

Chapter 3.0

Local Agency Comments


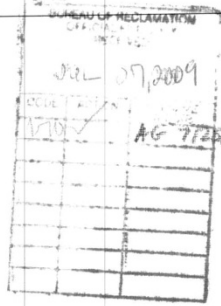

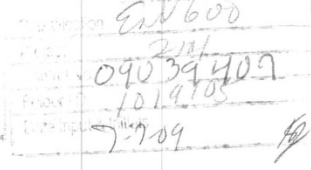
This chapter contains copies of comment letters (and any attachments) from the local agencies listed in Table 3-1. Each comment in the comment letters was assigned a number, in sequential order (note that some letters may have more than one comment). The numbers were then combined with an abbreviation for the local agency (example: CCC-1).

Responses to the comments follow the comment letters, and are also numbered, corresponding to the numbers assigned in the letter. The letters and associated responses are sorted alphabetically by abbreviation and appear in the chapter in that order.

Table 3-1
Comments Received from Local Agencies on Environmental Assessment/Initial Study
Water Year 2010 Interim Flows Project

Abbreviation	Agency
CCC	Columbia Canal Company
CCID (A)	Central California Irrigation District
CCID (B)	Central California Irrigation District
Firebaugh	City of Firebaugh
FWUA	Friant Water Users Authority
LSJLD	Lower San Joaquin Levee District
LSJLD2	Lower San Joaquin Levee District
LTR&PID	Lower Tule River Irrigation District
MCDPW	Merced County Department of Public Works
MID	Merced Irrigation District
SJRECWA	San Joaquin River Exchange Contractors Water Authority
SLCC	San Luis Canal Company
SLDMWA&SWC	San Luis & Delta-Mendota Water Authority and State Water Contractors
SLDMWA&WWD	San Luis Delta-Mendota Water Authority and Westlands Water District

3.1 Columbia Canal Company

		
June 22, 2009		
<p>Mr. Jason Phillips SJRRP Program Manager U. S. Bureau of Reclamation 2800 Cottage Way, MP-170 Sacramento, Ca. 95825-1898</p>		
<p>Re: Environmental Analysis for the San Joaquin River Restoration Program</p>		
<p>Dear Mr. Phillips:</p>		
<p>We are interested in the environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.</p>		
CCC-1	<p>We hereby join in the comments submitted by the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill our obligation to exhaust administrative remedies. Whether or not we choose to raise all issues raised by the RMC or others will be determined at a later time.</p>	
<p>Sincerely yours,</p> <p style="text-align: center;"></p> <p>Randy Houk, General Manager For the Shareholders of the Columbia Canal Company APN attached</p>		
<p>NOTICE: IF YOU DETACH ENCLOSURE PLEASE INSERT</p> <p>CODE NO. _____ INITIAL _____ DATE _____</p>		
<p>6770 Avenue 7 1/2 • Firebaugh, California 93622 • Telephone (559) 659-2426 • Fax (559) 659-2424</p>		

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BUREAU OF RECLAMATION
WYOMING REGION
2009 JUL -7 AM 9:47

ACRES	PARCEL #
13.58	041-010-001-000
13.38	041-070-004-000
27.18	041-130-003-000
10.91	041-190-003-000
1.55	041-190-007-000
11.94	041-201-002-000
7.94	041-201-001-000
2.75	042-010-002-000
3.93	042-010-004-000
16.52	042-010-011-000
7.85	042-010-013-000
3.17	042-010-022-000
4.13	042-061-005-000
25.12	042-100-002-000
4.82	042-100-004-000
11.43	042-110-003-000
17.92	042-150-003-000
3	042-161-003-000
19.27	042-191-002-00
6.67	042-201-002-000
14.37	042-220-002-000
13.05	042-220-006-000
21.16	042-231-004-000
3.69	042-241-004-000
16.08	042-252-002-000
17.08	042-260-004-000
31.63	042-270-002-000
11.33	042-280-005-000

ACRES	PARCEL #
2.1	013-270-02
0.76	013-270-03
2.01	013-270-04

Response to Comments from Columbia Canal Company

CCC-1: See responses to comments from the San Joaquin River Resource Management Coalition (Chapter 4).

3.2 Central California Irrigation District

Gasdick, Alicia

From: Christopher White [cwhite@ccidwater.org]
Sent: Monday, June 29, 2009 2:44 PM
To: Gasdick, Alicia; Kevin Faulkenberry
Cc: Steve Chedester; Berliner, Thomas M.; Chase Hurley ; Randy Houk; Joann Toscano; Jeff Bryant; Paul Minasian
Subject: WY 2010 Interim Flows EA/IS

Ali and Kevin,

^{CCID (A)}
⁻¹ As we discussed by telephone today, on behalf of the Resource Management Coalition (RMC), the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors), Central California Irrigation District (CCID), San Luis Canal Company (SLCC), Firebaugh Canal Water District (FCWD), and Columbia Canal Company (CCC), please consider this email a request for an extension of the 30 day comment period for the WY 2010 Interim Flow EA/IS.

^{CCID (A)}
⁻² We understand the pressure that the SJRRP is under to meet an aggressive time line. However, the 30 days is insufficient for us to adequately review this large document and we would request a 30 day extension in order to be able to complete our review and comment fully, and to coordinate comments with our landowners. This modest extension of time will allow us time to complete comments on interim flows.

Thank you.

Christopher L. White, PE

General Managerb

Central California Irrigation District

Post Office Box 1231

Los Banos, California 93635

(209) 826-1421 Office


(209) 761-4114 Cell

Response to Comments from Central California Irrigation District (A)

CCID (A)-1: A 14-day extension of the public review period was provided.

CCID (A)-2: Comment noted. No revisions to the Draft Environmental Assessment/Initial Study (EA/IS) text were necessary in response to this comment; therefore, the EA/IS text was not modified.

3.3 Central California Irrigation District

<p>1335 West "I" Street PO Box 1231 Los Banos, CA 93635</p> <p>BOARD OF DIRECTORS</p> <p>JAMES O'BANION <i>President</i></p> <p>LEE SPAIN <i>Vice President</i></p> <p>JOHN FAWCETT</p> <p>ANN WIESER</p> <p>KIRK JENSEN</p>	 <p>July 20, 2009</p>	<p>(209) 826-1421 Fax (209) 826-3184 Email: ccid@cciglobal.net</p> <p>CHRIS WHITE <i>General Manager</i></p> <p>GREGG RICE <i>Secretary Controller</i></p> <p>MINASIAN, SPRUANCE, MEITH, SCARES & SEXTON, LLP <i>Legal Counsel</i></p>
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Mr. Jason Phillips
SJRRP Program Manager
U.S. Bureau Of Reclamation
2800 Cottage Way, MP-170
Sacramento, CA 95825-1898
InterimFlows@restoresjr.net

Mr. Kevin Faulkenberry
DWR SJRRP Program Manager
Department of Water Resources
3374 E. Shields Avenue
Fresno, CA 93726
faulkenb@water.ca.gov

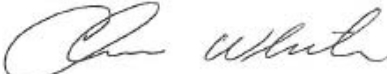
CCID (B) - 1

RE: Comments on the "Draft Environmental Assessment/Proposed Finding of No Significant Impact Under NEPA and Notice of Availability and Intent to Adopt an Initial Study/Draft Mitigated Negative Declaration Under CEQA for the Water Year 2010 Interim Flows Project, Dated June 3, 2009. Submitted By the San Joaquin River Resource Management Coalition, San Joaquin River Exchange Contractors Water Authority, and Respective Members

Dear Mr. Phillips and Mr. Faulkenberry:

Please find attached the hard copies of the attachments to the above referenced comments. The attachments were hand delivered to your respective Fresno Offices today.

Very truly yours,



Chris White
General Manager

CW: mm

Attachments and Enclosures to the above referenced comments.

Attachments

1. Compilation of landowners impacts to property
2. Summary of previous submittals

Enclosures

1. Copy of e-mail submittal of April 28, 2009 of the Central California Irrigation District depth to groundwater in shallow piezometers and deep well adjacent to the San Joaquin River information.

Attachment 2



Summary of Previous Submittals

1. DVD of aerial flight over the San Joaquin River during the flood event of 2006 in which approximately 4,000 cfs were flowing through the Mendota Dam into Reach 3 and below from the Kings River. The DVD documents many farmed fields inundated from seepage from the San Joaquin River. The DVD was submitted to the Bureau in July 2006.
2. On April 28, 2009, Central California Irrigation District submitted depth to groundwater historical data on shallow observation wells and deep wells and Autocad map showing locations of wells. The depth to groundwater data is from 1983 to present. An electronic copy of the transmitting email and attached data files are submitted with the electronic submittal of these comments.

Response to Comments from Central California Irrigation District (B)

CCID(B)-1: See responses to comments from the San Joaquin River Resource Management Coalition (Chapter 4). The depth to groundwater provided by Central California Irrigation District (CCID) was added to the data repository. U.S. Department of the Interior, Bureau of Reclamation is coordinating with CCID to develop thresholds consistent with the Seepage Monitoring and Management Plan. The data provided by CCID will be used in developing these thresholds.

