasin where the water originated. In addition, surface water supplies historically available to TID for irrigation are expected to be reduced significantly due to additional instream flow mandates as part of regulatory processes before the State Water Resources Control Board and the Federal Energy Regulatory Commission. For example, the State Water Resources Control Board’s Draft Substitute Environmental Document analyzing Phase 1 of the Board’s Bay-Delta Water Quality Control Plan, released in December 2012, includes the Board’s Preferred Lower San Joaquin River Alternative. This Preferred Alternative would take 35% of the unimpaired February through June flows from the Tuolumne, Stanislaus, and Merced Rivers each year for environmental purposes. These issues underscore the need to keep Turlock Subbasin water supplies within the Turlock Subbasin.

---

#### **B. Uses of the City of Turlock’s Recycled Water within the Turlock Subbasin**

8-18

The DEIR fails to describe the uses of the City of Turlock’s recycled water within the Turlock Subbasin during the environmental baseline period of up through 2014. As the DEIR notes, at 1-9, the Harding Drain is an open channel owned by TID. There are eight private pumps and one TID pump (Pump 152) that takes water from the Harding Drain for agricultural purposes. See attached map of the Harding Drain (Attachment 8) and the location of the nine pumps. TID pumps approximately 3,000 AF and the eight private pumps approximately 2,000 AF per year, or approximately 5,000 AF per year. During 2013, TID pumped 3,166 AF and during 2014, TID pumped 2,295 AF out of the Harding Drain, which could be delivered to up to 3,275 acres within that portion of TID’s irrigation service area. Consequently, the City of Turlock, until 2015, was not disposing of its recycled water through its Harding Drain Bypass Pipeline directly to the San Joaquin River. Therefore, the DEIR statement on page 1-9 that “Turlock currently discharges an average annual flow of 10 mgd to the San Joaquin River via the Harding Drain Bypass Pipeline” is not a true statement, since Turlock only started bypassing the Harding Drain and using the bypass pipeline in January 2015.

8-19

The conditions “on the ground” in 2014, which properly reflect the historical usage of the Harding Drain, is the relevant baseline condition from which the Project’s impacts need to analyze. The removal of the City’s recycled water from the Harding Drain will put greater demands on TID to provide additional Tuolumne River surface water and on Turlock Subbasin groundwater to replace the exported recycled water. Additional groundwater will be pumped

when TID surface water is not available, such as in drought years and where surface water is lost to regulatory processes described above. This additional Turlock Subbasin groundwater demand resulting from the export of recycled water has cumulative impacts that need to be addressed and which also are relevant to possible Project alternatives.

8-19  
cont'd

The City of Turlock uses a small amount of recycled water to irrigate its Pedretti Baseball Park, but does not use recycled water for any other city park or for city landscaped area. By agreement with TID, the City of Turlock delivers approximately 2,000 AFY for cooling water purposes to TID's Walnut Energy Center, a 250-megawatt natural gas-fired, combustion turbine based, combined-cycle electric generating plant.

---

### **C. City of Modesto's application of recycled water to agricultural lands within TID service area boundaries**

The City of Modesto has been delivering primary treated effluent from its Sutter Avenue WWTP to its Jennings Road secondary WWTP since the late 1960's when the Jennings Road WWTP was constructed. The attached Wastewater Treatment Facilities Schematic (Attachment 9) is from the City of Modesto's 2007 Wastewater Treatment Master Plan Update. The Master Plan reports that the Modesto Ranch's "Irrigation Land" consists of 2,526 acres. It is TID's understanding that during 2014, because of drought conditions causing low flows in the San Joaquin River ("SJR"), the City of Modesto did not make any discharges to the San Joaquin River and applied all of its recycled water on the Modesto Ranch land to grow alfalfa, corn, and other forage crops. The City of Modesto may only discharge secondary-treated wastewater during the time period and only when sufficient dilution flows exist in the SJR as stated in the DEIR, at 1-8:

*"The secondary effluent is applied to Modesto-owned ranch land (approximately 2,500 acres) or is discharged to the San Joaquin River from October 1 through May 31, when river flows provide a 20:1 dilution ratio."*

8-20

Most of the City of Modesto lies north of the Tuolumne River within the Modesto Subbasin and within the Modesto Irrigation District (MID).<sup>1</sup> Except for the sewage originating from the City of Ceres and from that portion of the City of Modesto lying south of the Tuolumne River, most of Modesto's sewer flows originate outside of the Turlock Subbasin.

As discussed in more detail below, the DEIR states that Modesto's secondary effluent is applied to Modesto-owned ranch land consisting of approximately 2,500 acres although no AFY numbers are disclosed and that since 2010 when Phase 1 of Modesto's treatment upgrades

---

<sup>1</sup> Pursuant to an 1890 Agreement, TID and MID share their individually and jointly owned water rights to the flows of the Tuolumne River at the La Grange Dam. TID has been unable to ascertain MID's position on the NVRRWP because Section 24.2, p. 47, of MID's 2005 Treatment and Delivery Agreement with the City of Modesto bars MID from objecting to any "reclaimed water usage, transportation or sale [by the City of Modesto] to any, [sic] court, administrative agency or other body or tribunal with jurisdiction over any such use, or in the press."

were completed, Modesto provides all 2.3 MGD [2,581 AFY] of tertiary effluent to the Modesto-owned ranch land. An aerial map of the “Modesto-owned ranch land” prepared by TID staff with Notes is enclosed for reference (Attachment 10). Of the 2,100 acres of the Modesto’s ranch land, 1,235.26 acres have not been irrigated with TID water for some 25 years and 115 acres have not been irrigated with TID water for 15 years. The Regional Water Quality Control Board’s requirements severely limiting Modesto’s ability to discharge Modesto’s treated sewage into the San Joaquin has benefitted the Turlock Subbasin groundwater for many years.

