Comment Letter SEWD

SEWD

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Feb 07, 2006 00138

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February 7, 2006

VIA EMAIL and US MAIL

Mr. Paul Marshall
SDIP EIS/EIR Comments
State of California Department of Resources
Bay Delta Office
1416 Ninth Street
Sacramento, California 95814

Re: Stockton East Water District/South Delta Improvement Program

Dear Mr. Marshall:

These comments on the South Delta Improvement Program Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) for the South Delta Improvements Program (SDIP) are submitted on behalf of Stockton East Water District.

SPECIFIC COMMENTS

New Melones Reservoir (p. 5.1-13)
The statement is made that "Operation of New Melones is governed by the interim operations plan. . ." This statement is inaccurate. The United States Bureau of Reclamation has indicated that it is using the interim operations plan (IOP) as a "guide." In fact, Reclamation had consistently deviated from the IOP in its operations of New Melones for the past several years, provided more water for water quality when needed and additional water to CVP contractors

SEWD-1

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than allocated under the IOP formula. As a result, the validity of modeling results using a version of CALSIM operating New Melones in accordance with the IOP is questionable. **SEWD-1**

San Joaquin River and South Delta Salinity (p. 5.3-13)

The statement is made that "Releases from New Melones Reservoir are used by Reclamation to control the salinity at Vernalis, but there is a maximum specified volume of water reserved for this purpose." This is inaccurate for several reasons. First, Reclamation has been operating New Melones without regard for any maximum specified volume of water for the control of salinity. In addition, Public Law 108-361 directs the Secretary to change the operation of New Melones for this purpose to reduce such releases. This change is not discussed in the operating scenario. **SEWD-2**

The statement continues: "CALSIM attempts to meet the EC objectives, but because the salinity control water volume may be depleted at the end of the water year, the simulated Vernalis EC is often higher than the 1,000 µS/cm objective in September." Because Reclamation has indicted that the EC standards at Vernalis will be met this statement reveals the inaccuracy of the CALSIM model as used. **SEWD-3**

Finally, the Draft EIS/EIR states: "The SDIP alternatives are not expected to change the San Joaquin River flows and therefore would not affect the Vernalis EC values." This conclusory statement is not supported with evidence anywhere in the record; nor does the record contain any analysis on this issue.

At p. 5.3-14 the Draft EIS/EIR states:

> The potential indirect effects of the SDIP providing increased CVP deliveries that would add to the salt load at Vernalis were considered in the CALSIM salinity estimates at Vernalis that were used in DSM2. However, most of the additional deliveries would be made to the CVP San Luis Unit contractors (e.g., Westlands Water District). Most of the CVP deliveries to water districts along the San Joaquin River are DMC exchange contractors who already receive their full allocation of Delta water in almost all water years. Changes in the Vernalis EC estimates caused by the SDIP were negligible.

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Please point out the information and analysis contained in the Draft EIS/EIR upon which these conclusions are based. The statement that "Changes in the Vernalis EC estimates caused by the SDIP were negligible" is not supported with data. **SEWD-3**

Most importantly, asking whether or not operation of Stage 2 of the SDIP changes the Vernalis EC estimates does not evaluate the adverse impact of the project on the environment. Because the potential indirect effects of Stage 2 of the SDIP providing increased CVP export deliveries that would add to the salt load at Vernalis were simulated with the CALSIM model, any changes in the salt load would be masked by the salinity management with New Melones releases to meet the EC objectives. The Draft EIS/EIR needs to evaluate the increased salt load at Vernalis NOT the estimated increase in Vernalis EC.

In fact, the Draft EIS/EIR does not discuss the impact of increased CVP exports (including refuge supplies) on return drainage into and water quality in the San Joaquin River, and resulting adverse impacts to water quality at Vernalis. While Reclamation will release additional water from New Melones to insure that the objective at Vernalis is met, that in itself is a potential adverse impact that must be evaluated in the Draft EIS/EIR and is not. In addition, the Draft EIS/EIR should discuss the appropriateness of assuming additional releases from New Melones to mitigate for adverse impacts caused by increased CVP return flows in light of the specific mandate of Public Law 108-361 to reduce such flows. **SEWD-4**

Moreover, we are not able to identify any analysis in the Draft EIS/EIR that supports the assertion that most of the additional deliveries would be made to Westlands Water District. Table 9.6 of the Draft EIS/EIR reveals increased deliveries under each alternative to CVP contractors, other than Westlands Water District, that drain into the San Joaquin River. **SEWD-5**

In addition, Table 9.6 indicates identifies zero increased deliveries under all alternatives to refuge contractors, while at p. 4-7 of the Draft EIS/EIR the statement is made that with implementation of Stage 2 of Alternative 2A: ". . .DWR would annually convey up to 100,000 acre-feet of CVP Level 2 Refuge water through CCF and SWP Banks by September 1. . . ." Is this additional water? **SEWD-6**

Further, the Draft EIS/EIR does not evaluate whether or not any of the additional unused pumping capacity that would allow an average of approximately 100,000 acre feet of potential **SEWD-7**

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water transfers pursuant to Stage 2 of Alternative 2A would be used to convey additional water to wildlife refuges. SEWD-7

At p. 5.3-17 the Draft EIS/EIR states:

> Figure 5.3-8 shows the DSM2 EC boundary conditions for the San Joaquin River at Vernalis for the 1976-1991 period compared to the historical EC measured at Vernalis during the same period. The relationship between EC and flow at Vernalis is generally matched with the DSM2 boundary EC conditions that are actually obtained from CALSIM. However, the historical monthly pattern of EC, which is generally highest in the winter months, was not always reproduced in the CALSIM-estimated EC values that were used in the DSM2 modeling. The DSM2 Vernalis boundary conditions show highest EC values in the months of August and September, apparently because the CALSIM-simulated salinity control account in New Melones Reservoir is depleted. CALSIM results (used in DSM2) show several years with a violation of the 1,000-µS/cm EC objective at Vernalis in September. Recent technical work by Reclamation on the Vernalis salinity estimates in CALSIM may resolve this issue. The high Vernalis EC from CALSIM produces a subsequent problem in DSM2 simulations of the SDIP alternatives, because the simulated complete closure of the head of Old River fish control gate in October and November tends to trap high EC water in the south Delta channels. Violations of the south Delta EC objectives that may be simulated in the baseline conditions are not considered to be an impact from the SDIP if the cause was the high Vernalis EC.

SEWD-8

The "recent technical work" being undertaken by Reclamation is not described; please indicate what type of work is being undertaken.

Sources of South Delta Salinity (page 5.3-25)
The Draft EIS/EIR includes the statement:

SEWD-9

> The CALSIM-estimated EC values, which are used in DSM2 simulations of EC, exceed these salinity objectives in September of several years. The high EC values from CALSIM that are above the water quality objectives in September do not occur in the historical record. There is no reason to believe that the Vernalis EC in September will exceed the EC objective in the future. The high EC values estimated by CALSIM in March are more likely to occur because there has been high salinity at Vernalis during the winter of low-flow years. Technical work currently being prepared by Reclamation to revise and improve the EC estimates in the CALSIM model may help resolve this

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issue. The revised Vernalis EC estimates are generally lower and suggest that water quality objectives at Vernalis and in the south Delta channels may be met more frequently.

SEWD-9

Where is the support for the conclusion that "The high EC values estimated by CALSIM in March are more likely to occur because there has been high salinity at Vernalis during the winter of low-flow years?" The most likely reason that EC values are high in March is refuge releases during that period, and this is not evaluated. Again, please define the "technical work" being prepared by Reclamation.

GENERAL COMMENTS

Refuge Supply Impacts

An area completely ignored by the Draft EIS/EIR is the potential impact of Stage 2 operations on water availability to water supply refuges. The document acknowledges that refuge water supplies are included in CVP demands (at p. 5.1-19), but does not provide specific information regarding increased supplies to refuges as a result of operational changes that could occur in Stage 2 of the SDIP.