3.4 City of Firebaugh

CITY OF FIREBAUGH			FRESNO COUNTY, CALIFORNIA																		
1133 "P" STREET FIREBAUGH, CALIFORNIA 93622-2547 (559) 659-2043 FAX (559) 659-3412 July 14, 2009			<table border="1"><tr><td>DATE</td><td>TIME</td></tr><tr><td>JUL 17 2009</td><td></td></tr><tr><td>170</td><td>✓ AG 7/23/09</td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table>	DATE	TIME	JUL 17 2009		170	✓ AG 7/23/09												
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Re: Environmental Analysis for the San Joaquin River Restoration Program																					
Dear Mr. Phillips:																					
The City of Firebaugh is interested in the environmental review process for the above-referenced proceeding. Please include this letter and comments for the record in this environmental review process.																					
FIREBAUGH-1	The City of Firebaugh hereby joins in the comments submitted by the San Joaquin River Resource Management Coalition (RMC). The purpose of this letter is to fulfill our obligation to exhaust administrative remedies. Whether or not we choose to raise all issues raised by the RMC or others will be determined at a later time. The City owns multiple properties along the river, including public parks, municipal well sites and a public works yard. All of these facilities and properties will be directly and indirectly impacted by the project due to water inundation, infiltration and as a result of the other impacts identified by RMC.																				
FIREBAUGH-2																					
Sincerely yours,																					
																					
Jose Antonio Ramirez, City Manager City of Firebaugh 1575 Eleventh Street Firebaugh, California 93622																					
<table border="1"><tr><td>Classification</td><td>Env-6.00</td></tr><tr><td>Project</td><td>214</td></tr><tr><td>Control No.</td><td>09042037</td></tr><tr><td>Folder I.D.</td><td>1019105</td></tr><tr><td>Date Input & Initials</td><td>7-17-09/EMB</td></tr></table>				Classification	Env-6.00	Project	214	Control No.	09042037	Folder I.D.	1019105	Date Input & Initials	7-17-09/EMB								
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Project	214																				
Control No.	09042037																				
Folder I.D.	1019105																				
Date Input & Initials	7-17-09/EMB																				

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Response to Comments from City of Firebaugh

FIREBAUGH-1: See responses to comments from the San Joaquin River Resource Management Coalition (RMC) (Chapter 4).

FIREBAUGH-2: As described in Section 2.0 of the Draft Environmental Assessment/Initial Study (EA/IS), the flow releases under the Proposed Action were developed to avoid affects to lands and facilities in Reach 3. These flows are anticipated to remain within the interior levees in Reach 3. Facilities and properties outside the interior levees within Reach 3 would not be affected by the Proposed Action, because the combined Water Year 2010 Interim Flows and irrigation supply flows would not exceed an estimated maximum of 1,300 cubic feet per second (cfs). At such flows, the California Department of Water Resources has estimated the capacity of interior levees in this reach to be approximately 1,300 cfs with 3 feet of freeboard, as described in Section 2.0 of the Draft EA/IS. See response to comment RMC-6 (Chapter 4).

3.5 Friant Water Users Authority

Gasdick, Alicia

From: William Luce [wluce@friantwater.org]
Sent: Monday, July 06, 2009 5:07 PM
To: InterimFlows@restoresjr.net; Kevin Falkenberry
Cc: Ronald D. Jacobsma; Robert Sawyer; Stephen H. Ottemoeller; Ernest Conant
Subject: FWUA Comments on Draft Interim Flow EA/IS
Attachments: FWUA Interim Flow EA-IS Comments.xls

Greetings...

Attached are comments of the Friant Water Users Authority on the Draft Environmental Assessment/Proposed Finding of No Significant Impact and Initial Study/Draft Mitigated Negative Declaration for the Water Year 2010 Interim Flows Project dated June 3, 2009.

Since the comment period has been extended until July 20, 2009, we reserve the right to supplement these comments.

Thank you.

Bill Luce, P.E., Consulting Resources Manager
Friant Water Users Authority
1974 N. Gateway Blvd., Suite #104
Fresno, CA 93727
Office: 559-562-6931
Cell: 559-802-0091
Fax: 559-562-6308
Email: wluce@friantwater.org

1	FWUA COMMENTS ON WATER YEAR 2010 INTERIM FLOWS PROJECT EAFONSI and IS/MND	7/6/2009
DOCUMENT & PAGE NUMBER	Paragraph, Section, or Line Numbers	COMMENT
FWUA - 1 Pg 3	Paragraph 4	In the third sentence, five invasive species are noted, but only four are listed.
FWUA - 2 Pg 3	Paragraph 5	The third sentence does not make sense. The sentence essentially says that changes in the VAMP releases from the Merced, Tuolumne, and Stanislaus rivers will not affect the ability to meet instream fish and water quality flow requirements in the Merced, Tuolumne, or Stanislaus rivers. And what that has to do with Interim Flow releases is not clear.
FWUA - 3 Pg 3	Paragraph 5	Fourth sentence states that the Proposed Action's effects on the Delta will be consistent with the analysis contained in the US Fish and Wildlife Service (USFWS) 2008 Operations Criteria and Plan (OCAP) Biological Opinion (BO). What about NMFS June 2009 BO?
FWUA - 4 Pg 4	Paragraph 12	The second sentence discusses an activity that is scheduled to occur beyond the timeframe of the Proposed Action.
FWUA - 5 Pg 5	Paragraph 13	The second sentence states that Reach 2 has (along with Reach 1) the greatest public access and instream flows. Neither of those are true for Reach 2.
DRAFT MITIGATED NEGATIVE DECLARATION (DMND) Pages 1-2		
FWUA - 6 Pg 1-2	"Proposed Finding"	The last sentence of the Proposed Finding discusses the SWRCB's decision that the Proposed Project would have no unreasonable effects on fish, wildlife, or other instream beneficial uses and would not injure any legal uses to the water under California Water Code Section 1725 et. seq. Since the SWRCB has not, to date, made such a decision it's not clear how the DMND could make such a statement.
FWUA - 7 Page 2	"Basis for Proposed Finding, paragraph 4"	The second sentence states WY 2010 Interim Flows would substantially increase the quantity of water flowing down the San Joaquin River. It's not clear what "substantially" means, but there will probably be times in WY 2010 when there is only a relatively small flow in the river.
FWUA - 8 Page 3	"Mitigation Measure Bio-1"	Sponge Plant is apparently missing from the list of invasive vegetation.
Environmental Assessment/Initial Study (EA/IS)		
FWUA - 9 1-2	30	replace "beginning" with "no later than"
FWUA - 10 1-5	21	change "diversion" to "redirection"
FWUA - 11 2-1	14-15	Change beginning of sentence to: "Figures 2-1 and 2-2 show the average simulated..."
FWUA - 12 2-1	16	There should be an explanation regarding the reason for selecting Normal-Dry and Wet years as the only years for which such detailed information is made available and how the information will be used in making determinations of impacts.
FWUA - 13 2-1	19	Change 2-2 to 2-3
FWUA - 14 2-5	18	Change beginning of sentence to: "Figures 2-7 and 2-8 show the average simulated..."

DOCUMENT & PAGE NUMBER	Paragraph, Section, or Line Numbers	COMMENT
FWUA -15 2-5	23	Change 2-7 to 2-9
FWUA -16 2-9	26	It is unclear what "like amount" is referring to.
FWUA -17 2-12	12	The sentence stating "Any increase in Delta exports directly resulting from WY2010 Interim Flows..." is inconsistent with the sentence on pg 2-9. In 25 which says "Delta exports would not change in the Proposed Action..."
FWUA -18 2-14	8	It is unclear what "water supply demands" are being considered.
FWUA -19 2-15	2-3	Since the information in Table 2-5 is taken directly from Exhibit B of the Settlement Agreement, it's somewhat misleading for the SJRRP to claim credit for developing it.
FWUA -20 2-15	11	Bulletin 120 is issued 4 times a year: the 2nd week of February, March, April, and May. Saying it will be finalized in May 2009 seems inconsistent.
FWUA -21 2-15	20	Figure 2-2 appears to be the wrong figure to cite here. Perhaps Figure 2-9 is the correct one to cite.
FWUA -22 2-17	2	Suggest replacing "additional" with "potential"
FWUA -23 2-17	8	Suggest replacing "would" with "could"
FWUA -24 2-17	16-19	The sentence beginning with "The volume..." doesn't seem to be needed. Suggest it be deleted.
FWUA -25 2-26	33	The NMFS BO is no longer "pending"
FWUA -26 2-29	32-34	The EA/IS should analyze the impacts on the lower Kings River from such a shift
FWUA -27 2-31	11	The EA/IS states if groundwater levels at a monitoring well exceed an identified threshold, WY 2010 Interim Flow would be reduced or diverted. Diverted where and for how long?
FWUA -28 3-2	29	This section seems to be mixing up the area immediately adjacent to the lake, which is the area that could possibly be affected by the proposed action, with upstream areas that include the "crest of the Sierra Nevada". All subsequent discussions and analysis of effects appear to be limited to the area immediately surrounding the lake.
FWUA -29 3-3	22-24	The statement "Annual water allocations and release schedules are developed with the intent of drawing reservoir 24 storage to minimum levels by the end of September" is not correct, or at least not accurate. Suggest replacing "are developed with the intent of" with "typically result in" and insert "near" prior to "minimum" on line 24
FWUA -30 3-4	32-33	The EA/IS states "diversion structures are common in this reach" (Reach 3). However, the San Joaquin River Restoration Study Background Report (McBain and Trush (eds), 2002), Table 5-2 shows only 4 pumps and the Arroyo Canal in Reach 3, not enough to state diversion structures are common.
FWUA -31 3-5	8-12	There is no mention of the wildlife refuge landscape adjacent to the river in Reach 4B1.
FWUA -32 3-21	26-32	The causal relationship of human caused GHG to climate change is not undisputed. There are other plausible explanations for climate change that have nothing to do with human activities.
FWUA -33 3-22	10	Suggest inserting "near Millerton Lake" following the first "Friant Dam" to be consistent with description on pg 3-23. In 35-36.
FWUA -34 3-25	2	Why are Mammoth Reach, Granite, Jackass, and Chiquito Creeks even discussed in this section when there is no possible way the proposed action can affect them?