On November 3, 2010, the City of Modesto entered into that certain “Agreement for Lease of Agricultural Land – Jennings Ranch” with a Wendel Trinkler, Jr., Lessee (“Modesto Ranch Lease” or “Lease”). A copy of the Lease is attached (Attachment 11). The Lease has the following significant provisions:

- Section 1, page 2 of the Lease, provides that the Lease is for “a ten (10) year term commencing on January 31, 2011, and ending on the last day of December 2020.” The “Lessee is given three (3) four-year options to extend the term.” However, the City “at City’s sole option” may not grant any extended term if, for example, there are changes in the volume of treated wastewater available for irrigation.
- Section 4.H, page 5, obligates the City to “provide a full water supply to Lessee necessary to meet crop water demand for agricultural crops grown by Lessee at Jennings Ranch during the lease term,” but “Such water necessary to provide said full supply may come from a combination of sources including but not limited to . . . groundwater and irrigation district surface water.”
- Section 22, page 10, states, “The delivery of tertiary treated wastewater to Jennings Ranch is not included as part of this Agreement and any such delivery shall be at the sole option of City.” In other words, the City may unilaterally stop all future deliveries of tertiary water to its Lessee at any time in order to sell that tertiary treated wastewater to DPWD.

Continued application of Modesto’s treated wastewater at the existing quantity levels on the Modesto Ranch lands must be required until long-term groundwater sustainability is achieved within the Turlock Subbasin. The requirement would apply even if the land is sold by Modesto. Discontinuation or significant reduction in that use will cause a significant adverse environmental impact on the Turlock Subbasin by the removal of this source of groundwater recharge and the resulting substitute use of groundwater and/or TID’s surface water on those acres within TID. This is TID’s main concern with the City of Modesto’s participation in the NVRWP.

## **II. The DEIR Fails to Adequately Analyze the Project's Impacts on Groundwater**

### **A. The NVRRWP Proposes to Export Turlock Subbasin Water to the Del Puerto WD and the Delta-Mendota Subbasin within Stanislaus County**

The DPWD provides irrigation water to 45,000 acres of farmland within western San Joaquin, Stanislaus, and Merced counties. The Delta-Mendota Subbasin reaches from western Stanislaus, Merced, and Fresno counties. The groundwater conditions within western Stanislaus County is in better condition than within the eastern side of the Turlock Subbasin. The Delta-Mendota Subbasin is hydrologically separated from the Turlock Subbasin by the San Joaquin River. 8-21

The Delta-Mendota Canal (“DMC”) conveys Central Valley Project (“CVP”) water from the Jones Pumping Plant in the Delta through western San Joaquin, Stanislaus, Merced, and Fresno counties, terminating at the Westlands Water District. While the DEIR emphasizes the benefits of the proposed Project to western Stanislaus County, once the NVRRWP recycled water is discharged into the Delta Mendota Canal, some of the water will flow out of Stanislaus County for use within Merced and Fresno counties.

---

### **B. The Sustainable Groundwater Management Act Requires Cities and Water Districts within the Turlock Subbasin to Achieve Groundwater Sustainability**

In 2014, the California Legislature adopted and Governor Brown signed a package of three bills that brought comprehensive groundwater regulation to California. That legislation is collectively referred to as the Sustainable Groundwater Management Act (“SGMA”). The major requirement of the SGMA is that local public agencies must implement measures to achieve groundwater sustainability over the long term within the groundwater subbasin from which they and private users extract groundwater. Extensive articles and materials on the SGMA have been published. See, e.g., “The 2014 Sustainable Groundwater Management Act: A Handbook to Understanding and Implementing the Law,” Water Education Foundation, 2015. 8-22

The mandates of the SGMA support and validate TID’s concerns in its DEIR comments about the need to provide long-term for a sustainable Turlock Subbasin through the integrated and coordinated use of groundwater, surface water, and recycled water.

The DEIR’s gratuitous and totally unsupported conclusionary statement regarding the Project’s compliance with the SGMA is at pages 3.11-22 to 3.1- 23, which states, under the No Action Alternative:

*“Extraction of groundwater would be conducted within the bounds of existing regulations, including recently passed legislation, specifically SB 1168, AB 1739, and SB 1319, which together enacted the Sustainable Groundwater Management*

*Act providing a framework for improved management of groundwater supplies by local authorities.”*

8-22  
cont'd

In fact, this is the only specific location in the DEIR where it mentions the “extraction of groundwater.” One of TID’s major points as discussed in Section I.A above and elsewhere is that the DEIR fails to discuss the extraction of groundwater within the Turlock Subbasin. This groundwater ends up as recycled water. The DEIR fails to discuss the consequences to the Turlock Subbasin’s long-term sustainability caused by the export of 59,000 AFY of recycled water out of Turlock Subbasin at Project Buildout.

The Project will further disrupt the water balance of the Turlock Subbasin by exporting to Del Puerto Water District located within the Delta-Mendota Subbasin the NVRRWP recycled water that originates from the Turlock Subbasin. As mentioned above, the Project’s recycled water was being used to recharge groundwater in this subbasin through application of the recycled water to agricultural lands within the Turlock Subbasin boundaries in the relevant baseline setting.

---

### **III. There are deficiencies in DEIR/EIS’s use of data**

While the DEIR is dated January 2015, all of the data used in the DEIR must be as a practical matter be pre-2015 data.

8-23

The DEIR data is presented in a way that is either misleading or makes it difficult for a reader to be able to analyze the data or the DEIR provides conflicting information. A good example of that is the DEIR’s presentation or lack of full disclosure on “Recycled Water Availability.” Table 1-2, Recycled Water Availability at Buildout” (which is defined as 2045), shows Modesto at 30,600 AFY and Turlock at 28,400 AFY for a total of 59,000 AFY. Yet there is no table in the DEIR, which shows Recycled Water Availability in 2014. Table ES-1 in the NVRRWP Feasibility Study reports “2018 Available Recycled Water” of 16,500 AFY for Modesto and 14,150 AFY for Turlock, for a total of 30,600 AFY.