SEWD-10

Conditions Precedent to Stage 2

The California Legislature has imposed conditions upon the Department of Water Resources and the United States Congress has imposed conditions upon the Bureau of Reclamation that must be met before the operational changes contemplated at Stage 2 of the SDIP can be implemented. Yet, the Draft EIS/EIR does not mention the requirements imposed by California Water Code §138.10 or Public Law No: 108-361.

SEWD-11

Water Code §138.10 specifically provides that the Secretary of Resources is to submit a plan to meet the existing permit and license conditions imposed upon the Department of Water Resources by the State Water Resources Control Board in D 1641, and that the plan is to be submitted to the Board of the California Bay-Delta Authority "prior to increasing the existing permitted diversion rate at the State Water Project's Harvey O. Banks Pumping Plant."

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Public Law 108-361 includes an express prohibition against "increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors" until the Secretary develops and initiates implementation of the program described in that law. The program is a specific pre-requisite to implementation of the Stage 2 of the project described in the Draft EIS/EIR, and the project description must include a discussion of the program requirements. **SEWD-11**

Specifically, Public Law 108-361 requires re-operation of the New Melones Project to address the following changes in operations on the San Joaquin River:

- ✓ Developing a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

- ✓ Implementing a best management practices plan to reduce the water quality impacts of the discharges from wildlife refuges that receive water from the Federal Government and discharge salt or other constituents into the San Joaquin River.

- ✓ Acquiring water from willing sellers on streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges of salt or other constituents, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin Rivers, and to reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives.

The express purpose of the obligations imposed by Public Law 108-361 is to "reduce the demand on water from New Melones Reservoir used for that purpose and to assist the Secretary in meeting any obligations to Central Valley Project contractors from the New Melones Project." Consequently, these directed changes are foreseeable and must be analyzed in the 2020 operations scenario to present an accurate environmental impact.

CONCLUSION

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In summary, it appears that the Draft EIS/EIR does not discuss, let alone address, all impacts of the proposed project. In addition, the project description does not accurately reflect existing law governing operation of the CVP, and specifically, the limitations imposed upon operation of Stage 2 of the Project by Public Law 108-361.

Very truly yours,

JEANNE M. ZOLEZZI
Attorney-at-Law

JMZ:rl

cc: Mr. Kevin Kauffman
Mr. Michael Finnegan

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Responses to Comments

SEWD-1

The CALSIM model (Benchmark 2002) used operation rules developed from the New Melones Reservoir Interim Operations Plan (IOP) to simulate monthly water allocation for the Stanislaus River. Reclamation actually operates each reservoir with some discretionary actions, in addition to the basic operations outlined with the IOP. For the SDIP evaluation, the most important concept is that New Melones Reservoir operations were not changed by the SDIP. There are, therefore, no impacts on any water districts that use Stanislaus water, or on fish habitat or water quality conditions in the Stanislaus River.

SEWD-2 through SEWD-5

Please see Master Response Q, *Effects of SDIP on San Joaquin River Flow and Salinity*.

SEWD-6 and SEWD-7

The SWP wheeling of 100,000 af/yr of level 2 supply to refuges allowed more water to be pumped through the CVP Tracy facility and delivered to CVP contractors. Per the SDIP project purpose, the additional export capacity provided under Stage 2 could be used to convey additional supply to refuges. Analysis of this potential action is incorporated into the analysis of water transfers.

SEWD-8 and SEWD-9

Please see Master Response Q, *Effects of SDIP on San Joaquin River Flow and Salinity*.

SEWD-10

Refuge supplies will not change (increase) with the SDIP. Alternative 2A, which includes some CVP/SWP integration provisions, will allow the SWP to convey 100 taf/yr of refuge water supplies, allowing CVP pumping to increase deliveries to CVP contractors. Any future water transfer may require additional evaluation of environmental impacts in the water source area and in the water use area; the SDIP evaluation of future water transfers includes only the Delta effects from the increased pumping.

SEWD-11

DWR has completed a plan to meet existing permit and license conditions dated January 2006. As required by Water Code 138.10, this plan will be submitted to the CBDA and the State Water Board prior to increasing the existing permitted diversion rate of the SWP.

This comment contains numerous legal conclusions with which Reclamation does not agree. Reclamation believes that it is complying fully with all applicable state and federal laws, including Public Law 108-361, in connection with the proposed SDIP. Moreover, contrary to this comment, it is Reclamation's position that:

- Reclamation has historically met the terms and conditions of its water right permits for operation of the New Melones Project, as required by the State Water Board. Reclamation is committed to meet these terms and conditions in the future.
- Reclamation has a Program to Meet Standards in place, and a report describing this program, dated February 2006, is currently awaiting Administration review before being issued as a public document.
- Reclamation and DWR have committed to additional NEPA/CEQA documentation before the Stage 2 decision and prior to increasing exports beyond current permit conditions. Reclamation and DWR are not presently operating the CVP and SWP export facilities beyond levels allowable under their respective water right permits and licenses.
- The "future without project" condition developed in the SDIP Draft EIS/EIR incorporates all reasonable, foreseeable actions.

Comment Letter TC

TC

TRINITY COUNTY JAN 3 1 2006 116
BOARD OF SUPERVISORS
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January 18, 2006

Mr. Paul A. Marshall
Department of Water Resources
South Delta Branch, Draft EIS/EIR Comments
1416 9th Street, 2nd Floor
Sacramento, CA 95814
Fax: (916)653-6077

RE: Comments on the South Delta Improvements Program, Draft Environmental Impact Statement/Environmental Impact Report

Dear Mr. Marshall:

The County of Trinity (County) has had the opportunity to review the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/R) of November 2005, by the California Department of Water Resources (DWR) and the US Bureau of Reclamation (BOR) concerning the South Delta Improvements Program (SDIP). We recommend that DWR and BOR withdraw the proposed DEIS/R for this project because of numerous legal and technical inadequacies. Some of the inadequacies include, but are not limited the following:

- The document is based upon the "Biological Opinion (BO) on the Long-Term Central Valley Project (CVP) and State Water Project (SWP) Operations Criteria and Plan (OCAP)", which has been found faulty by an independent technical review team convened by the CALFED Bay-Delta Program whose findings were made public January 3, 2006. A report by the Department of Commerce's Inspector General also found the BO process violated government procedures. TC-1
- The document does not consider an alternative which **reduces** exports from the Delta, per the Third District Court of Appeals Decision (RCRC et al v State of California), which sets aside the CALFED PEIR because the PEIR improperly fails to discuss an alternative that requires reduced exports of water from the Delta.
- Similar to the CALFED PEIR and the Third District Court of Appeals Decision (RCRC et al v State of California), the document does not adequately disclose the environmental impacts of diverting water from various potential sources to meet the CALFED Program's goals. In particular, the analysis of impacts to Trinity Lake, Trinity River fisheries and Trinity County recreation are not only inadequate, but grossly misleading. The modeling analyses for the document TC-2

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include fundamentally erroneous assumptions about the 2000 Trinity River Record of Decision (Trinity ROD) which are in direct conflict with the Trinity ROD's requirements for flows and Trinity Lake storage.

- The larger CALFED program, which includes SDIP, CVP long-term contract renewal, the so-called "Napa Proposal" and other elements to integrate CVP and SWP operations requires an EIS/EIR which amends the 1986 Coordinated Operating Agreement between DWR and BOR.
- The SDIP DEIS/EIR is premature in assuming that ever-larger deliveries of water to the San Luis Unit of the CVP is justified, as the ROD for the San Luis Unit Drainage Re-Evaluation has not been completed. The National Economic Analysis for that project identified that land retirement would be the most cost effective alternative, which could actually allow for **reduced** Delta exports.