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FWUA COMMENTS ON WATER YEAR 2010 INTERIM FLOWS PROJECT EAFONSI and IS/MND

7/6/2009

DOCUMENT & PAGE NUMBER	Paragraph, Section, or Line Numbers	COMMENT
FWUA - 35	3-40	Water management considerations in the San Joaquin R and tribs also include reservoir releases for instream uses and the Stanislaus is operated at times for salinity control
FWUA - 36	3-41	Insert "native" between "Key" and "species"
FWUA - 37	1	The section is woefully deficient in describing the drainage and salt balance issues. For example, it is not the Corcoran clay that causes perched groundwater that contributes to salinization of soils, it is shallow clay layers and other subsurface conditions near the ground surface. Also, slow draining soils and inadequate leaching contribute to soil salinity and importation of salts in irrigation water can contribute to increasing salinity of usable groundwater.
FWUA - 38	3-61	Insert "maximum" prior to "volume"
FWUA - 39	3-61	There should be a reference to a specific datum or mean sea level for the two numbers.
FWUA - 40	3-63	Replace "fulfill riparian water rights" with "comply with Holding Contract requirements"
FWUA - 41	20-21	Replace "meet downstream water rights and contract diversions" with "comply with Holding Contract requirements"
FWUA - 42	3-63	Insert "not all of which are active on a regular basis" at the end of the sentence.
FWUA - 43	2	Revise the last part of the sentence to read, "only during periods of flood management flow releases."
FWUA - 44	3-64	Insert "controlled" between "accommodate" and "flood"
FWUA - 45	3-64	Isn't capacity in Reach 2B also limited by vegetation in the channel?
FWUA - 46	3-66	Add "and instream flow requirements" to the end of the sentence
FWUA - 47	3-66	Replace "constraints" with "agreements"
FWUA - 48	3-66	Insert "and permitted" between "nominal" and "pumping"
FWUA - 49	1-5	Replace "contracts" with "supplies" in line 1. The second sentence is not an accurate statement - lands served by Class 1 contracts include most of the crops in the Friant service area. Some Class 1 only districts are typically in the upslope areas, but the cropping scope is broader than described. In lines 4-5, revise the last phrase to read "is delivered as Class 1 water"
FWUA - 50	12-15	Replace the first sentence with: In addition to Class 1 and Class 2 water, Reclamation delivers water (called Section 215 water) made possible as a result of an unusually large water supply not otherwise storable for project purposes or frequent and otherwise unmanaged flood flows of short duration under the authority of Section 215 of the Reclamation Reform Act.
FWUA - 51	3-67	Replace "The CVP" with "Reclamation"
FWUA - 52	3-67	Add the San Felipe Unit as a CVP unit receiving water from the DMC, Jones PP, etc.
FWUA - 53	31-32	Revise the last part of the sentence to read, "in exchange for the use of waters of the San Joaquin River within the Friant Division."
FWUA - 54	32-34	The sentence is not accurate relative to Exchange Contractor distribution system operations. If reference is to Reclamation treating the total EC supply as a unit for purposes of Reclamation's performance under the EC contract, the sentence should make that more clear.
FWUA - 55	3-67	The O'Neill Forebay is a regulating reservoir, not a "regulatory body"

FWUA COMMENTS ON WATER YEAR 2010 INTERIM FLOWS PROJECT EAFONSI and IS/MND

7/6/2009

4

DOCUMENT & PAGE NUMBER	Paragraph, Section, or Line Numbers	COMMENT	
FWUA - 56	3-69	1-3	Suggest putting a period after "the DMC" and deleting the rest of the sentence. As stated the sentence is confusing.
FWUA - 57	3-69	4	The first sentence makes it appear that the water in Reach 3 is not usable, notwithstanding the normal deliveries to San Luis Canal Company. The last sentence doesn't make a lot of sense, except during flood flows, and then only applies to 4A, since no flows from 3 ever get to 4B.
FWUA - 58	3-70	16-19	Incomplete sentence
FWUA - 59	3-75	19-21	There is no data or description of circumstances, either in Fig. 3-6 or elsewhere, to substantiate the conclusion that groundwater levels have recovered from the previous drought.
FWUA - 60	3-88	8 and 21	The Friant Division service area does not include Kings County
FWUA - 61	3-91	3-4	Something is missing from the sentence
FWUA - 62	3-91	9 and 23 (and possibly elsewhere)	There is no "s" at the end of the word Grassland when referring to the water district and the Ecological Area
FWUA - 63	3-93	6	There is no mention of Skaggs Bridge Park (operated by Fresno County) in Reach 1
FWUA - 64	4-39	10	There are multiple references in this section (and elsewhere in the document as identified in other comments), starting with Tables 4-4 through 4-7 and at various locations in the text, to changes in flow resulting from proposed action flows in December 2009 and Jan 2010. There will be no Interim Flows during those two months, as correctly stated on Pg. 4-48, Ln. 21-22.
FWUA - 65	4-49	7-8	See prior comment regarding Dec '09 & Jan '10 Interim Flows
FWUA - 66	4-51	7	Should e.g. be used instead of i.e. ?
FWUA - 67	4-51	8-20	The discussion in this paragraph (and elsewhere in the document) assumes there will be VAMP flows in Water Year 2010. As noted on page 2-26, the future of VAMP is uncertain for Water Year 2010. The document should not assume a continuation of VAMP.
FWUA - 68	4-68	11-12	See Comment for pg 3-68, Ln 4 regarding beneficial use of water from Reach 3.
FWUA - 69	4-68	27-28, 38,41	See prior comments regarding Dec '09 & Jan '10 Interim Flows
FWUA - 70	4-70	9-13	The increase in groundwater pumping above both existing conditions and No Action that will likely never be recovered due to the continuation of the project beyond this year (see comment on cumulative impacts). The fact that the change in GW pumping is within the normal range of variability does not change the fact that it occurred a direct result of the proposed action. The impact to groundwater levels should be considered potentially significant.
FWUA - 71	4-74	5	Replace "naturally" with "under Existing and no Action alternatives"
FWUA - 72	4-82	7	VAMP is not a certainty. Insert "if any" at the end of the sentence.
FWUA - 73	4-84	5-7	The sentence does not accurately describe proposed operations and water rights actions in the Delta. Water would be recovered under a temporary change in point of diversion
FWUA - 74	4-85	4	"500" should be "384" to be consistent with Table 2-3
FWUA - 75	4-85	6-7, 12-15	See comment for pg 4-84. Water would be redirected by Reclamation under temporary permit changes. It is Reclamation's obligation to make the necessary arrangements to return the water to Friant, in consultation with Friant Division LT contractors.

DOCUMENT & PAGE NUMBER	Paragraph, Section, or Line Numbers	COMMENT
FWUA - 76	4-85 19	How can a 384 KAF reduction in deliveries to Friant Division contractors be considered "less than significant?"
FWUA - 77	4-86 2-4	The system will not be operated under existing regulatory requirements if Reclamation redirects water under temporary permits. Revise description accordingly.
FWUA - 78	4-86 4	Change 4-18 to 4-19
FWUA - 79	4-106 4-110	See comment from pg 4-85, Ln 12-15
FWUA - 80		The cumulative impacts section ignores the long term Restoration action by saying that the PEIS/R will analyze the impacts, but from the perspective of this document, it should be considered a separate project and the cumulative impacts on the Friant long-term Contractors' water supply and groundwater levels from the IF in 09-10 should be considered potentially significant when taken in combination with future reductions. Additional groundwater pumping from the proposed action is water permanently lost to the groundwater storage in a basin that is already over-drafted
FWUA - 81	4-111 11-13	To use the fact that "Water supply availability to Friant Water Users is highly variable on an annual basis, and the amount of water used as Interim Flows is within this range of annual variability" as an excuse to not analyze the effects of the Proposed Action is not acceptable. Impacts that result from the Proposed Action must be analyzed even if they are within the so-called range of annual variability.
FWUA - 82	6-9 30-31	Shorebird Research Group of the Americas (SRGA) is erroneously referred to, apparently due to a typo in the abbreviated name for the San Joaquin River Group Authority (SJRGGA). Perhaps SJRGGA is the correct abbreviation? Suggest replacing SRGA with SJRGGA and deleting the reference to SRGA in the List of Abbreviations and Acronyms.
FWUA - 83	6-9 31 and beyond	See comment above regarding the uncertain future of VAMP
Appendix C		
FWUA - 84	3-1 to 3-10 The entire Section 3	Reference to and use of Expert reports and testimony should be eliminated from all analyses as such use is in violation of Paragraph 41 of the Settlement Agreement. In addition, it should be noted that the text refers to "testimony" when what has been used are Expert Reports. Since there are several expert reports on the record that are on the same subject and which may contain contradictory or conflicting statements or conclusions, it is inappropriate to arbitrarily select one expert over another. These expert reports have not been peer-reviewed or subjected to rigorous scientific review.
FWUA - 85	6-12 12	Delete reference to "Settlement's expert testimony." There is no such thing.