---

We know the following from the statements on pages 1-8 to 1-9 of the DEIR:

8-24

- Modesto’s secondary effluent is applied to Modesto-owned ranch land consisting of approximately 2,500 acres.
- Since 2010 when Phase 1 of Modesto’s treatment upgrades were completed, Modesto provides all 2.3 MGD [2,581 AFY] of tertiary effluent to the Modesto-owned ranch land.
- Modesto’s Phase 2 treatment upgrades are scheduled to be online by February 2016 and will provide an additional 12.6 MGD of tertiary treatment capacity, bringing the total tertiary treatment capacity of 14.9 MGD [16,718 AFY]. Note that the 16,718 AFY number

supports the 16,500 AFY 2018 Available Recycled Water number in the Feasibility Study Table ES-1.

- Modesto is planning to continue to increase tertiary treatment capacity to 27.3 MGD [30,855 AFY] by build-out (i.e., 2045) and the DEIR goes on to state that “this water would be available for the proposed project.” Note that the 30,855 AFY number supports the 30,600 AFY 2045/Buildout Available Recycled Water number in the Feasibility Study Table ES-1 and in DEIR Table 1-2.
- In addition, the NVRRWP’s Response to TID’s scoping comments, the NVRRWP stated the following:

*“There will be no change to the existing uses of recycled water; these uses are as follows:*

- *Turlock Irrigation District Walnut Energy Center*
- *Modesto Ranch Irrigation (adjacent to treatment plant)*
- *City of Turlock Pedretti Park.*”

---

The above DEIR data and representations in the Responses to TID’s scoping comments raise several key questions, including the following:

1. Is it correct to state that as used in the DEIR, the term “recycled water” only means tertiary treated wastewater, which has been “oxidized, filtered, and adequately disinfected, pursuant to the CDPH reclamation criteria, CCR, Title 22, division 4, chapter 3, (Title 22) or equivalent” and “would also have to comply with Reclamation’s water quality standards for the Upper DMC”? See DEIR, Section 1.1.7, at 1-10 to 1-11. Is it also correct to state that any wastewater, which has only been secondary treated, would not be classified as “recycled water” for purposes of this DEIR? 8-25
2. What does the term “Available Recycled Water” mean as used in both DEIR Table 1-2 and Feasibility Study Table ES-1? From the above data, is it a correct statement that all of the tertiary treated recycled water produced at both the Turlock and Modesto WWTPs will be sold to DPWD? 8-26
3. If the last sentence in No. 2 above is an incorrect statement, where is it disclosed in the DEIR the amounts of the “Net Available Recycled Water” proposed to be sold to DPWD from the City of Turlock and from the City of Modesto upon commercial operation of the Project? “Net” meaning net of existing uses, which the NVRRWP Response emphatically states above that there would be “no change”? So is 30,600 AFY the net amount proposed to be sold to DPWD in 2018 and is 59,000 AFY the net amount proposed to be sold to DPWD at Project “Buildout”? 8-27

- 8-28 4. As discussed above in Section I.C, the City of Modesto may unilaterally cease delivering any tertiary treated recycled water under the Modesto Ranch Lease and sell all such water to DPWD. The DEIR states at the top of page 1-9 that all 30,855 AF “would be available for the proposed project.” Would it be correct to state that the City of Modesto intends to discontinue using tertiary treated recycled water on more than 2,500 acres of City-owned ranch land and sell all such water to DPWD? Is it also correct to state that the City of Modesto’s representation quoted above that “There will be no change in the existing uses of recycled water” at Modesto Irrigation Ranch is not a true statement?
- 

#### **IV. There are Deficiencies in Impact HYD-3 Analysis (Substantial Depletion of Groundwater Supplies or Substantial Interference with Groundwater Recharge)**

8-29 A major focus of the DEIR is to address the potential impacts to San Joaquin River fisheries and water quality of withdrawing approximately 18,000 AFY of secondary and tertiary treated wastewater from the San Joaquin River.<sup>2</sup> Consequently, Impact HYD-3 only analyzes the impact of the proposed Project’s reductions in the San Joaquin River stream flows on groundwater storage. See DEIR at 3.11-20. As shown by the comments in this letter, the DEIR’s narrow analysis is legally deficient and the Bureau and the City of Modesto will need to prepare a legally sufficient analysis of the groundwater impacts of the proposed project and recirculate a revised DEIR if they choose to proceed with the proposed Project.

---

#### **V. The DEIR's Analysis of the Project's Cumulative Impacts to the Turlock Groundwater Subbasin is Inadequate and Violates CEQA**

8-30 The DEIR states, when addressing “Cumulative Impacts to Groundwater Storage”, at 3.11-27, “As discussed under Impact HYD-3, cumulative or long-term impacts of reduced San Joaquin River flows on groundwater storage would be less than significant.” The DEIR’s analysis of cumulative impacts violates CEQA in two important ways. First, the cumulative impacts analysis for groundwater impacts simply references the discussion of project-specific groundwater impacts and adopts the same less than significant conclusion reached for Impact HYD-3 (Substantial Depletion of Groundwater Supplies or Substantial Interference with Groundwater Recharge) (DEIR, pp. 3.11-20 to 3.11-23.). This is inadequate. Second, the DEIR does not address cumulative impacts to the Turlock Subbasin or to TID’s surface water supplies. As a result, the EIR did not accurately consider whether the Project’s impacts to the Turlock Subbasin are cumulatively considerable.

---

<sup>2</sup> As discussed in Section I.B above, alleged average of 18,000 AFY is incorrect because of the approximately 5,000 AFY of Harding Drain water diverted for agricultural uses through 2014.

Therefore, the “Cumulative Impacts to Groundwater Storage” as described in the DEIR fail to analyze the cumulative impacts to the Turlock Subbasin. Additionally, the DEIR fails to provide a sufficient analysis regarding the cumulative impacts to TID’s surface water supplies with the withdrawal of recycled water from the Harding Drain and from City of Modesto-owned lands.