We also request that the comment period be extended another 30 days in order to allow adequate time to review this complex and lengthy document. TC-3

Long Term CVP OCAP BO is Inadequate

The SDIP project is based on Endangered Species Act compliance through the CVP OCAP. A revised BO should be prepared with adequate analyses to determine jeopardy to listed species, including Klamath-Trinity coho salmon (Southern Oregon/Northern California Coho). The independent review by a team of 6 scientists concluded that the BO had the following deficiencies:

1) Global climate change was not considered. The BO assumes that the climate and hydrologic regime during the last century will persist into the future. The Panel does not believe that global climate change (e.g., temperature warming), and the consequent temperature and hydrological changes, received adequate treatment in the BO. This deficiency resulted in an important uncertainty being ignored that could affect the characterization of the risk to the ESUs. TC-4

2) Variability in ocean productivity, and its affect on fish production, was not incorporated into the analyses.
The current status of the listed populations is, in part, an outcome of recent favorable ocean conditions. What will the status of listed populations be under less favorable conditions that may occur in the near future? By not including variability of ocean conditions in its analysis, the BO does not adequately address whether or not the listed populations are sufficiently large to survive a period of poor ocean conditions.

3) Unknowns or uncertainty were either not adequately incorporated into the analyses, or their incorporation was not clearly explained.
In some cases, uncertainties were simply ignored or their consideration was deferred to other future analyses or other in-progress biological opinions. For example, Table 9
in the BO (page 193) summarizes the effects of the proposed project on the listed ESUs, but Table 9 fails to list eleven additional effects mentioned in the text of the BO. Ignoring or deferring the consideration of these effects in analyses does not give the listed species the required benefit of the doubt.

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4) **Some models and analyses appeared to be flawed.** The application of monthly temperature models to anadromous fish studies is a point of concern. Of particular concern is the adoption, with little discussion, by NMFS of these monthly results both for assessing potential impacts and for setting thermal criteria. In addition, the data used to develop relationships between water temperature and salmon gamete, egg, and alevin mortality was not the best available. TC-4

5) **Greater consideration should be given to genetic and spatial diversity in the ESUs.** Too little consideration was given to the genetic and spatial diversity aspects of the ESUs. The Central Valley Technical Recovery Team (CVTRT) noted that the "dependent" populations of spring Chinook and steelhead occupy marginally suitable habitats that either depend on migrants from the nearby streams or operate as a metapopulation in which each stream is not individually viable, but the group persists. These dependent populations are a valuable resource because they exist in marginal environments, may contain valuable genetic attributes (e.g., higher temperature tolerance), and may serve as links with other populations in ways that increase the viability and resiliency of the ESUs over long time scales. The BO did not adequately treat the genetic and spatial diversity aspects in their analysis.

Clearly, the BO for the SDIP is inadequate and must be revised and completed prior to release of a new DEIS/R. In order to fully disclose impacts and mitigation measures, the revised BO must be completed prior to release of the new DEIS/R.

An Alternative That Reduces Delta Exports Is Not Considered

In October, the California Third District Court of Appeals set aside the CALFED ROD because, among other things, the PEIS for CALFED did not consider an alternative which **reduces** exports from the Delta. Similar to the CALFED PEIS, the SDIP DEIS/R does not contain an alternative which reduces Delta exports. This is a serious deficiency in the SDIP DEIS/R and must be remedied by development of an alternative which does not require an increase in the capacity of the SWP's pumping capacity at Clifton Court Forebay.

Trinity County suggests development of a "Land Retirement Alternative" which returns water to environment as follows (Excerpted from comments by the Trinity County Board of Supervisors on various Central Valley Project Long-Term Water Contract Renewal NEPA documents)**:** TC-5

A revised SDIP DEIS/R should expand on Appendix A of the Trinity River Fishery Restoration Supplemental EIR (shown below revised as Table 1). Table 1 portrays a rough estimate of the potential water savings associated with the retirement of lands within the San Luis Unit, Delta-Mendota Canal Unit and the San Joaquin River Exchange Contractors of the Central Valley Project that are expected to require drainage service. The purpose of this analysis is to estimate an amount of CVP water that could be obtained from the retirement of drainage-impacted lands in the 3 units of the CVP. The water savings would then be dedicated to increase Trinity Lake storage to offset instream fishery flows as prescribed in the Trinity River Record of Decision (Trinity ROD). The

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reduction in project use power needs would also reduce power demands to help mitigate impacts to CVP power customers from loss of generation from implementing the Trinity ROD.

The total land with drainage problems is 376,751 acres in the water districts identified below in Table 1, but other problem areas also exist outside of the SLU and DMC areas, as identified in Table 2 below.

The analysis below shows that land retirement could save 793,056 AF in total CVP contracted water, which would have been an actual reduction in demand of 568,373 AF in 2002, the same year as the unprecedented Klamath Fish Kill. Permanent land retirement and dedication of water to other CVP project purposes would result in significant benefits from reduced pollution from drainage water, reduced CVP project power usage, increased ability to meet various water quality standards, increased water storage, increased M&I water supplies, and more water for environmental needs such as Trinity River fishery flows and wildlife refuges. **Land retirement could also be the basis for an alternative which reduces exports from the Delta, per the Third District Court of Appeals decision on the CALFED PEIR.**

Table 1 from the Draft Trinity River Fishery Restoration Supplemental Environmental Impact Report (Trinity County 2004, as amended 1/24/05 and 2/16/05)

	Acres	Acres Requiring Drainage Service	% of District Requiring Drainage Service	Max CVP Contract Amount (AF)	Max CVP Contract Water Savings (AF)	2002 CVP Contract Deliveries (AF)	2002 CVP Water Savings (AF)
Broadview Water District	9,515	9,515	100.00%	27,000	27,000	18,588	18,588
Panoche Water District	39,292	27,000	68.72%	94,000	64,593	66,743	45,863
Westlands Water District	***604,000***	***298,000***	***49.34%***	***1,154,198***	***569,455***	***776,631***	***383,172***
Eagle Field	1,438	1,435	99.82%	4,550	4,542	2,869	2,864
Mercy Springs	3,589	2,417	67.35%	2,842	1,914	4,679	3,151
Oro Loma	1,095	,1095	100%	4,600	4,600	3,173	3,173
Widren	881	881	100%	2,990	2,990	2,094	2,094
Firebaugh	23,457	23,457	100%	85,000	85,000	85,000	85,000
Cent. Cal ID	149,825	4,951	3.30%	532,400	17,569	532,400	17,569
Charleston Drainage District (portion of San Luis WD	4,314	3,000	69.54%	8,130	5,654	Not avail	Not avail

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with drainage problems)							
Pacheco Water District	5,175	5,000	96.62%	10,080	9,739	7,137	6,896
Total	842,581	376,751	NA	1,925,790	793,056	1,499,314	568,370

Table 1 above was derived by obtaining acreage information for each district through Chris Eacock at the Bureau of Reclamation (USBR) in Fresno. The number of acres requiring drainage by 2050 was taken from estimates in the San Luis Drainage Feature Evaluation, Plan Formulation Report, USBR, December 2002 (pages 2-5 and 2-6). The maximum water savings associated with the retirement of these lands was calculated by multiplying the maximum contract amounts for each district by the percent of that district requiring drainage. Contract amounts were taken from a list of CVP contracts provided by Reclamation. Each district's total contract amount was calculated by adding all of its water contracts if more than one contract exists.

According to information we have received from the Environmental Working Group, water and crop subsidies to Westlands in 2002 amounted to over $100 million. If approximately half of Westlands, as well as those impacted lands in other drainage-problem districts such as Broadview, Widren, Mercy Springs, Panoche, Pacheco and others were retired, it would free up hundreds of thousands of acre-feet of water, as well as significantly reduce water and crop subsidies by tens of millions of dollars a year. Full analysis of such an alternative would provide meaningful disclosure to decision makers and the public about the true costs of delivering water to these problem lands.