Response to Comments from Friant Water Users Authority

FWUA-1: The text was revised to include the fifth species, sponge plant in the third sentence of the referenced paragraph.

FWUA-2: The sentence has been reworded to indicate that minimum instream fish and water quality flow requirements in the Merced, Tuolumne, and Stanislaus rivers would be maintained irrespective of any changes to Vernalis Adaptive Management Plan (VAMP) flow releases

FWUA-3: The text was revised to indicated that the Proposed Action will be implemented in accordance with the U.S. Fish and Wildlife Service 2008 Central Valley Plan/State Water Project (CVP/SWP) Operations Biological Opinion (BO), the National Marine Fisheries Service (NMFS) 2009 CVP/SWP Operations BO, and all other prevailing and relevant laws, regulations, BOs, and court orders in place at the time water is recaptured in the Sacramento-San Joaquin Delta (Delta).

FWUA-4: Mitigation for noise will occur beyond the time frame of the Proposed Action, as it is associated with the removal of invasive species after WY 2010. Please see Section 4.0 of the Draft Environmental Assessment/Initial Study (EA/IS). No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

FWUA-5: Text reworded to clarify that Reach 1 has the greatest existing public access and instream flows, and that Reach 2 only has flows during limited high-flow periods, but has limited public access. Both are not expected to receive significantly increased recreational use from the Interim Flows.

FWUA-6: The California Department of Water Resources (DWR) will be using this IS/Mitigated Negative Declaration (IS/MND) to make its findings, and DWR, in conjunction with the U. S. Department of the Interior, Bureau of Reclamation (Reclamation), has evaluated the effects on fish, wildlife, and other instream beneficial uses, and whether any legal users of the water would be injured. Reclamation and DWR have made their own determination for consideration by the State Water Resources Control Board (SWRCB). The SWRCB would consider these conclusions in making its own findings. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified..

FWUA-7: The sentence was revised to provide clarity

FWUA-8: Comment noted. The text was revised to include sponge plant.

FWUA-9: The text was revised as suggested in the comment.

FWUA-10: The text was revised as suggested in the comment.

FWUA-11: The text was revised as suggested in the comment.

FWUA-12: Wet years, per Exhibit B of the Stipulation of Settlement in *NRDC, et al., v. Kirk Rodgers, et al.* (Settlement), were selected to illustrate the estimated maximum flows that could be released from Friant Dam under the Proposed Action. Wet year flows under the Proposed Action are similar to the No-Action Alternative during all months except during the spring pulse. During the spring pulse, estimated flows under the Proposed Action would be limited by channel capacity and would be at or below the maximum flows experienced in normal-dry years. During normal-dry years, the Friant Division could experience the greatest reduction in deliveries because of the lack of available water. Therefore, these water years were selected to provide the greatest range of potential effects of the Proposed Action.

FWUA-13: The text was revised as suggested in the comment.

FWUA-14: The text was revised as suggested in the comment.

FWUA-15: The text was revised as suggested in the comment.

FWUA-16: The text was revised for clarity.

FWUA-17: The text on Line 25 on page 2-9 of the Draft EA/IS was removed.

FWUA-18: Water supply demands that could be considered include the Mendota Pool, Arroyo Canal, Lone Tree Unit of the National Wildlife Refuge (NWR), and East Bear Creek Unit of the NWR. Water diversions would not exceed the demand for water supply at these locations. No revisions to the Draft EA/IS were necessary in response to this comment; therefore, the EA/IS text was not modified.

FWUA-19: The year-types in Exhibit B of the Settlement were identified based on the percentages of years from 1922 through 2005 with relative inflows. The San Joaquin River Restoration Program (SJRRP) has developed a correlation between these data and the complete range of potential unimpaired inflow to Millerton Lake, as shown in Table 4-2, Appendix C of the Final EA/IS describes this process and the need for it. The text was revised to reflect this.

FWUA-20: The final forecast for a year is published in the May version of DWR Bulletin 120.

FWUA-21: The text was revised as suggested in the comment.

FWUA-22: The text was revised as suggested in the comment.

FWUA-23: Channel capacity limitations prevent the release of full Restoration Flows during WY 2010; therefore, WY 2010 Interim Flows would be less than full Restoration Flows. Additional considerations, such as the potential to cause seepage impacts, support this reduction in the first year of experimental flow. No revisions to the Draft EA/IS text were necessary in response to this comment; therefore, the EA/IS text was not modified.

FWUA-24: Text referenced was included to provide additional clarity on the meaning of information presented in Figure 2-15 of the Draft EA/IS.

FWUA-25: Concur. The text was revised throughout the Final EA/IS to reflect the NMFS BO released in June 2009.

FWUA-26: Text was inserted to provide clarity in Section 4.

FWUA-27: Reduction of flows would occur at Friant Dam. Diversion of flows would occur at the diversion locations identified in the Draft EA/IS, including Chowchilla Bypass, Mendota Pool, Arroyo Canal, and/or wildlife refuges.

FWUA-28: The text was revised in Section 4 to distinguish between areas immediately adjacent to the lake and upstream areas.

FWUA-29: The text was revised as suggested.

FWUA-30: The text was revised for clarity to indicate that the diversion structures refer to several pump facilities and Arroyo Canal.

FWUA-31: The text was revised in the Final EA/IS to include a description of wildlife refuge landscape adjacent to the river.

FWUA-32: The Draft EA/IS does not imply that the causal relationship between human-caused greenhouse gases (GHGs) and climate change is undisputed. However, the current practice under the California Environmental Quality Act is to identify the contribution of GHGs.

FWUA-33: The text was revised as suggested in the comment.

FWUA-34: The text was revised as suggested in the comment. Text regarding Mammoth Reach, Granite, Jackass, and Chiquito Creeks was removed from Section 3.0 in the Final EA/IS.

FWUA-35: The text was revised in Section 3.0 of the Final EA/IS to clarify water management practices in the San Joaquin River.

FWUA-36: The text was revised as suggested in the comment.

FWUA-37: See response to comment RMC-59.

FWUA-38: The volume quantity in the text was changed from 520 to 524 thousand acre-feet (TAF) to be more accurate, but the term “maximum” was not added because a specific elevation/storage point is being discussed (top of active storage). Storage volumes in Millerton Lake can actually exceed this amount under certain flood conditions.

FWUA-39: The North American Vertical Datum1988 datum was added to the text.

FWUA-40: The text was revised as suggested.

FWUA-41: The text was revised as suggested.

FWUA-42: The text was revised as suggested.

FWUA-43: The text was revised as suggested.

FWUA-44: The phrase “accommodate flood releases” was replaced by the phrase “accommodate controlled releases.”

FWUA-45: Comment noted. See RMC-10.

FWUA-46: The text was revised as suggested.

FWUA-47: The text was revised as suggested.

FWUA-48: The text was revised as suggested.

FWUA-49: The second sentence was removed because cropping patterns are not essential to the discussion in this section. All other text was revised as suggested.

FWUA-50: The text was revised as suggested by the comment with a few editorial changes.

FWUA-51: The text was revised as suggested.

FWUA-52: The text was revised as suggested.

FWUA-53: The text was revised as suggested.

FWUA-54: Text regarding “integration” of Exchange Contractor systems was removed. References to Reclamation’s role in the Exchange Contractor’s contracts are explained in previous sentences.

FWUA-55: The text was revised as suggested.

FWUA-56: The sentence was revised to provide clarity.

FWUA-57: The sentences were revised to provide clarity.

FWUA-58: The sentence was revised to include missing text.

FWUA-59: The text was revised to add clarity. Groundwater levels in the San Joaquin River Hydrologic Region began to recover from the 1987 – 1992 drought in some of the subbasins in 1994 and continued to rise through 2000 to water levels near 1970 predrought conditions. The most recent DWR contour map for the San Joaquin Valley

groundwater basin indicates that in general, groundwater levels have recovered to predrought levels except in a few isolated areas.

FWUA-60: Comment is correct. Reference to Kings County was removed from throughout the document. In the revised text, Friant Division is described as a five-county area. The text was also revised to indicate that demographic data was collected for Kings County to evaluate potential socioeconomic effects that the Proposed Action could have on Kings County, especially the towns of Hanford and Corcoran. Because the county is adjacent to the Friant Division service area, it was expected that a number of county residents would be employed by water users in the service area.

FWUA-61: This sentence was revised to provide clarity.

FWUA-62: The text was revised to reflect comment.

FWUA-63: The text was revised to include information on Skaggs Bridge Park in Reach 1.

FWUA-64: San Joaquin tributary operations may be changed as a result of Interim Flows in the San Joaquin River because of interactions with the Vernalis Adaptive Management Plan (VAMP), Vernalis water quality, etc. These changes in tributary operations would result in changes in tributary reservoir storage. In later months, even without the presence of Interim Flows, this changed storage may result in changes to tributary flows as operational storage limits, such as flood control limits, are encountered at different times. Also, since each tributary operates differently, both to meet shared goals in the San Joaquin River and for its own internal purposes, these changes can be different on different tributaries.