---

## **VI. The DEIR Improperly Fails to Analyze Alternatives to Exporting the Recycled Water Outside the Groundwater Subbasin of Origin**

The DEIR improperly fails to consider any reasonable alternative uses of recycled water from the Cities of Turlock and Modesto that avoid exporting the water outside of its groundwater basin of origin. (See DEIR, p. 1-12 [project objectives include “[d]eliver[ing] agricultural water to DPWD at a cost that supports regional economic sustainability”].) The Project objective of “regional economic sustainability” has now been overridden by the SGMA requirement that the Turlock Subbasin achieve groundwater sustainability. The proposed export of all of the recycled water proposed by this Project (some 59,000 AFY) could very well be a major factor in preventing the achievement of long-term groundwater sustainability within the Turlock Subbasin. Assisting to achieve groundwater sustainability within the Merced and Fresno county portions as well as the Stanislaus County portion of the Delta-Mendota Subbasin does not reduce in any way the SGMA obligations upon the City of Turlock, the City of Modesto, and those other public entities pumping groundwater and sending wastewater to the two WWTPs from achieving groundwater sustainability within the Turlock Subbasin.

8-31

The DEIR should also have analyzed alternative uses of recycled water within the Cities of Turlock, Modesto, and Ceres to reduce the extraction of groundwater by those cities. Those alternatives were obviously not considered because they would not bring any revenue to Turlock or Modesto as would the sale of recycled water to DPWD. As stated above, the cities are required to take steps to achieve groundwater sustainability within the Turlock Subbasin. In addition, as shown in the comments contained in Section I.A above, the eastern side of the Turlock Subbasin is experiencing a chronic lowering of groundwater levels. Both the Cities of Turlock and Modesto are aware of this groundwater problem. Yet the DEIR fails to present an alternative use of at least some of their recycled water to help address that problem.

## CONCLUSION

TID recommends that the agencies revise the DEIR to address these problems, and recirculate the DEIR for further public review and comment. We appreciate the opportunity to provide these comments and look forward to your responses.

Very truly yours,

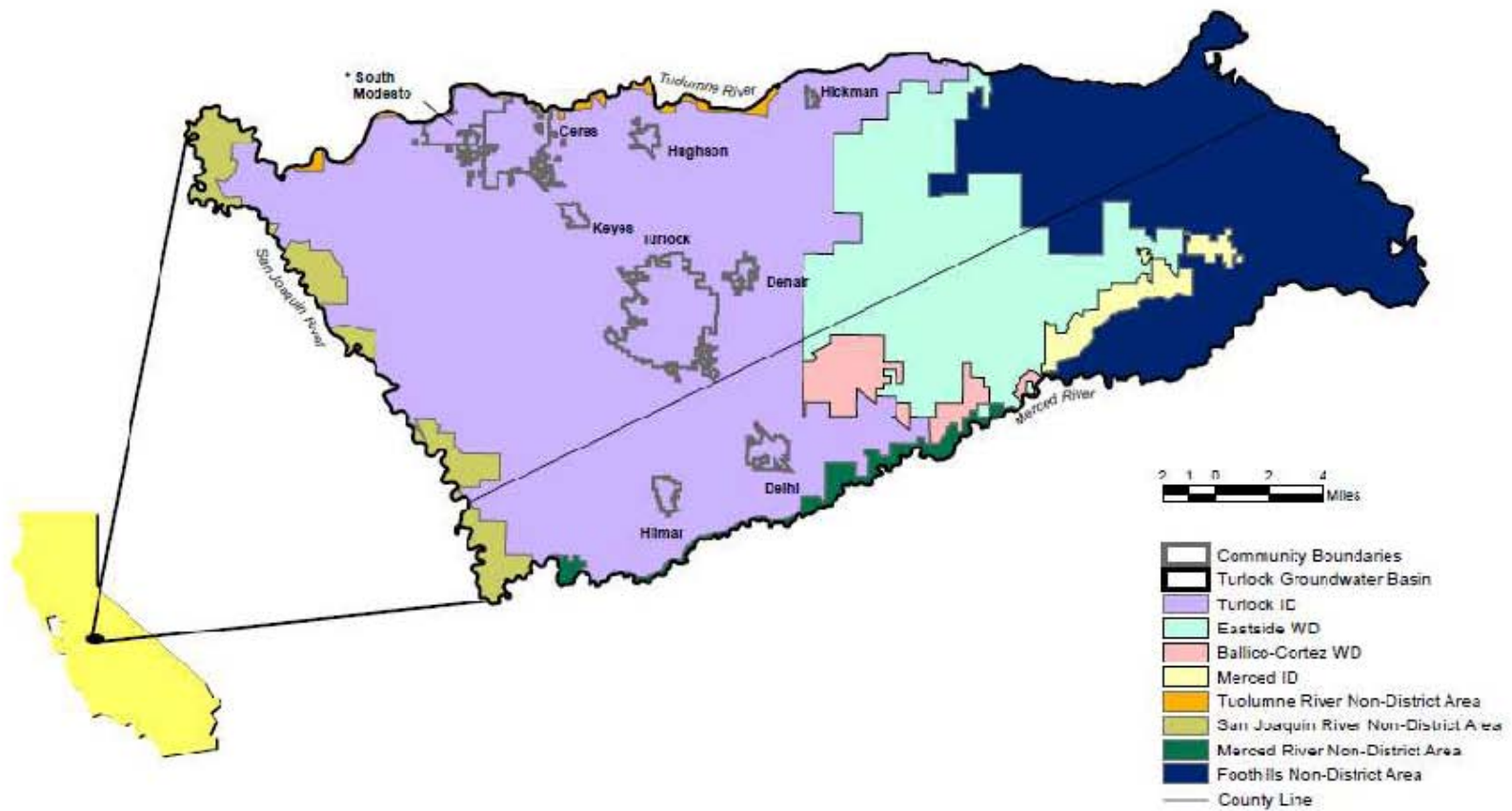


Casey Hashimoto, P.E.  
General Manager

### Attachments:

8-32

1. Turlock Groundwater Subbasin Groundwater Management Plan, Figure 1
2. Turlock Groundwater Subbasin Groundwater Management Plan, Figure 5
3. Turlock Groundwater Subbasin Groundwater Management Plan, Figure 6
4. Turlock Groundwater Subbasin Groundwater Management Plan, Figure 15i
5. Turlock Groundwater Subbasin Groundwater Management Plan, Figure 19
6. Turlock Groundwater Subbasin Groundwater Management Plan, Figure 7
7. Turlock Groundwater Subbasin's 2010 groundwater levels
8. Map of locations where water is pumped from the Harding Drain
9. City of Modesto Wastewater Treatment Facilities Schematic
10. Modesto-owned ranch land map, with notes
11. "Modesto Ranch" Lease