Table 2

	Total Irrigated croplands in 2002(acres)	Drainage Impaired acreage in 2000 (acres)	% of County Requiring Drainage Service	Estimated Contract Amounts (AF)	Estimated Water Savings (AF)
Tulare County	652,385	291,000	44.60%	1,304,770	581,927
Kern County	811,672	313,000	38.56%	1,623,344	625,961
Total	1,464,057	604,000	N/A	2,928,114	1,207,888

Table 2 above portrays a very preliminary estimate of water savings in Tulare and Kern County within the SWP service area. The acres of irrigated croplands was taken from the USDA farm census statistics report in 2002. The acreage of drainage impaired acres is derived from a report by CA Dept of Water Resources, the 2000 San Joaquin Valley Drainage Monitoring Program. The acreages identified are for lands with high groundwater within 20 feet of the surface. The contract amounts were figured by estimating 2 acre-feet per acre irrigated, most likely an underestimated amount. Further investigation is needed to verify and refine these numbers, but clearly there is adequate

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justification to remove these lands from irrigation due to continuing drainage problems and salinization of land, in violation of Water Code Section 100- Wasteful and Unreasonable Use of Water.

Inadequate Impact Analysis For Trinity County- A County of Origin for the CVP

The SDIP DEIS/EIR contains unsubstantiated findings about the lack of impacts to Trinity River fisheries. The Stage 2 analysis of Trinity River fisheries only includes an analysis of coho salmon, but does not analyze impacts on fall and spring chinook, winter and summer steelhead, lamprey and sturgeon. In particular, the statement on page 6.1-87 that "***The effects on coho salmon are representative of the potential effects on Chinook salmon and steelhead***" grossly ignores the life history of all species in the Trinity River. Adult Coho salmon generally migrate and spawn when temperature isn't an issue (late fall/winter), while spring chinook, fall chinook and summer steelhead spawn, migrate and hold during periods when temperatures can be an issue (summer/early fall). TC-6

The DEIS/R fails to recognize the importance of steelhead and chinook in sport, tribal and commercial harvest, and it fails to identify that lower Trinity Lake carryover storage will have a negative impact on the survival of Trinity River fisheries. It tries to make the case that increased exports from the Trinity River to the Sacramento River will reduce Trinity River temperatures, but the DEIS/R completely ignores the issue of cold water reserves to ensure that adequate temperatures can be achieved. TC-7

Specifically, the DEIS/R should analyze how well the project will meet water quality objectives for the Trinity River adopted by the North Coast Regional Water Quality Control Board, the SWRCB and USEPA as follows:

NCRWQCB Temperature Objectives for the Trinity River
Temperature Not to Exceed; Time Period; River Reach
60°F (15.6°C); July 1-September 14; Lewiston Dam to Douglas City Bridge
56°F (13.3°C); September 15-October 1; Lewiston Dam to Douglas City Bridge
56°F (13.3°C); October 1-December 31; Lewiston Dam to confluence with North Fork

Trinity River water quality is also explicitly protected by Water Right Orders 90-05 and 91-01. These orders state that exports from the TRD to the Central Valley for Sacramento River temperature control shall not harm Trinity River fisheries, as measured by compliance
with specific temperature requirements in the Trinity River. The temperature requirements contained in Water Right Orders 90-05 and 91-01 for the Trinity River are 56°F (13.3°C) and 56°F (15.6°C) at Douglas City and the North Fork confluence, respectively, as shown
in the table above. The 60°F summer objective at Douglas City is not a requirement of Water Right Orders 90-05 and 91-01.

The DEIS/R should be revised to include a full analysis of impacts to Trinity River temperatures and consistency with State, federal and Tribal water quality standards and objectives. TC-8

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Trinity Lake is a 2.48 million AF reservoir located on the Trinity River near Lewiston, California. Water released from Trinity Dam is approximately 45°F, and can be diverted via Clear Creek and Spring Creek tunnels to the Sacramento River for use by the CVP; but it can also be released into the Trinity River to meet fishery needs in the Trinity River and the Lower Klamath River. Since the massive adult salmon kill of 2002 where at least 68,000 adult chinook salmon died due to poor water conditions from Klamath Project operations, additional water was released from Trinity Dam in 2003 and 2004 to prevent another fish kill (additional releases were deemed unnecessary in 2005). Releases of water from Trinity and Lewiston Dams have been shown to significantly decrease water temperatures (by 5-6°F) and increase dissolved oxygen in the Lower Klamath River, approximately 112 miles downstream of Lewiston Dam.

However, Trinity Lake is approximately twice the size of the average annual inflow from the upstream watershed. Thus, the refill potential of the reservoir is extremely low compared to other reservoirs such as Shasta Lake, which has an inflow roughly equal to its size. Once Trinity Lake is drawn down during an extended drought, it will not refill, but will likely get even lower, such that cold water supplies will eventually be exhausted, leaving virtually no source of cold water to keep the Trinity and Lower Klamath rivers' fisheries alive. Such action would also negatively affect the economy of Trinity County such as businesses that rely upon water storage in the Reservoir and those that rely upon flows within the Trinity River for tourist and recreation opportunities. TC-9

The 2000 Trinity River Record of Decision (ROD) called for increased fishery flows into the Trinity River from Trinity and Lewiston Dams, corresponding to roughly a 1/1 reduction in water exports to the Sacramento River. It is now apparent that the BOR, through the SDIP, has no intention whatsoever of honoring the requirement to reduce water exports to the CVP commensurate with the increase in fishery flows. Instead, BOR intends to continue historic deliveries of CVP water, as stated in the numerous CVP long-term contracts such as the San Luis Unit, with possible larger deliveries.

Therefore, approval of the SDIP and implementation of the Joint Point of Diversion whereby the CVP can send its "surplus" water south of the Delta using SWP pumping capacity will surely result in depleted cold water reserves in the Trinity Lake at the beginning of the next multi-year drought. Since the reservoirs on the Klamath River upstream of the Trinity River confluence are shallow, nutrient-rich and warm, this will leave absolutely no safeguards for protection of the KTW's fisheries. This includes coho salmon, a state and federal listed species, as well as steelhead, spring and fall chinook, lamprey and green sturgeon. These species support a broad range of tribal, commercial and sport fisheries, and communities in the North Coast Region and southern Oregon.

The DEIS/R should be revised to include a full analysis of impacts to all Trinity River fisheries, and an honest assessment of the environmental and economic impacts of reduced carryover storage and recreation in Trinity Lake on not only the Trinity River, but also on the Lower Klamath River's fisheries.

Trinity County believes that the statement found with Table 4-1 (pg. 13-14) of the SDIP that salmonids with the Trinity River will be "less than significant" is extremely misleading, and is based on assumptions which conflict with the Trinity ROD. Within

WILLIAM CHAMBERS DISTRICT 1 | JEFF MORRIS DISTRICT 2 | ROGER JAEGEL DISTRICT 3 | HOWARD FREEMAN DISTRICT 4 | WENDY REISS DISTRICT 5

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the DEIS/R discussion of the TRD (pg. 5.1-9), it is stated that based upon the simulation used to predict carry-over capacity, that a minimum pool of 250 TAF every few years, with 500 TAF every several years would be the minimum pool. However, the Trinity ROD mandates that at least 600 TAF yearly be left as a Trinity Lake minimum pool, except with NMFS reconsultation it may go to an absolute minimum of 400 TAF in drought years. Based on the SDIP simulations, there would be 21 years out of 100 where there would be minimum pools less than Trinity ROD requirements. This would likely have a severe impact to salmonids in the Klamath-Trinity watershed by having water temperatures instream being higher than State, federal and tribal water temperature standards and objectives. Therefore the County believes that DWR and BOR declaration that there would be a "less than significant impact" to Trinity River fisheries is untrue. A true disclosure analysis that takes in consideration the Trinity ROD minimum pool standard, reduced long-term Trinity exports to the CVP, and Trinity instream flow requirements be fully analyzed and discussed in a new SDIP DEIS/R.