FWUA-65: See response to comment FWUA-64.

FWUA-66: The abbreviation “i.e.” is used here to clarify that "flow objectives at Vernalis" refers to VAMP requirements.

FWUA-67: VAMP flows are released based on hydrologic conditions. Modeling completed for the technical analysis included VAMP operating criteria, and reviewed 83 years of historical hydrology, as described in Appendix G of the Draft EA/IS. The 83 years included different hydrologic conditions, which would result in different releases (including no releases) for VAMP. Therefore, the potential for releases or no releases under VAMP is included in the assessment of the Proposed Action. Additional text was added in Section 2.0 of the Final EA/IS to clarify how VAMP was treated in evaluating the Proposed Action.

FWUA-68: Sentences revised to clarify.

FWUA-69: Note added to clarify that WY 2010 Interim Flows will not be released between November 21, 2009, and January 31, 2010.

FWUA-70: The Proposed Action does not include release of flows after September 2010. As described in the response to comment FWUA-80, a change in groundwater pumping as a result of this 1- year action is considered less than significant. The SJRRP Program Environmental Impact Statement/Report (PEIS/R) will evaluate the program-level and cumulative affects of the future potential implementation of the SJRRP, including the project-level and cumulative affects of both Interim Flows and Restoration Flows. The PEIS/R is being developed and is not yet available.

FWUA-71: The flows discussed in this paragraph are historical flows, not simulated flows from the No-Action Alternative. "Historical record" language was added to clarify this.

FWUA-72: The paragraph was revised to reflect VAMP operations in the water operation model. The No-Action Alternative assumes the continuation of VAMP.

FWUA-73: Text regarding water rights and recapture was removed from this paragraph. This paragraph was revised to focus solely on CVP/SWP pumping changes due to Interim Flows. Water recapture is discussed in subsequent sections.

FWUA-74: The value was changed to "384" TAF to be consistent with the wet year Interim flows listed in Table 2-3 of the Draft EA/IS.

FWUA-75: As described in Section 2, recirculation of recaptured water to the Friant Division could require mutual agreements between Reclamation, DWR, Friant Division long-term contractors, and other south-of-Delta CVP/SWP contractors. Text added in Section 2.0 of the Final EA/IS to state that Reclamation would assist in developing these agreements.

FWUA-76: WY 2010 Interim Flows is a 1-year action that will be consistent with the two goals of the Settlement: the Restoration Goal and the Water Management Goal, as defined in Section 1.0 of the Draft EA/IS. Consistent with the Water Management Goal, Reclamation will take actions to reduce or avoid adverse water supply impacts on all of the Friant Division long-term contractors that may result from the WY 2010 Interim Flows. As stated in Section 2.0 of the Draft EA/IS, WY 2010 Interim Flows would be recaptured to the maximum extent possible, consistent with and limited by existing operating criteria, prevailing and relevant laws, regulations, BOs, and court orders in place at the time the water is recaptured. Recapture and recirculation of WY 2010 Interim Flows could require mutual agreements among Reclamation, DWR, Friant Division long-term contractors, and other south-of-Delta CVP/SWP contractors. Text in Section 4 was revised to include additional information from technical analyses completed for preparation of the Draft EA/IS. The information presented in Section 2 is based upon a Wet year and represents the estimated maximum water available for transfer during WY 2010 Interim Flows. Actual delivery reductions range from zero to the full quantity released and would vary based upon the year type. During a Critical-Low year, the water available for recapture and transfer to the Friant Division long-term contractors would be zero because there are no WY 2010 Interim Flow releases under this year type. During Critical-High, Dry, Normal-Dry, Normal-Wet, and Wet years, the water available for

recapture and transfer to the Friant Division long-term contractors would range between zero and 70 TAF, zero and 147 TAF, zero and 185 TAF, zero and 223 TAF, and zero and 384 TAF (as shown in Table 2-3), respectively. Implementation of the Proposed Action consistent with the Settlement would support a finding that reductions in deliveries due to WY 2010 Interim Flows would result in less-than-significant impacts.

FWUA-77: Temporary permits would not affect regulatory requirements for operation of San Luis Reservoir. See response to comment RMC-39. Text has been revised for clarity.

FWUA-78: The text was revised as suggested.

FWUA-79: See response to comment FWUA-75. Text was added in Section 2.0 of the Final EA/IS.

FWUA-80: The change in groundwater pumping as a 1-year action is not considered potentially significant. The SJRRP PEIS/R will evaluate the program-level and cumulative effects of the future potential implementation of the SJRRP, including project-level and cumulative effects of both Interim Flows and Restoration Flows. The PEIS/R is being developed and is not yet available; therefore, it would be speculative at present to identify environmental impacts and their significance, which will be addressed in the PEIS/R.

FWUA-81: WY 2010 Interim Flows would occur as a 1-year action and, as stated in the Finding of No Significant Impact (FONSI), is not anticipated to result in significant impacts. Reductions in water supply availability to Friant Water Users would be replenished by recirculated water and alternate sources of water. Potential impacts related to the reduction in water supply to Friant Water Users have been evaluated and have been identified as less than significant (see Section 4.10 of the Draft EA/IS, Hydrology and Water Quality). See response to comment RMC-93.

FWUA-82: The text was revised according to comment.

FWUA-83: See response to comment FWUA-67.

FWUA-84: The expert witness reports were reviewed for technical evaluations and technical information on the physical system. Information and/or methods described in expert witness reports were used based on professional judgment, if determined to be the best available information. The Draft and Final EA/IS do not use this information to construe the Settlement.

FWUA-85: The text was revised for clarity.

3.6 Lower San Joaquin Levee District

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Mr. Kevin Faulkenberry
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Re: The Lower San Joaquin Levee District's comments on the "Water Year 2010
Interim Flows Project - Draft Environmental Assessment and Finding of No
Significant Impact / Initial Study and Mitigated Negative Declaration."

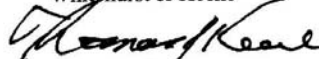
Dear Mr. Faulkenberry:

As I said in my e-mail of earlier today, I have reviewed the letter which I submitted on behalf of the Levee District on July 2, and I found that most of the references in the text of the letter to the exhibits to the letter were incorrect. I have gone through and corrected those references. My understanding is that the public comment time period has been extended from July 6, to July 20. Based on that understanding, please replace my earlier letter of comment with the enclosed letter of comment which bears today's date and my signature.

Thank you for your cooperation.

Very truly yours,

Linneman, Burgess, Telles,
Van Atta, Vierra, Rathmann,
Whitehurst & Keene



Thomas J. Keene

cc: Reggie Hill, Secretary-Manager
Lower San Joaquin Levee District

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Re: The Lower San Joaquin Levee District's comments on the "Water Year 2010
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Dear Mr. Faulkenberry:

Please accept this letter as the Lower San Joaquin Levee District's comments in its review of the "Water Year 2010 Interim Flows Project - Draft Environmental Assessment and Finding of No Significant Impact / Initial Study and Mitigated Negative Declaration," (hereinafter referred to as the EA-IS.) It is our understanding that comments submitted to you will be shared with the Bureau of Reclamation so that we do not have to communicate directly with the Bureau as well

The EA-IS, serves both as a National Environmental Policy Act, (NEPA) document and as a California Environmental Quality Act, (CEQA) document. It explains why the California Department of Water Resources (DWR) is the appropriate entity to be the lead agency in CEQA compliance and that one of the reasons for CEQA compliance is that several discretionary activities by the Lower San Joaquin Levee District will be necessary in order to implement this project (Page 1-4, lines 28-34 and Page 1-6 lines 27 - 29, and line 36 to page 1-7 line 2). Even though the discretionary activities of the Lower San Joaquin Levee District are at least one of the primary reasons for having to comply with CEQA, the Levee District was not given an opportunity to review an administrative draft of the EA-IS document nor did it participate in the analysis which it contains. The analysis in the document of impacts to flood control is not acceptable to the District. The EA-IS also contains a number of errors, some of which are serious. It is unfortunate that these disagreements and out right errors were not addressed before the public comment time period began.

Mr. Kevin Faulkenberry, DWR SJRRP Program Manager, Department of Water Resources
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NONTECHNICAL COMMENTS

LSJLD-1

Necessity of an Agreement with the District: The EA-IS provides that

Implementing the WY 2010 Interim Flows would require several agreements with local agencies. WY 2010 Interim Flows would be constrained by agreements to place at the time of release . . .

- **Lower San Joaquin Levee District – Agreements with the Lower San Joaquin Levee District may be required to operate, inspect, and maintain flood control facilities including levees, channels, flap gates, and bifurcation structures. These activities may include patrolling of levees to assess conditions, maintain channels, close flap gates prior to release of WY 2010 Interim Flows, and operate the Chowchilla, Eastside and Mariposa bypass bifurcation structures. (Page 2-27, lines 7 to 9 and lines 27 to 32).**

The District firmly believes that, instead of the permissive language that an agreement may be required with the District there should be mandatory language that there must be an agreement with the District. The District also believes that such an agreement should have been in place before the productions of the EA - IS.