\* South Modesto represents the City of Modesto Service Area South of the Tuolumne River

Figure 1. Turlock Groundwater Basin Location and Boundaries

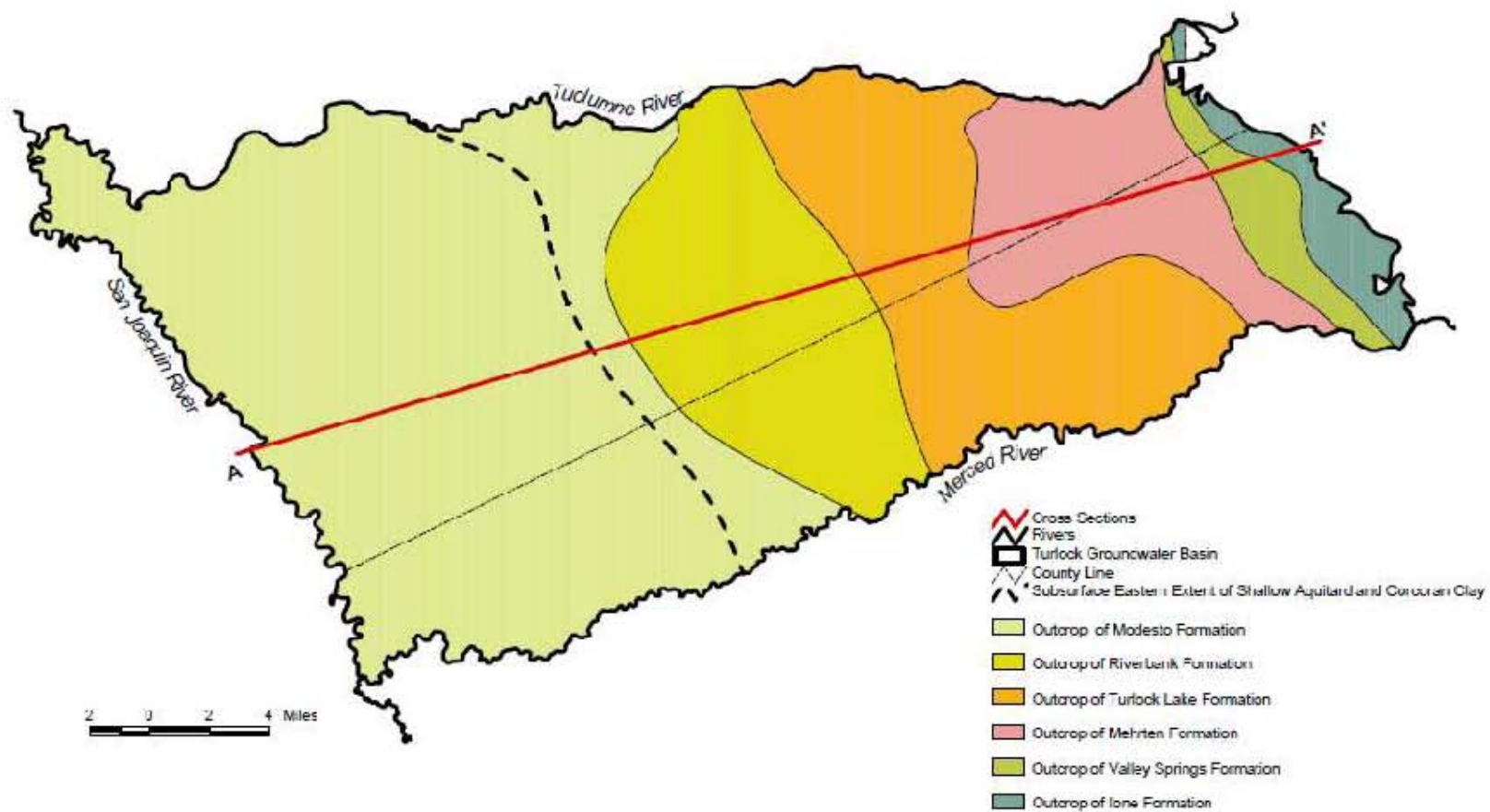