The SDIP analysis also includes tables which identify both exports from the Trinity River to the Sacramento River, as well as Trinity River instream flows in terms of cubic feet per second (cfs). This is very misleading and is inconsistent with other environmental documents related to the CVP whereby water amounts are typically shown in annual Acre-Feet (AF). CFS is an instantaneous amount of water, while AF is an appropriate metric for water measurement on an annual basis. Again, the DEIS/R should be withdrawn and a new document should be prepared which clearly identifies impacts and mitigation measures in commonly understood terms. **TC-10**

Trinity County is a disadvantaged, low-income county, as described in State guidelines for various grant programs. Our poverty levels are similar to the City of Oakland, and well below state averages for both income and children covered by the school lunch program. Therefore, impacts to Trinity County should also be addressed in terms of environmental justice. **TC-11**

Need for an SEIS/EIR to Amend the 1986 Coordinated Operations Agreement

The operational component of SDIP is actually an amendment of the 1986 Coordinated Operation Agreement (COA) between BOR and DWR for meeting Delta Water Quality Standards. An EIS/EIR was completed in 1986, yet no supplemental NEPA/CEQA document has subsequently been prepared to address changes in operations of the 2 systems over the past 20 years.

The purpose of the COA was to jointly meet the water quality standards in SWRCB Decision 1485, which was subsequently replaced by SWRCB Decision 1641 in 1999. CALFED, the Napa Proposal and other integrations of the SWP and CVP are clearly amendments to the 1986 COA, yet no mention is made whatsoever in this DEIS/R about that issue. **TC-12**

The DEIS/R should be withdrawn and a revised DEIS/R should address how the COA is being amended by the SDIP.

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Assumptions About Irrigation of the San Luis Unit of the CVP Are Predecisional

Trinity County also believes that the SDIP DEIS/R is premature to approve at this time because it would be pre-decisional as it relates to renewal of CVP contracts south of the Delta and drainage issues in the San Luis Unit of the CVP. Currently the BOR is negotiating Long-Term Contracts (LTC's) for San Luis Unit and Western San Joaquin Division CVP contractors and has released NEPA documents, which are also premature. The reason why the County believes that the LTC's are premature is due to the fact that the San Luis Drainage Feature Re-Evaluation (SLDFRE) has not been completed, nor has the intent of the San Luis Act of 1960 (P.L. 86-488) been met. The San Luis Act states that the Secretary of Interior is prohibited from signing LTC's for the San Luis Unit (who would benefit from the SDIP) benefit before the Secretary of Interior: TC-13 TC-14

"*...has... received satisfactory assurance from the State of California that it will make provision for a master drainage outlet and disposal channel for the San Joaquin Valley, as generally outlined in the California water plan, Bulletin Numbered 3, of the California Department of Water Resources, which will adequately serve, by connection therewith, the drainage system for the San Luis unit or has made provision for constructing the San Luis interceptor drain to the delta designed to meet the drainage requirements of the San Luis unit as generally outlined in the report of the Department of the Interior, entitled 'San Luis Unit, Central Valley Project,' dated December 17, 1956.*"

Therefore to move forward with the SDIP before the SLDFRE has been complete is illegal and premature at this point in time. The County calls upon DWR and BOR to withdraw the SDIP DEIS/R at this time, and re-evaluate the potential impacts this action will take.

The County also incorporates by reference the comment letters that Trinity County sent in regard to CVP LTCR to BOR for the Delta-Mendota Canal Unit (12/7/2004) and the San Luis Unit (1/18/2005 & 12/15/2005). Copies of those comment letters have been attached to this comment letter for the SDIP DEIS/R.

Thank you for the opportunity to comment on this document.

If you have any questions regarding our comments, please contact Principal Planner Tom Stokely at 530-623-1351, extension 3407.

Sincerely,

TRINITY COUNTY
BOARD OF SUPERVISORS

By,
William E. Chambers
WILLIAM E. CHAMBERS, Chairman

WILLIAM CHAMBERS	JEFF MORRIS	ROGER JAEGEL	HOWARD FREEMAN	WENDY REISS
DISTRICT 1	DISTRICT 2	DISTRICT 3	DISTRICT 4	DISTRICT 5

JAN 3 1 2006

cc: Clifford Lyle Marshall, Chairman Hoopa Valley Tribal Council
Howard McConnell, Chairman Yurok Tribal Council
Roger Rodoni, Chairman Humboldt County Board of Supervisors
Marcia Armstrong, Chairman Siskiyou County Board of Supervisors

WILLIAM CHAMBERS DISTRICT 1 | JEFF MORRIS DISTRICT 2 | ROGER JAEGEL DISTRICT 3 | HOWARD FREEMAN DISTRICT 4 | WENDY REISS DISTRICT 5

Responses to Comments

TC-1

Pleas see Master Response A, *Relationship between the South Delta Improvements Program and the Operations Criteria and Plan.* Please also see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR.*

TC-2

Please see Master Response N, *Trinity River Operations*.

Reclamation and DWR consider the 1986 COA as their basic coordinated operating agreement; some aspects of their operations have been modified, as needed, to satisfy more recent agreement, such as D-1641 and the 2004 OCAP assumptions.

SDIP Stage 1 is considered to be a necessary project for fish protection and local south Delta water supply improvements. The Stage 2 decision process will allow additional time to consider balanced progress on other CALFED, DWR and Reclamation projects.

TC-3

Please see Master Response C, *Extension of the Comment Period on the South Delta Improvements Program Draft EIS/EIR.*

TC-4

Please see Master Response A, *Relationship between the South Delta Improvements Program and the Operations Criteria and Plan.* The SDIP ASIP (CALFED version of a Biological Assessment) that has been prepared for the SDIP Stage 1 provides additional evaluation of potential fish effects from the construction and operation of the permanent operable gates.

TC-5

Please see Master Response D, *Developing and Screening Alternatives Considered in the South Delta Improvements Program Draft EIS/EIR.* In particular, alternatives that include land retirement are being considered by Reclamation in the San Luis Drainage Reevaluation EIS. Only one of the

alternatives under consideration in the San Luis Drainage Reevaluation EIS, the "In-Valley Drainage-Impaired Area Land Retirement Alternative", would retire sufficient lands (308,000 acres) such that the water supply from CVP contracts would exceed the water needs for the San Luis Unit. This may reduce the total CVP demands, but would not likely reduce the total deliveries to below the current capacity of the CVP Tracy pumping plant. The SDIP Stage 2 alternatives that increase CVP deliveries would be complementary to any land retirement and drainage reduction projects undertaken by Reclamation.

TC-6

Please see Master Response N, *Trinity River Operations*. The differences between Coho salmon and Chinook salmon life history timing are acknowledged. The water temperature analyses for Coho salmon demonstrated that no water temperature changes are expected in any month.

TC-7

Please see Master Response N, *Trinity River Operations*. Trinity Lake carryover storage will not be affected by any of the SDIP Stage 2 alternatives.

TC-8

Please see Master Response N, *Trinity River Operations*. The simulated water temperatures at Lewiston Dam or downstream locations have not been compared with the State Water Board or the North Coast RWQCB temperature objectives. Because the Trinity River flows have not been changed by SDIP Stage 2 alternatives, there would be no change in compliance with these temperature objectives. Reclamation operations prescribe a balance between the release flows specified in the Trinity River ROD, and the carryover storage needed to provide some drought protection and maintain a cold-water reserve.

TC-9

Please see Master Response N, *Trinity River Operations*. SDIP Stage 2 alternatives will not have any impacts on Trinity County's recreational opportunities that rely on Trinity Lake storage or Trinity River flows.

TC-10

River flows and exports are described with both average monthly flow rates, with units of cubic feet per second (cfs), and annual total flow volume, with units of

thousand acre-feet (taf). Both are appropriate and consistent with other water planning documents. A monthly flow of 1 cfs will total about 60 acre-feet of volume.

TC-11

The CALSIM output indicates that no changes in Trinity River flows would result from the implementation of the SDIP Stage 2 alternatives. Therefore, there would be no change in fish habitat conditions and no disproportionate effects attributable to the SDIP would occur..

TC-12

The SDIP Stage 2 alternatives will not require an amendment to the COA. The COA guides the daily coordination of Delta and reservoir operations between the CVP and SWP. The SDIP has no effect on this important agreement between Reclamation and DWR. Adjustments in the COA rules to accommodate the new objective in D-1641 (i.e., X2 outflows, and E/I export limits, and export limits during VAMP) have been made by DWR and Reclamation.