The Lower San Joaquin Levee District has very few financial resources. It is almost¹ wholly funded by assessments against the real property contained within its boundaries. It recently increased its rates in order to secure enough of a cash reserve to fulfill its purpose of protecting the lands within its jurisdictional boundaries from flooding. As a consequence of its limited funding, the District is limited in the number of employees it has both in the field and in administration. It has made the point over and over again with DWR and with the Bureau of Reclamation, (USBR), that it cannot afford to provide flood protection services at the present level if the cost of providing that service is increased.

On the recommendation of the Department of Water Resources, in March of 2007, the Levee District requested designation as a "Cooperating Agency" in the Bureau of Reclamation's NEPA compliance in this project, (See Exhibit A to this letter). By letter from the Bureau of

¹Its only other sources of income are from grazing leases and the sale of sand. These combined account for less than five percent of the District's annual budget.

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Reclamation's Regional Director's office, the Levee District was assured that it was to be a Cooperating Agency under NEPA, (See Exhibit B to this letter). The Levee District relied on that assurance and participated in meetings with representatives of both USBR and DWR in late 2008 and early 2009. When the Levee District indicated to the Bureau that it needed financial assistance pursuant to Section 1501.6 (c) of the NEPA regulations, the suggestion that the District be a Cooperating Agency was withdrawn, (See Exhibit F to this letter). Therefore, the District was not given an administrative draft of the EA/IS document by the Bureau of Reclamation either.

When the District first began participating in meetings with the Bureau of Reclamation and DWR staff on a regular basis, the District was assured that it would be allowed to negotiate an agreement with the Bureau of Reclamation whereby the federal government would fulfill the provisions of Section 1009(a)(3) of the Omnibus Public Land Management Act of 2009, (which is quoted in the footnote²), and reimburse the District for the expenses which it would incur in participating in USBR's and DWR's efforts to implement this project. After having incurred substantial costs, it was told that the costs which it had incurred prior to the adoption of the Omnibus Public Land Management Act of 2009 would not be reimbursed, (See Exhibit G to this letter). When the District pointed out that the Bureau of Reclamation had committed significant assets to this project before the passage of that legislation, including hiring outside contractors to aid in the process, (Exhibit G to this letter) the District was told that it did not have a contract with the federal government or a formal inter-agency agreement, (Exhibit H to this letter). When the District attempted to negotiate such an agreement with the Bureau of Reclamation, (see the bottom half of Exhibit I and the attached draft Memorandum of Agreement), it was told that the Bureau would not consider the District's draft of such an agreement, but would produce an agreement itself in August of 2009, (See the upper half of Exhibit I to this letter). When the District pointed out that such an agreement would be well after the time to comment on this EA-IS, (see the lower half of Exhibit J to this letter), the Bureau of Reclamation said that, in any event, the Bureau would not consider reimbursing the District for work performed by the District to review the environmental compliance on this project because it was already funding DWR's participation in the review of these documents and the Bureau felt the District's participation would be redundant in this regard, (see the upper half of Exhibit J to this letter).

²Section 1009(a)(3), provides in pertinent part, "to the extent that costs incurred solely to implement this Settlement would not otherwise have been incurred by any entity or public or local agency or subdivision of the state of California, such costs shall not be borne by any such entity, agency or subdivision of the State of California, unless such costs are incurred on a voluntary basis."

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In light of the above-related history of the relationship between USBR and the District concerning this project, it is difficult for the District to believe that an agreement which is acceptable to the District will, in fact, be even seriously considered by the Bureau of Reclamation. The District must, therefore, analyze the EA-IS on the assumption that there will be no such agreement or, if there is, it will address only a portion of the costs to District. The District cannot afford to pay for the increases in its costs of operation which the project will necessitate. Based on such an analysis the conclusion that there will be a significant impact on the environment from even this first year of Interim Flows is inescapable.

LSJLD-2a **Necessity of an Agreement with Landowners:** Before leaving the EA - IS reference to the agreements which need to be reached to implement the project, it should be noted that the list includes landowners in the Eastside and Mariposa Bypasses, (page 2-28, lines 1 to 4). It is of some concern that this paragraph says only that "additional agreements with landowners *may* be required to convey WY 2010 Interim Flows within the bypass system." In November of 2008, the Staff Counsel to the Division of Planning and Local Assistance of the Department of Water Resources determined that the bypass system north of Washington Avenue in Merced County was located in an easement for the passage of flood water. His conclusion was that the easements did not confer a right to utilize the bypasses for restoration flows, (see Exhibit C to this letter).

LSJLD-2b Aside from the owners of the lands adjacent to the bypass system north of Washington Avenue, there are additional property rights south of Washington Avenue which have not been considered in the EA - IS. For example, a number of the landowners along Reach 2A of the San Joaquin River continue to own the mineral rights to that portion of the River which runs through or along the edge of their property. Because of the Air Pollution Control Board's efforts to decrease the amount of dust which blows into the air from farming activities, these landowners regularly extract sand out of the River bed to use on their farm roads. If there is water in Reach 2A, year round, the ability of these farmers to mine sand from the River will be lost, which makes their property interest in the minerals under the land less valuable and decreases their ability to reduce the amount of fugitive dust which becomes airborne as a result of their farming practices, thereby increasing air pollution.³

³ The sand which is currently pulled out of the River by these farmer helps the District. The less sand there is in Reach 2 A, the less sand there is to settle out in Reach 2 B and downstream of Reach 2 B to potentially clog the River channel. The less sand there is choking the river and bypass system, the easier the job of the Levee District.

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Clearly these are a impacts not considered in the EA - IS and just as clearly the reduction of these impacts will necessitate agreements with the affected landowners. But the EA - IS, recites the need for landowner agreement, like an agreement with the District, in permissive rather than mandatory language.

LSJLD-3

Impact on Operation & Maintenance of the Flood Control Project During WY 2010:

The EA-IS provides that:

The release of WY 2010 Interim Flows would be managed to avoid interfering with operations of the San Joaquin Flood Control Project. This includes operations of the Chowchilla [Canal] Bypass Bifurcation Structure, Sand Slough Control Structure, Eastside Bypass Bifurcation Structure, and Mariposa Bypass Bifurcation Structure, as well as San Joaquin River Flood Control Project Levee Maintenance. . . [The] Lower San Joaquin Levee District regularly conducts operation and maintenance (O&M) activities to maintain channel capacity within the San Joaquin River Flood Control Project. These O & M activities would continue under the Proposed Action, and could occur more frequently. (Page 2-18, lines 17 - 21 and 25 - 28).

The project, as proposed will, in fact, interfere with the District's operation and maintenance of the Mariposa Bypass and the Eastside Bypass as well as the District's maintenance of certain portions of the River itself which the District is obligated to maintain.

The District's maintenance of the bypass system necessitates the removal of all vegetation in order to maximize the space available for the transportation of flood waters. The methods used by the District for many years have included the application of herbicides on the levees and channels. Other activities include the "chaining" of the levee slopes, (which means dragging a large chain at each end along the surface of the slope in order to remove broadleaf vegetation) and, in some situations, the removal and pruning of flow restrictive trees by hand. The herbicides currently used cannot, by law, be used around any water which may flow into the River and from there into the Delta. None of these activities can be performed on the levee slopes of a bypass when there is water in the bypass. Access to the channel bottom for men and equipment is necessary for this activity and it cannot be performed when the bottom of the channel of the bypass is wet. This Proposed Action would mean that there would be water in the Mariposa Bypass and the northern end of the Eastside Bypass, (or, if not in the Mariposa Bypass then in the entire length of the Eastside Bypass) from October 1, 2009 until November 20, 2009,

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and then again from February 1, 2010 until September 30, 2010. To say that, "These O & M activities would continue under the Proposed Action, and could occur more frequently" is a patent falsehood. Under the schedule presented, the only time when there would be no water releases into the system would be from November 20, 2009 to February 1, 2010, which means that this would be the only time afforded for maintenance such as vegetation management. Some maintenance activities might be accomplished during this time period, depending upon the weather, but any herbicide application during this time frame would be ineffective because the typical vegetation in these locations would be dormant at this time of the year. Weather conditions constrain all field activities, and this time period historically coincides with wet weather conditions throughout the system.

LSJLD-4

Impact on Operation & Maintenance of the Flood Control Project After WY 2010:

The analysis in the EA-IS does not address what happens at the end of the project. It is clear from the Stipulation and Settlement in *NRDC v. Kirk Rodgers, et al.* (Appendix A to the EA - IS), that the San Joaquin River Restoration Project will then go into its second year immediately following this project. That project calls for water to be in the Eastside Bypass from the Sand Slough control structure to the confluence with the Mariposa Bypass and then in the entire length of the Mariposa Bypass again, from the first day of the new project. There will be no opportunity for the District to de-water the bypass system and remove the vegetation from it. The only way to remove the vegetation which will be recruited by the Interim Flows during the initial project will be using hand tools and herbicides which are permissible for use around water which will flow in the River and, from there, into the San Francisco Bay - San Joaquin Delta estuary. This method of removing vegetation is labor intensive both in the use of the hand tools and in the application of herbicide since the herbicides which can be used legally are not as effective as the herbicides currently used and so are likely to require more than one application, nor are the District field personnel trained in the application of these water tolerant herbicides. Since these costs are unknown and will remain unknown until the end of the project it would make sense to handle them with an agreement by the Bureau of Reclamation to reimburse the District its expenses. However, as noted above, the District does not believe that an agreement which is acceptable to the District will be even seriously considered by the Bureau of Reclamation.