Figure 5. Hydrogeologic Units Represented within the Groundwater Model

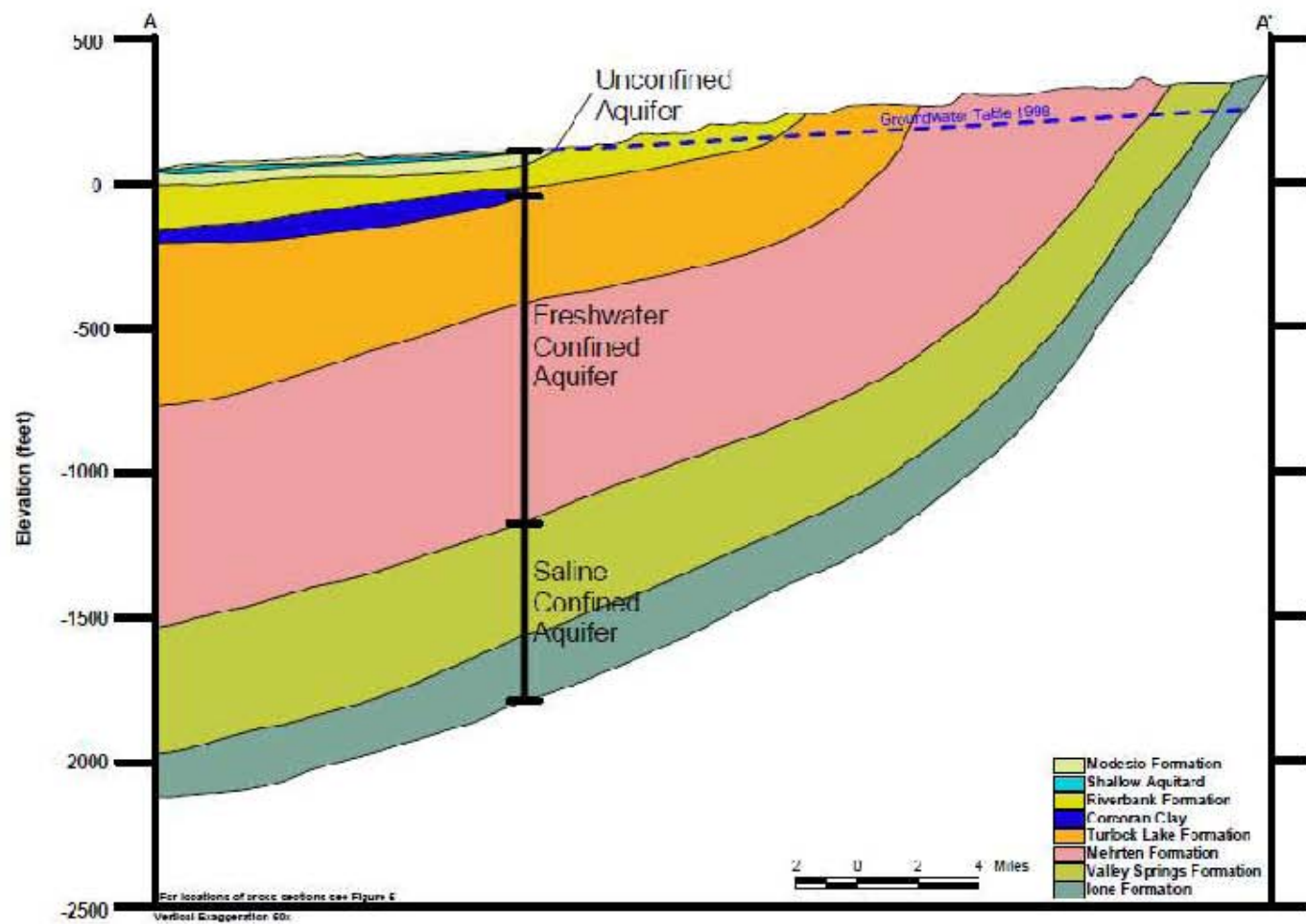
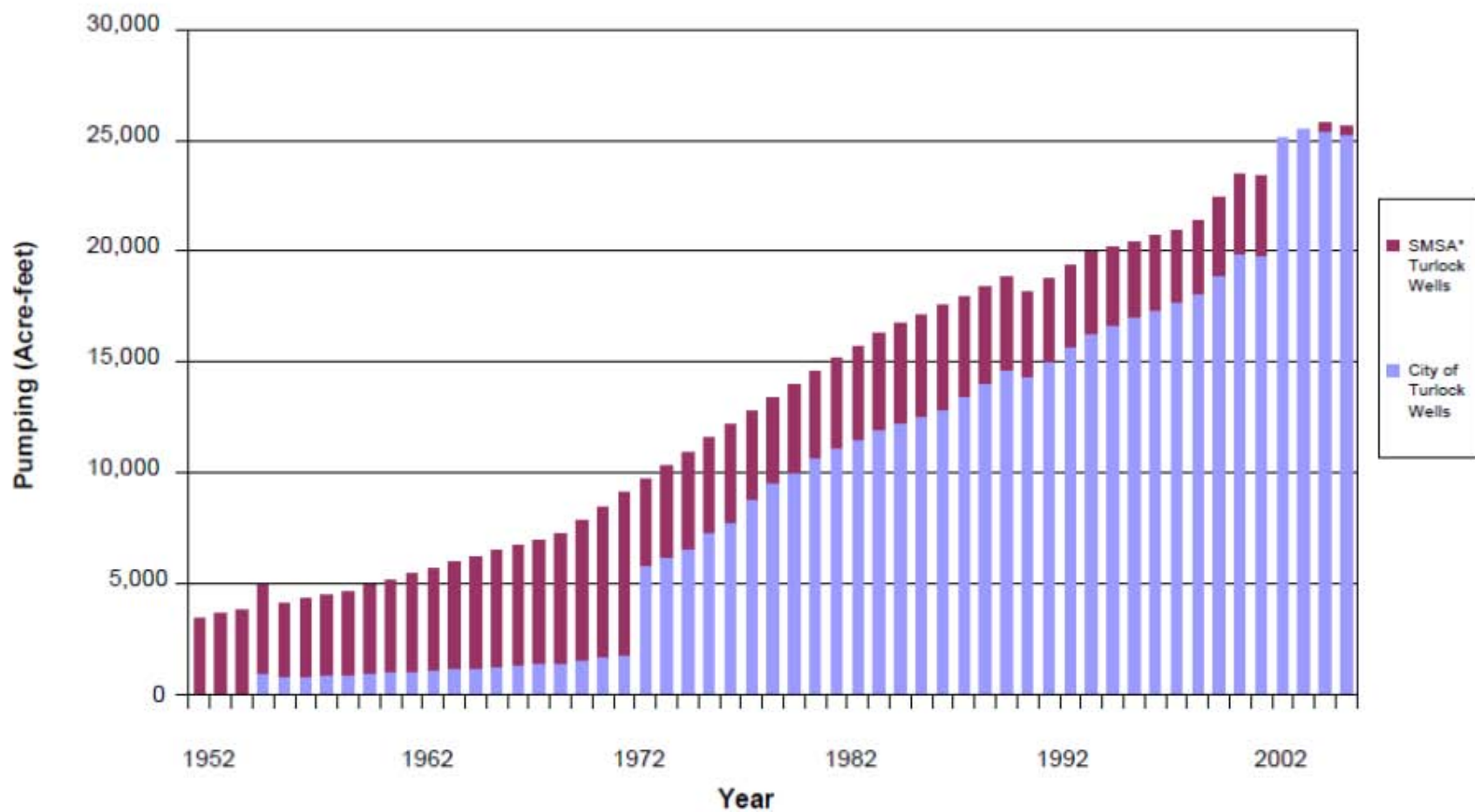


Figure 6. East-West Cross-Section Showing Hydrogeologic Units within the Groundwater Basin