TC-13

There are no actions related to the SDIP that would have a pre-decision effect on the CVP contract renewals. These contracts will be decided independently of the SDIP. The SDIP Stage 1 permanent operable gates are focused on maintaining water levels, water quality, and fish protection in the south Delta and will have no effect on contract renewals. Stage 2 SDIP alternatives would also not likely change contract renewals because the amount of increased CVP deliveries is small relative to the total contract demands.

TC-14

Future actions to provide drainage for the CVP San Luis Unit may result in re-allocation of available water in the affected water districts. Future San Luis drainage disposal alternatives may improve water quality in the San Joaquin River, by reducing the current discharge of tile drainage from the Grasslands Drainage Area. Reclamation is evaluating several drainage reduction options that may include retirement of some currently irrigated lands. Drainage disposal or reduction in irrigation to some drainage-affected acreage may be part of the cumulative future conditions. These possible drainage actions will not be affected or influenced by SDIP.

Comment Letter Z7WA

Z7WA

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551 PHONE (925) 454-5000

Statement by Zone 7 of Alameda County Flood Control & Water Conservation District (Zone 7 Water Agency) on South Delta Improvements Program Public Hearings, January 26, 2006

The Zone 7 Water Agency provides wholesale water supply and local water and groundwater management to 200,000 residents in the Livermore Valley in eastern Alameda County

The Livermore Valley has been receiving deliveries from the SWP since 1962.

We depend on the SWP to provide a reliable, high quality water supply, but to do so in a responsible manner – that is, in a manner that protects and maintains the quality and habitat values of the Delta. Z7WA-1

The South Delta Improvement Program will allow DWR to operate the SWP in such a positive manner that will protect Delta fisheries and South Delta agricultural interests.

The operable gates will allow DWR a lot more flexibility in managing the water resources of the Delta and the State. Operable gates will replace the current, inefficient practice of placing and removing the temporary barriers that are installed each year for South Delta protection.

We recognize that DWR is being very cautious in moving forward first with the gates and that the additional time and analysis on operational alternatives will allow resolution of any water quality issues that may arise.

We believe the overall benefits of the SDIP for water supply reliability, water management flexibility, South Delta water quality, and Delta fisheries warrant the implementation of the SDIP.

Zone 7 strongly supports the SDIP as part of the overall a long-term solution for a sustainable Delta.

Thank you for the opportunity to comment this evening.

Vincent D. Wong
Assistant General Manager

Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA 94551

Phone: (925) 454-5004
E-mail: vwong@zone7water.com

Responses to Comments

Z7WA-1

The commenter's description of the project's water supply and environmental benefits and support for the project are noted.

Comment Letter ANT

ANT

OFFICE OF THE CITY ATTORNEY
P.O. Box 5007, Antioch, CA 94531-5007
(925)779-7015
FAX (925)779-7003

January 30, 2006

FEB 0 6 2006 00121

Paul A. Marshall
Department of Water Resources
South Delta Branch Draft EIR Comments
1416 9th Street
Sacramento, CA 95814

Sharon McHale
U.S. Bureau of Reclamation
Mid-Pacific Region
Draft EIS Comments
2800 Cottage Way
Sacramento, CA 95825

Re: City of Antioch's Comments on South Delta Program, EIS/EIR

Dear Mr. Marshall and Ms. McHale:

The City of Antioch appreciates the opportunity to comment on the South Delta Improvements Program EIS/EIR. While we join with our colleague Contra Costa Water District in many of its comments, Antioch also has unique historic and legal perspectives and special concerns relating to its citizens.

Established in 1872, Antioch is Contra Costa County's oldest incorporated city. Its lineage traces back to its ancient[1] namesake city along the banks of the mighty Euphrates River in what is now modern day Syria. Antioch was diverting water from the San Joaquin River prior to December 19, 1914, the date that the Water Commission Act became effective, requiring subsequent appropriators to obtain permits and licenses from what is now the State Water Resources Control Board.

[1] Since the earliest days of Christianity.

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Antioch's non-statutory right is just as valid today as a pre-1914 statutory right and is probably better than a statutory right because it is not limited to a recorded maximum quantity or specified diversion works. The city's use of water from the river has been continuous since initiated by the original purveyors of water to the City more than 130 years ago. The only limitation on Antioch's water right is the Constitutional mandate that the water must be reasonably required for beneficial municipal purposes.[2] Of course, Antioch is also protected by Water Code §106.5, declaring it to be "the established policy of this State that the right of a municipality to acquire and hold rights to the use of water should be protected to the fullest extent necessary for existing and future uses."

The reader probably knows that the State Water Project of 1957 provided no facilities which benefited Antioch and, to the contrary, established massive exports from the Delta, further reducing the availability of usable water for the city. To mitigate this damage, the city and the Department of Water Resources negotiated an agreement dated April 11, 1968[3]. This compact recognizes the historically usable water (150 parts per million or less of chloride) occurred on an average of 208 days per year. If in any year the number of days of availability of usable water is less than 208, the Department must pay to the City one-third of the City's incremental costs of purchasing canal water from CCWD to replace the river supply. The one-third fraction was based on the assumption that the depletion of the natural supply is due one-third to the operation of the Central Valley project, one-third to the State Water Project, and one-third to all the other upstream diverters, riparians and appropriators.

Antioch also has the "delta priority". The Sacramento-San Joaquin Delta, as defined by Water Code §12220, includes all the land east of Mallard Slough (in Pittsburg) that was in the territory of CCWD as it existed in 1959, the year that §12220 was enacted.

The Delta Protection Act, at §12202 states that among the functions to be provided by the State Water Project "shall be the provision of salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta". The provision further declares that if a substitute water supply is necessary for Delta users, no added financial burden shall be placed upon said Delta water users. Finally, §12203 declares it to be the policy of the State that no one, including the Bureau of Reclamation and the Department of Water Resources, divert from the Delta water "to which the users within said Delta are entitled."

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[2] California Constitution, Article X §2.
[3] Set to expire in 2008.

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Finally, under the Watershed Protection Act (Water Code §§11460 – 11465), the Department of Water Resources is directed to respect "the prior right to all of the water reasonably required to adequately supply the beneficial needs of the watershed area, or any of the inhabitants or property owners therein", §11460.

It is with these historic and legal perspectives that Antioch reacts to and comments upon this proposal to increase *by a factor of 27 percent* the diversions from our water source that is already in delicate balance[4]. Unquestionably, diversions of this magnitude can only exacerbate salt intrusion at Antioch's intake and increase our reliance on purchased water from the canal source. ANT-1

Please inform us whether the draft EIS/EIR models impacts on water quality as far downstream as Antioch's intake at Fulton Shipyard. As we have pointed out, there currently is a delicate balance affecting water quality at this location, and further diversions would appear, almost with a certainty, to further degrade quality levels. ANT-2

The Contra Costa Water District informs Antioch that water quality at its intake is such that "normal" years of rainfall now have the same poor quality of chlorides as "dry" years prior to 1993. Although the EIS/EIR uses 16-year averages in its calculation of water quality impacts, people do not drink "16-year average quality". Obviously, they drink what is available in the river at any given time. ANT-3

We are further informed by CCWD that the proposed diversions will degrade the performance of Los Vaqueros Reservoir by at least ten percent, resulting not only in a very substantial cost to all ratepayers but also degrading the reservoir's ability to provide good quality water during dry years, its primary purpose. ANT-4

If Antioch is required to purchase more canal water because of degraded quality at the municipal intake, it will incur very significant costs which either must be borne by the City for its municipal uses and/or by its ratepayers for private uses. The EIR/EIS should identify those potential costs and study possible physical blighting effects on the community if, for example, Antioch reduces irrigation of parks and landscaped medians and public areas to the point of causing plant distress or loss, and similar impacts on privately-owned property if ratepayers reduce water usage as well. ANT-5

[4] The proposed increase of permitted diversion limits into the SWP Clifton Court Forebay from 6,680 cubic feet per second to 8,500 cfs.