LSJLD-5a

Interim Flows around Reach 4 B 1 of the San Joaquin River: The EA-IS is not very clear as to exactly what reaches of which bypass will be used to avoid Reach 4 B 1 of the River. It seems to say that Interim Flows will be routed through the Eastside Bypass as far as the Mariposa Bypass and then would go down the Mariposa Bypass back into the River, (Page 2-25, line 2). However, if certain conditions are met, this water may not go into the Mariposa Bypass at all but will go down the entire length of the Eastside Bypass, (Page 2-24). These conditions

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include the extent to which these flows could be used to replace CVP water supplies to the wildlife refuges, such as the East Bear Creek Unit.

The diversion of WY 2010 Interim Flows at the East Bear Creek Unit could be exchanged for CVP water supplies that otherwise would be delivered to the East Bear Creek Unit. These CVP water supplies would then be available for recirculation to the Friant Division. Recirculation would be subject to available capacity within CVP/SWP storage and conveyance facilities, as shown in Figure 2-1, including the Jones and Banks pumping plants, the California Aqueduct, the DMC, San Luis Reservoir and related pumping facilities and other facilities of CVP/SWP contractors. (EA - IS, page 2-24, lines 23 to 29)

LSJLD-5b There are a number of problems with the above quoted language. A minor one is that Figure 2-1, to which it refers has nothing to do with the subject matter of this paragraph. The most important one is that the East Bear Creek Unit's water does not come from the DMC or any other facilities of the Central Valley Project or the State Water Project. It comes, for the most part, from the Merced Irrigation District, and the rest comes from San Joaquin, Fresno, Chowchilla and Kings River flood waters. It is hard to see how delivering San Joaquin River water to the East Bear Creek Unit could serve the purpose of replacing water lost to the Friant Division of the Central Valley Project. If this is in fact what is intended then more explanation of the means by which this is to occur is necessary.⁴

LSJLD-5c The best sense we can make of Section 2.2.2 is that the water will go into the Mariposa Bypass with only a fairly remote possibility that it will go into the Eastside Bypass, (since neither of the purposes of the Settlement Agreement would be served if the water went into the Eastside Bypass just to deliver water to the refuges when there is no benefit to the Friant Division's water supply in doing so). Assuming that is what is intended, one of the problems with this approach is that the inflow elevation of the concrete control structure into the Mariposa Bypass is significantly higher than the bypass channel bottom directly upstream of the structure. This

⁴Similar descriptions of deliveries of Interim Flow water to wildlife refuges are scattered throughout the document. For example, the discussion on page 2-9, starting at line 11, which refers not only to the East Bear Creek Unit in this regard but also to the Lone Tree Unit. Like the East Bear Creek Unit, the Lone Tree Unit is not normally supplied from the Delta-Mendota Canal but from the Merced Irrigation District and flood flows coming down the San Joaquin River from the Kings River. Each of these discussions should be corrected in this regard.

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higher elevation makes it necessary to close the gates to the downstream portion of the Eastside Bypass so that the water level can be raised high enough for water to flow into the Mariposa. This means that the water has to pond in the Eastside Bypass upstream of the Mariposa Bypass control structure until it is high enough to over top the concrete inflow wall of the structure. This has at least two negative consequences:

LSJLD-5d - In order to get the water high enough, the ponding in the upstream portion of the Eastside Bypass reaches a point that it inundates and makes impassable Dan McNamara Road, which is owned and maintained by the County of Merced. The District has an agreement with the County that, when the road is inundated, the traffic can be rerouted along the gravel roadway of the right project levee. Since, historically, this has happened for only a very limited number of days in any given year, the cost of maintaining this levee has been borne by the County of Merced. With the additional time this road will remain underwater during the project, the cost of maintaining the levee will be greatly increased. It cannot be determined what it will take to restore this levee to its pre-inundation state until the water recedes and traffic is routed to the County road again. Not only will the submerging of this road increase the cost of maintaining the levee to which traffic is detoured, it will also subject the District to liability issues relative to the duration of the traffic. This issue is not addressed in the EA - IS.

LSJLD-5e - At least one of the landowners within the Eastside Bypass, downstream of the Sand Slough structure, mines sand from the channel bottom which benefits the landowner and the District. It benefits the District because there are subsidence issues in the Eastside Bypass downstream of the Sand Slough Control Structure which causes the rate at which the water flows through this part of the Eastside Bypass to be slower than it was when the system was designed. Because of this slowness of the flow, this area has a tendency to fill up with sand. The removal of any of the sand from the Eastside Bypass in this area and immediately upstream of this area serves to reduce the tendency for the channel to become constricted. Water in this portion of the Eastside Bypass year round, will shut down this mining operation. It should be borne in mind that this portion of the bypass system is owned by the adjacent landowners subject to an easement for the passage of flood waters. To keep non-flood waters in the Eastside Bypass will, therefore, constitute a taking of a property right from this land owner. It will also, to some degree, harm flood control efforts in that it will reduce the amount of sand which is removed from the system and therefore increase the deposit of sand further down the bypass system.

LSJLD-6a **Supposed Lack of Alternatives:** The conclusion of the analysis of the alternatives in the EA - IS is that there are no alternatives to consider other than the project itself and the no project alternative, (page 2-23, lines 1 to 5). This is hardly the case. As discussed above, the EA - IS seems to say that the proposal is to send the Interim Flows down the Eastside Bypass into the

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Mariposa Bypass and, by that means, back into the River,⁵ (Page 2-25, line 2). Part of the reason for this may be that the Eastside Bypass downstream of the Mariposa Bypass must be kept clear of water when there is a likelihood of storm water flows coming into the system from the Merced Streams Group because this segment of the Eastside Bypass may not otherwise have sufficient capacity to accommodate these flows. However, as noted above, keeping the Interim Flows in the Mariposa Bypass for the entire term of this project has negative consequences as well as to Dan McNamara Road and the mining of sand by an adjacent private property owner. Keeping water in a single portion of the bypass system for nearly the entire year also has a severe negative impact on the District's ability to provide flood protection through the removal of vegetation. An alternative which would appear to address some of these problems would be to keep the water in the Mariposa Bypass only for a portion of the year which would include the time period during which flood flows from the Merced Streams Group might be reasonably anticipated. During the rest of the year these flows could be in the Eastside Bypass for the entire distance from Sand Slough control structure to the confluence of the Eastside Bypass and the San Joaquin River. There would still be some impacts with regard to Dan McNamara Road and the mining of sand, but this would serve to reduce both those impacts and the impact to flood protection of the project.

LSJLD-6b

Unfortunately the EA - IS speaks of the Stipulation and Settlement (Appendix A to the EA - IS), as if it was carved in stone or as if it were a federal statute. It is entirely possible to go back into court and ask that, in light of the amount of time which it took to adopt the funding statute, additional time should be afforded prior to introducing Interim Flows into the system. This would allow for the consideration of such alternatives as remodeling the control structure at the head of the Mariposa Bypass to reduce or eliminate the need for ponding in order to have water go down the Mariposa. It would also allow for consideration of moving the decision as to whether to use Reach 4 B of the River into Phase 1 of the Settlement Agreement so that, if it was decided to use Reach 4 B, the problems over the operation and maintenance of the bypass system could be eliminated. Most of all, it would allow the rational negotiation of a reimbursement

⁵It should be noted that the EA - IS is the first document which is specific about the route the Interim Flows will take in the 2010 water year. The *San Joaquin River Restoration Program Initial Program Alternatives Report*, published in June of 2008, failed to make a commitment as to which route would be taken. A request by the Levee District in January of 2009 for disclosure of the route, (Exhibit E to this letter), was turned down, (Exhibit H to this letter) by telling the District to wait for the *Final Program Alternatives Report* which was, insofar as the District is aware, never produced. Early consultation with the Levee District on this subject might have led to the development of at least one alternative to consider.

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agreement with the Lower San Joaquin Levee District which would go into effect before the
deadline to comment on either this EA - IS or the environmental document for the overall
project.

TECHNICAL ERRORS:

- LSJLD-7 **Infiltration losses in reaches other than Reaches 1 and 2:** On page 2-5, beginning at
line 11, refers to Figures 2-7 through 2-12. Those figures refer only to reaches 1 and 2 of the
River. The text refers to "infiltration losses in lower reaches". This seems more than a little
confusing since reaches 1 and 2 are upstream and, therefore, the highest reaches of the River..
Table 2-7 on page 2-21 introduces infiltration losses in Reach 2 A, which suggests that similar
information concerning infiltration losses in the other reaches of the River will be somewhere
else in the document. There does not seem to be any information in the document concerning
infiltration losses in the "lower reaches" of the River anywhere in the EA-IS. This makes the
information with regard to these two reaches of limited value to the analysis.
- LSJLD-8 **Sand erosion in Reach 1:** The sand which erodes from Reach 1 is deposited in Reach 2,
with only some of it eventually in Reach 3, (not all, as is asserted on page 3-55, at line 26).
Any measurement of this is complicated by the fact that sand from the operation of the Mendota
Pool is also deposited in Reach 3.
- LSJLD-9a **Corrections to the descriptions in Section 3.11.4, pages 3-78 and 3-79:** Throughout
the document it is refers to the "Chowchilla Bypass". The correct name is the Chowchilla Canal
Bypass. It runs from its confluence with the San Joaquin River at the bifurcation to its
confluence with the Fresno River at drop structure number two. The Eastside Bypass runs from
its confluence with the Fresno River at drop structure number two to the confluence with the San
Joaquin River. Both of these descriptions are from the Department of Water Resources levee log
inventory. The descriptions in various points in the EA - IS should be corrected, particularly in
Table 1-1 on page 1-10, and in Section 3.11.4 on page 7-78.
- LSJLD-9b The Chowchilla Canal Bypass has a channel capacity at the bifurcation structure of 5,500
cfs, with four feet of free board. At the bottom end, it has exactly the same rating.⁶ The Eastside
Bypass upstream of the Mariposa Bypass control structure is rated at 16,500 cfs. The EA-IS

⁶Its design capacity does *not* gradually increase as flows from the Fresno River, Berenda
Slough and Ash Slough are collected, (Section 3.11.4, page 3-78 at lines 29 to 31).