**Figure 15i. Annual Pumpage from Municipal Wells for Turlock, 1952-2006**

\*SMTA (South Modesto Service Area) Turlock Wells are within the City of Turlock and operated by the City of Modesto

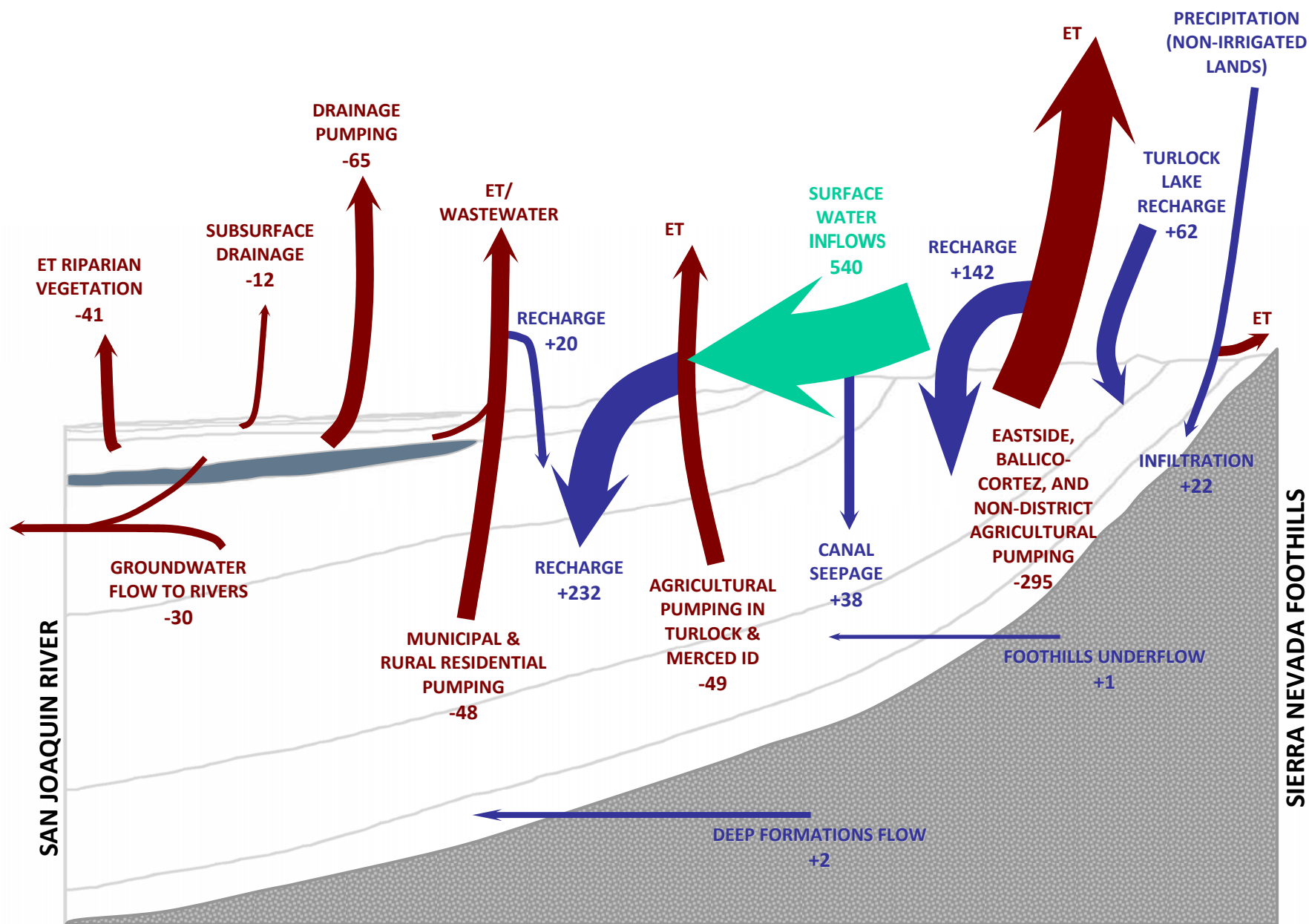


Figure 19. Estimated Turlock Groundwater Basin Water Budget, 1997-2006 (Thousands of Acre-Feet per Year)