Paul A. Marshall
Department of Water Resources
Sharon McHale
U.S. Bureau of Reclamation
January 30, 2006
Page four

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The EIS/EIR should propose appropriate mitigation measures to ensure, at a minimum, current levels of water quality at the City's Fulton Shipyard intake, as well as a requirement for the Department of Resources to extend its agreement with Antioch for the guarantee of at least 208 days of usable water per year and ensuring that Antioch suffers no financial hardship because of the need to purchase more canal water. ANT-6

Finally, the EIS/EIR should contain an environmental justice component to discuss the various impacts of state actions that have degraded Antioch's environment over the last few decades. Such impacts include State policies that mandate that Antioch accommodate at least 600 units of housing per year, yet makes no provision for state funding of Highway 4 improvements and other transportation issues exacerbated by residents of the new housing; approval of the siting and operation of a number of electrical power generating plants along the San Joaquin River in Eastern Contra Costa County, adversely impacting both air and water quality; and now, with this project, the further degradation of water quality and the adverse impacts on the health—both physical and fiscal—of our 100,000+ residents. ANT-7

Very truly yours,

William R. Galstan

WILLIAM R. GALSTAN
Special Counsel

WRG/sh
cc: Mayor and City Council Members
Lynn Tracy Nerland, City Attorney
James M. Jakel, City Manager
Phil Harrington, Director of Public Works
Joseph G. Brandt, Director of Community Development/City Engineer
Greg Cartrell, CCWD

Responses to Comments

ANT-1

Section 5.1 describes why increasing the pumping capacity does not change export pumping by 27%. The actual annual increase in the total CVP and SWP export pumping will be 194 taf/yr, from a baseline pumping of 5,618 taf/yr (Table 5.1-12), an increase of 3–4%. This increased pumping will occur at times when the effects on Antioch salinity will be negligible.

ANT-2

The DSM2 model estimated that average Antioch salinity (EC) values, for the 1976–1991 representative study period, were 2,057 µS/cm for the baseline and 2,073 µS/cm for Alternative 2A (comparable to the other average EC values in Table 5.3-3). The average Antioch EC will increase by less than 1% of the baseline value (i.e., 16 µS/cm).

ANT-3

The changes in EC when chloride is less than 150 mg/l (when EC is less than 600 µS/cm) are negligible; no changes in chloride will occur when Antioch is diverting water from the Fulton Shipyard intake. CCWD staff are referring to the higher salinity that occurs in the fall, when Delta outflow is allowed to be as low as 3,000 cfs.

ANT-4

Please see the response to comment CCWD1-24.

ANT-5 and ANT-6

Please see the response to comment ANT-3.

ANT-7

The environmental justice assessment is in Section 7.9 of the SDIP Draft EIS/EIR. The assessment focuses on identifying the disproportionate impacts of constructing and operating the SDIP components on minority and low income communities. Constructing or operating SDIP will not affect regional or local housing or transportation demands. Section 5.3 provides a through discussion

the impacts of Stage 1 and Stage 2 on water quality. As shown in Tables 5.3-1 and 5.3-3, the quality of water measured at Jersey Point would not substantially change under Stage 1 or Stage 2, respectively.

Comment Letter COO

COO

E. SNOW

Kathy Kelley

CITY OF ONTARIO

303 EAST "B" STREET, CIVIC CENTER ONTARIO CALIFORNIA 91764-4196 (909) 395-2000
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TREASURER

December 12, 2005

DEC 23 2005 032

Mr. Lester Snow, Director
Department of Water Resources
State of California
Sacramento, California 95814

RE: SOUTH DELTA IMPROVEMENTS PROGRAM

Dear Director Snow:

This letter is to express support for the Department of Water Resources' (DWR) South Delta Improvements Program (SDIP). SDIP is a critical water supply, water quality and environmental project designed to meet California's diverse water needs. This November, DWR and the U.S. Bureau of Reclamation released a draft Environmental Impact Report/Statement (EIR/S) for SDIP, kicking off an important public review and comment process.

California is facing a critical challenge. We need a safe, reliable and high-quality water supply to keep up with our rapidly rising population and fast-growing trillion-dollar economy. However, we have limited water supplies in our arid state, so we must better utilize our existing water resources and infrastructure. Otherwise we put our communities, farms, environment and businesses at risk. Two-thirds of California receives its water from the San Francisco Bay/Sacramento-San Joaquin Delta. Given its importance, we need to better manage the Delta's water delivery system, as well as its water quality. We need to make every drop count. **COO-1**

In 2000, the State and Federal governments initiated the historic CALFED Bay-Delta Program to manage the Bay-Delta's water resources and ecosystem. A unique collaboration of interests supported the plan including environmental organizations, water agencies, business interests, farmers, and state and federal water and fish agencies. SDIP is the next step forward in this long-term planning effort for the Bay-Delta.

SDIP is a responsible and balanced plan to better utilize and integrate our existing water management infrastructure in the Delta. Collectively it will improve our State's water supply reliability, water quality and the overall health of the Bay-Delta ecosystem. The program will construct seasonal tidal gates to protect fish and improve water circulation and quality in the Delta, dredge select Delta channels to improve water deliveries for local farmers, and allow State Water Project deliveries to increase modestly and only when needed and environmentally safe to do so.

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Currently the State is constrained in its ability to use surplus water supplies. We have the infrastructure to move the water, but until SDIP is approved the State's water managers cannot fully or responsibly use the existing system. This impairs our local ability to fully implement environmentally responsible programs such as our Dry Year Yield Program and conjunctive use of local ground water basins to store wet year surpluses for dry year use. These local programs can help to reduce peak dry year demands on the State Water System.

SDIP calls for only a 3-5% increase in the average amount of water pumped from the Delta. More significantly, SDIP will provide the flexibility to shift the timing of water deliveries when surplus is available and when environmentally safe to do so. SDIP is an ideal option for California to advance as it will not require the construction of major new infrastructure and funding for the program has already been secured through passage of voter-approved bonds in 2000 (Proposition 13).

COO-1

SDIP is supported by a statewide, broad coalition of water, agriculture, business, planning organizations, and local government officials including the Southern California Water Committee of which the City of Ontario is a member.

Effective use of water is critical to our families, farms, and businesses and to continued economic progress. It is our responsibility to use this precious resource wisely through all possible best management practices including water conservation, recycling and storage, to ensure California's water future. Locally we are implementing all of these practices. Statewide, it is imperative that we have a more flexible water delivery system so that we can continue to implement programs to accommodate existing and growth in our population and economy while remaining resource wise and service reliable.

We support the SDIP and encourage key stakeholders to help advance this critically needed project.

Thank you.

Sincerely,

Gerald A. DuBois
Council Member
City of Ontario

cc: Hon. Governor Arnold Schwarzenegger, 1st Floor, State Capitol, Sacramento 95814
Mr. Ryan Brodderick, Director, California Department of Fish & Game, 1416 9th Street, 12th Floor, Sacramento 95814
Mr. Mike Chrisman, Secretary, California Resources Agency, 1416 9th Street, #1311, Sacramento 95814 Mr. Joe Grindstaff, Director, California Bay-Delta Authority, 650 Capitol Mall, 5th Floor, Sacramento 95814 Mr. Kirk Rodgers, Regional Director, Mid-Pacific Region, U. S. Bureau Reclamation, 2800 Cottage Way, Sacramento 95825
Mr. Dan Skopec, Deputy Cabinet Secretary, Office of the Governor
Mr. Terry Tamminen, Cabinet Secretary, Office of the Governor
Southern California Water Committee
Mr. Ken Jeske, City of Ontario – Public Works/Community Services Director

Responses to Comments

COO-1

The commenter's description of the project's benefits and support for the project are noted.