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repeatedly misstates the capacity of the Eastside Bypass downstream of the Mariposa Bypass control structure as 13,000 cfs. (e.e, Table 2-4, at page 2-14; Section 3.11.1 at page 3-65, line 37; Section 3.11.4 at page 3-78, line 42). The Eastside Bypass downstream of the control structure is rated at only 12,000 cfs. The system is designed so that the first 8,500 cfs of flow is passed through the Mariposa Bypass control structure with the next 8,000 cfs going down the Eastside Bypass as it continues north of the mouth of the Mariposa Bypass. Any flows coming down the Eastside Bypass to the Mariposa Bypass control structure in excess of 16,500 cfs are to be divided between the Mariposa and the downstream portion of the Eastside.

LSJLD-9c When flows from the Merced Stream Group reach the flood project, any flows in the Eastside Bypass are diverted into the Mariposa Bypass to allow the Merced Stream flows to enter the system. Not doing this conflicts with the project intent of accepting flood flows. When flows are allowed to pass through the Eastside Bypass rather than being diverted into the Mariposa Bypass, it is because there are no impending flows from the Merced Stream Group.

LSJLD-9d The Sand Slough Structure does not divert flows from the river into the Eastside Bypass. It keeps low flows from entering the bypass. There are no operational instructions in the Project O&M, but it is assumed that it was put in place to prevent flows from entering the bypass, allowing the flows to enter the old downstream river channel through the headgate installation. Sand Slough Structure serves no purpose for flood operations.

LSJLD-10a **Roads and Bridges:** The reference to there being eleven roadway crossing of the "Chowchilla Bypass and Tributaries", (page 3-10, line 37) is simply incorrect as is the reference to there being fifteen bridges across it (page 3-99, line 18) and the reference to highway 152 crossing it, (page 3-99, line 20). There are only four bridges that cross the Chowchilla Canal Bypass (Chowchilla Canal Bypass patrol bridge; Madera County Avenue 7 bridge; Madera County Avenue 12 bridge; Madera County Avenue 14 bridge). The Chowchilla Canal Bypass ends before Madera County's Road 9 bridge crossing. State Hwy 152 does not cross the Chowchilla Canal Bypass but it crosses the Eastside Bypass.

LSJLD-10b The reference to there being only two bridges across the Eastside Bypass, (page 3-99, line 24) is incorrect. There are eleven bridges that cross the Eastside Bypass from the confluence with Fresno River to the Mariposa Bypass control structure (Madera County Road 9; Triangle T Ranch; Madera County Avenue 18 ½; Madera County Road 4; Madera County Avenue 21; State Hwy 152 (two bridges); Merced County West Washington Avenue; Merced County Sand Slough; Merced County Chamberlain Road; Merced County Sandy Mush Road; Hayfield access bridge).

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LSJLD-10c As discussed above, Merced County's Dan McNamara Road is a low-water crossing that becomes flooded with minimal flows (50 cfs), prompting the County to post road closed signs. Continued access for McNamara Road is essential for the County, so the County has agreed to assume the responsibility for the maintenance of the levee roadway surface and shoulders on the right levee of the Eastside Bypass between McNamara Road and Sandy Mush Road, which serves as the detour to connect to the balance of McNamara Road. The County's use of the levee as a roadway exposes the District to liability. During flood events this is understood and is a risk the District has accepted. However, for non-flood flows to increase District liability exposure on a more frequent basis is not acceptable.

LSJLD-11 **Non-Project Levees:** Contrary to the assertion made on page 3-84, starting on line 6, there are project levees upstream of the Sand Slough Structure which are maintained by the District. These are, on the right bank, Unit #3, which is 2.16 miles, and, on the left bank, Unit #4, which is 1.58 miles.

LSJLD-12 **Central Valley Flood Control Act of 2008:** Page 6-8, section 6.12 really misrepresents the sense of the legislation in this field. The Department of Water Resources was directed by the Governor and by this legislation to improve upon existing conditions to attain a sustainable integrated flood management and emergency response system throughout California. This is necessary to increase public safety, protect and enhance environmental and cultural resources, and to support economic growth by reducing the probability of destructive floods. The Proposed Action in this EA-IS does not further this goal. By placing a higher value on achieving the twin goals of restoring the San Joaquin River and reducing the impact on the Friant Division of the Central Valley Project than protecting people from flood waters, the entire project runs counter to the goals and purposes set forth in the Flood Control Act. The proponents of the project cannot reduce the capacity of the bypass system to carry flood water by allowing vegetation to grow in it and still keep the same level of flood protection. It does not work. What is worse, the proponents are trying to do this too fast and too cheaply and are, thereby, jeopardizing the safety of the public.

CONCLUSIONS:

LSJLD-13 Without an agreement whereby the Lower San Joaquin Levee District's costs incurred solely to implement the Settlement Agreement which would not otherwise have been incurred by the District are paid to the District, there will be significant negative impacts on the District's ability to prevent flood damage to the property protected by the District. These impacts have not been mitigated to the extent of making them less than significant. Therefore a mitigated negative

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declaration is simply not appropriate at this time.

LSJLD-14 These impacts include but are not necessarily limited to the added costs associated with operating and maintaining the Flood Control Project when there is water in it for the entire year, (other than the late Autumn and the Winter, during which there is likely to be water in the system from winter storms). Because there is only a limited amount of money available to the District, the costs which are reimbursed or paid in advance should include costs incurred by the District to pay for legal help and engineering help in reviewing this EA-IS. The fact that the Bureau of Reclamation is bearing the cost of having others review the CEQA documents has no bearing on this issue. The District has knowledge and experience in regard to the working of the system which no one else, including the Department of Water Resources, has. The costs reimbursed should extend to all of the costs incurred by the District, including those incurred prior to the passage of the funding legislation. The agreement to do so should also address the District's costs which will be incurred at the end of WY 2009, the first year of the River Restoration Program, to return the Flood Control Project to its present condition.

LSJLD-15 The Draft Mitigated Negative Declaration has two findings in it which are not true. Finding 8 is that the proposed project would not have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly. Finding 9 is that there is no substantial evidence that the proposed project would have a significant negative or adverse effect on the environment. Finding 8 is incorrect in that the project will diminish the level of flood protection afforded to the people who live and/or work with in the District's boundaries. Even with additional funds, it will be very difficult, if not impossible, to remove all of the vegetation which will be recruited into the Eastside and Mariposa Bypasses with those areas remaining wet after this first year of Interim Flows is over. A floodway which is overgrown with vegetation can have significantly less capacity to carry flood water than it had without vegetation. This simple fact is not given adequate consideration in the EA - IS. Obviously, if there are significant negative impacts as to flood control, there is substantial evidence that the proposed project will have a significant negative or adverse effect on the environment.

LSJLD-16 The problems with the Finding of Not Significant Impact are even greater. While it acknowledges the problem with inundating Dan McNamara Rod, (finding 15, page 5), it fails to acknowledge that this impact is not mitigated. Merely recognizing that traffic will have to be re-routed does not address who is going to pay for the cost of maintaining this alternate route or the impact on the levee where this alternative route will be located. While it first says that the project will not significantly impact recreation, it goes on to suggest that it will "enhance the use of the San Joaquin River by boaters . . . by potentially increasing the time that flow would be in ideal flow ranges", (page 5, finding 14). The problem with that is that there is little or no public

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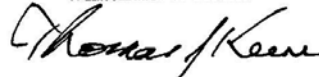
access to the San Joaquin River and no access to the Eastside Bypass and Mariposa Bypass for recreational activities. The bypasses in particular are too sensitive to be given over to recreation. The waters which run through them can be treacherous to boaters, particularly when the control structures are being operated.

Technically, the EA-IS is filled with errors and it should be withdrawn and a new environmental study prepared. The preparation of this document should include circulating an administrative draft to agencies such as the District which both have technical knowledge of the subject matter but which also may be required to adopt CEQA or NEPA compliance documents in order to perform discretionary acts necessary for this first year of the San Joaquin River Restoration Project to be a success. Prior to the circulation of this new environmental document for public comment, a reimbursement agreement with the District should be negotiated and signed. The new CEQA document should consider reasonable alternatives such as those which are identified in this letter.

We look forward to the Department of Water Resources' response to our comments on this draft CEQA document.

Very truly yours,

Linneman, Burgess, Telles,
Van Atta, Vierra, Rathmann,
Whitehurst & Keene



Thomas J. Keene

cc: Reggie Hill, Secretary-Manager
Lower San Joaquin Levee District