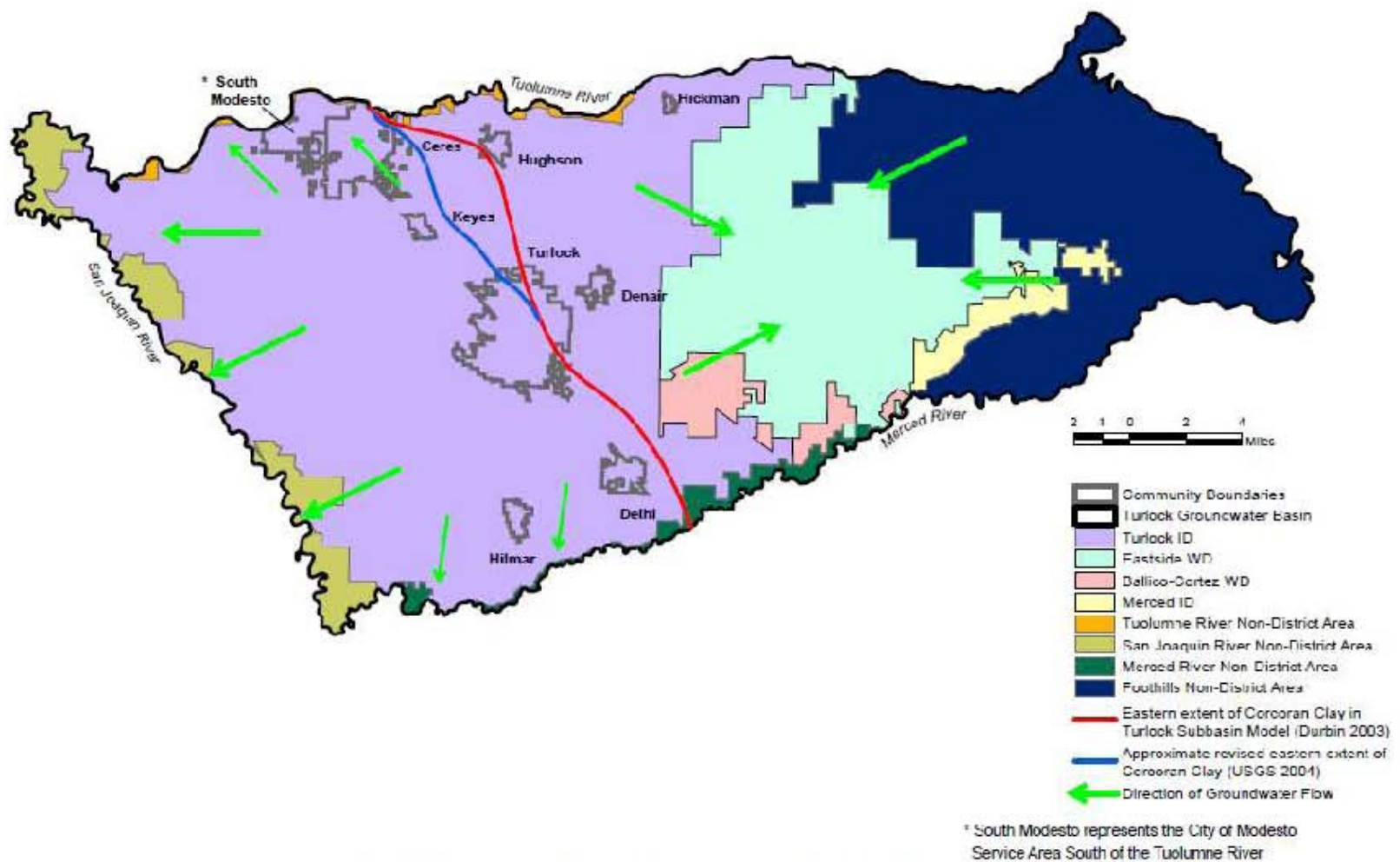
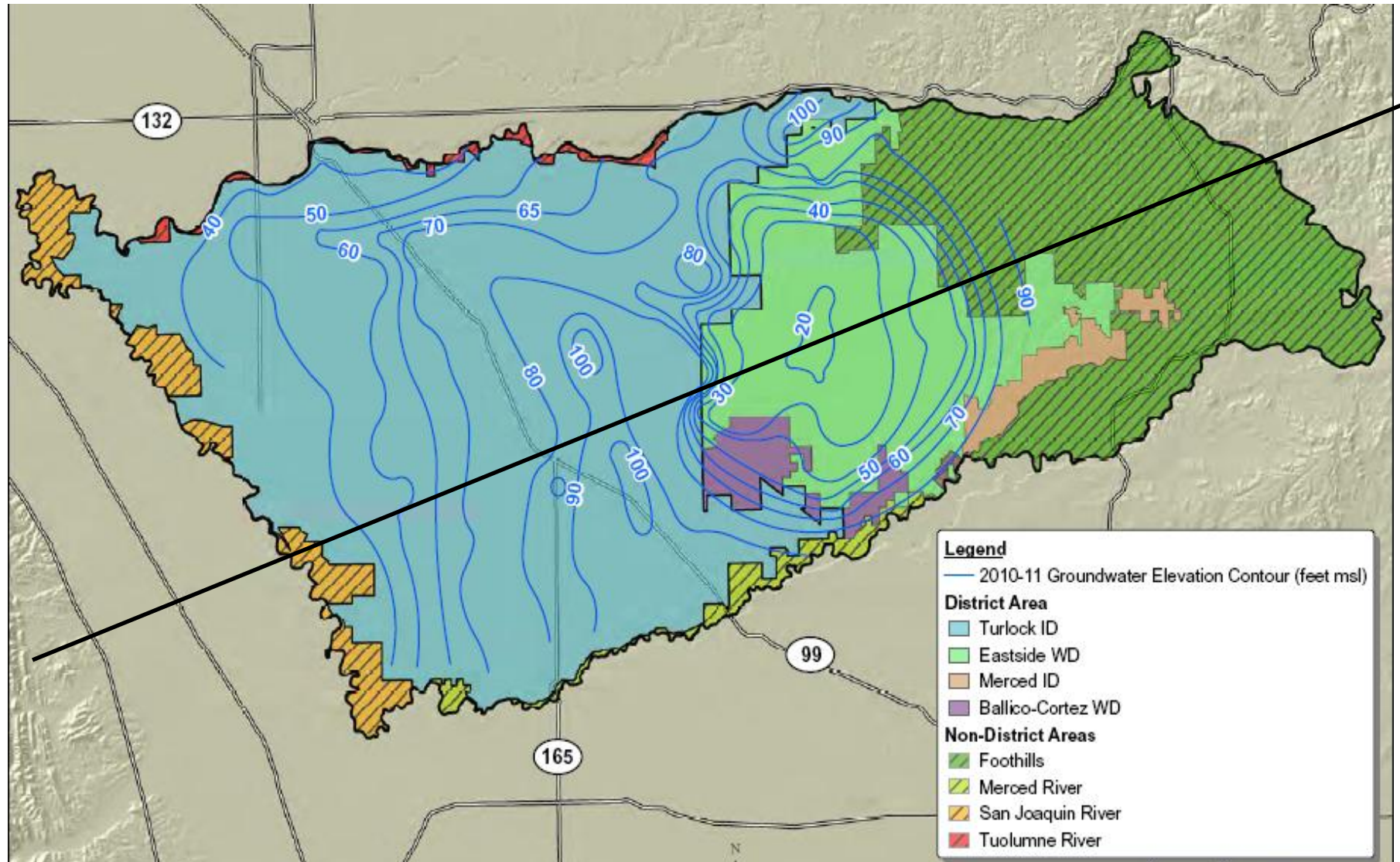


Figure 7. Groundwater Movement within the Basin

# Groundwater Levels - 2010



# Cross-Section of the Basin

**Groundwater Surface (Estimated Profile) 1960, 2005 & 2010**