Comment Letter COS1

COS1

CITY OF STOCKTON

DEPARTMENT OF MUNICIPAL UTILITIES
2500 Navy Drive • Stockton, CA 95206-1191 • 209/937-8750 • Fax 209/937-8708
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February 7, 2006

FEB 10 2006 00193

VIA FACSIMILE and U.S. MAIL

Paul Marshall
State of California Department of Water Resources
South Delta Branch, Draft EIS/EIR Comments
1416 Ninth Street, Second Floor
Sacramento, CA 95814

CITY OF STOCKTON COMMENTS TO DRAFT EIS/EIR
SOUTH DELTA IMPROVEMENTS PROGRAM (SDIP)

Thank you for the opportunity to comment on the Draft EIS/EIR. This document is presently inadequate in numerous areas as described below. Generally we are concerned with the operation of the barriers in both Stage 1 and Stage 2 scenarios and the subsequent water quality impacts in the San Joaquin River downstream of the Head of Old River in the vicinity of Stockton. Our specific comments are as follows:

1. 1-30 **Effects of Water Quality in the South Delta**

This Section misstates the problem. Increased exports will have a deleterious impact on dissolved oxygen (DO) at the Stockton Deep Water Ship Channel (DWSC). Increased pumping without the Head of Old River Barrier (HORB) operated in a closed position will allow more water to go down Old River towards the export pumps and less water to arrive at the Stockton DWSC. This is especially true in Below Normal, Dry, and Critical water years in July, August and September. If the HORB is open and 100% of the San Joaquin River flow is going to the export pumps, then little or no flow is reaching the Stockton DWSC. This lack of flow at the DWSC is due to export pumping and in-Delta diversions. The SDIP EIS/EIR does not propose how DWR and USBR will mitigate for the SDIP's effects on DO. **COS1-1**

The SWRCB recently adopted a TMDL for DO. Does the EIS/EIR modeling of indicate how the DWR and the USBR will meet their share of the load allocation under the DO TMDL? **COS1-2**

Is the SDIP subject to approval and permitting by the CVRWQCB on this issue? **COS1-3**

Stockton
All-America City
2004
1999

Paul Marshall
February 7, 2006
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CITY OF STOCKTON COMMENTS TO DRAFT EIS/EIR
SOUTH DELTA IMPROVEMENTS PROGRAM (SDIP)

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2. 2-2 **Operational Component**

How is the operation of the SDIP consistent with the Napa Agreement? Please describe the Napa Agreement or those sections of the Napa Agreement that are analyzed as part of this EIR/EIS. COS1-4

3. 2-4, 5 **Decision Stages**

Stage 1 is to be the decision of whether to continue the temporary barrier or install the permanent barriers. Decision making for stage 2 will begin after the stage 1 decision. Where is the decision for the interim operations described on page 2-2? COS1-5

4. 2-30 **Summary and Fall**

The EIS/EIR should consider an operation with the HORB gates closed in July, August, and September to improve the San Joaquin River flow through the Stockton DWSC. COS1-6

The EIS/EIR requires two criteria to be met before considering gate operations at other times for longer periods of time. Based on the second criteria, the HORB gate will never be shut in July and August and some Septembers to improve DO in the DWSC. Salmon and steelhead do not out-migrate from the San Joaquin River in those months.

This is a major flaw in the SDIP. The SDIP will result in more water flowing down Old River from the increased pumping and causing further degradation in the Stockton DWSC.

5. Table 4.1

WQ-13: We strongly disagree with your analysis. If the export pumps are above their current pumping levels in July, August, September and October during low flow years such as Below Normal, Dry and Critical, then more water will go down Old River and less water will go down the San Joaquin River. This will exacerbate the DO problem in the Stockton DWSC. This is especially true given the fact that the HORB gates will not be closed. COS1-7

WQ-27: Same comment as above.

Paul Marshall
February 7, 2006
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CITY OF STOCKTON COMMENTS TO DRAFT EIS/EIR
SOUTH DELTA IMPROVEMENTS PROGRAM (SDIP)

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6. 5.3-1 **Introduction**

The Introduction states that salinity downstream of the Head of Old River at Brandt Bridge will not change substantially from Vernalis and is dependent upon the salinity at Vernalis. Brandt Bridge is a D-1641 compliance point and at a minimum the EIS/EIR should show the analysis to support the statement. Agricultural drainage and other inflows between Vernalis and Brandt Bridge may not change the salinity at the lower compliance point irrespective of the SDIP but this must be shown. **COS1-8**

The EIS/EIR did not assess salinity or other water quality effects downstream of Brandt Bridge. Why were other locations not assessed? The EIS/EIR did not assess the water quality effects of the SDIP near the proposed intake location for the Stockton Delta Water Supply Project. These effects must be evaluated. **COS1-9**

7. 5.3-13 **San Joaquin River and South Delta Salinity**

That last sentence states that San Joaquin River flows will not change due to SDIP and therefore would not affect the EC values. However, Table 5.1-12 shows an average *increase* in CVP deliveries of up to 107,000 acre-feet. The EIS/EIR did not evaluate the effects of importing this additional water and the salt that comes with it to the valley each year. **COS1-10**

8. 10-5 **Section 10.3**

The Stockton Delta Water Supply Project is not evaluated under the cumulative impact assessment. The EIR for this project was certified on November 8, 2005, and a water right permit was issued on December 20, 2005. The SDIP EIS/EIR needs to evaluate the environmental effects with the Delta Water Supply Project in place. **COS1-11**

Because of these defects, the Draft EIS/EIR should be redrafted and re-circulated for public review and comment to adequately assess the impacts as stated above.

Again, we thank you for the opportunity to provide comments on the Draft EIS/EIR document.

If you have any questions, feel free to contact me at (209) 937-8700.

for MARK J. MADISON
DIRECTOR OF MUNICIPAL UTILITIES

MJM:RLG:as

cc: Art Godwin: Mason, Robbins, Gnass and Browning

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Responses to Comments

COS1-1

Increased exports will normally reduce the fraction of San Joaquin River water that flows past Stockton; however, with tidal gates operating, the fraction of San Joaquin River water flowing past Stockton will be generally higher and can be adjusted as needed to maintain the natural channel flow split of approximately 50% diverted into Old River. As Section 5.3 describes, operations of the tidal gates will increase the fraction of San Joaquin River water that flows past Stockton during the summer months (Figure 5.3-21). The estimated DO in the DWSC will likely increase in response to this increased flow (Figure 5.3-22). Please also see Master Response O, *Gate Operations Review Team*.

COS1-2

DWR and Reclamation are not currently held responsible for any TMDL allocation. They may be responsible for maintaining the natural flow split at the head of Old River. The head of Old River tidal gate would be used to achieve this objective, if required and allowed by fish and wildlife regulatory agencies (please see Master Response O, *Gate Operations Review Team*). The DSM2 tidal hydraulic simulations indicate that flows at Stockton will increase substantially in these summer months compared to existing conditions, because the Old River diversions will be reduced by the tidal gate operations.

COS1-3

The Central Valley RWQCB has reviewed these effects on DO and will issue a CWA Section 401 water quality certification for the SDIP.

COS1-4

As described in Appendix A, Operational Scenario A was developed by DWR and Reclamation as a way to operate the SWP and CVP to use the strengths of each project. Under this scenario, DWR would divert and pump 100,000 acre-feet of Reclamation's Level 2 refuge water before September 1. In exchange, Reclamation would supply 75,000 acre-feet from its upstream reservoirs to alleviate a portion of the SWP's obligation to comply with water quality standards and flow requirements in the Delta. These commitments stem from the agreements made during the meetings in Napa.

COS1-5

The decision-making process for Stage 2 will begin after a decision for Stage 1 is made. The text in Chapter 2 of the SDIP Draft EIS/EIR has been modified to more clearly explain that a decision to implement the Interim Operations would be incorporated into the Stage 2 decision-making process. If incorporated into the Stage 2 decision, Interim Operations could be implemented shortly thereafter (please see Master Response M, *Interim Operations*).

COS1-6

The description of the head of Old River gate operations given in Chapter 2, starting on page 2-30, of the SDIP Draft EIS/EIR is accurate. Partial gate closure is described as the normal summer operations for improving DO conditions in the DWSC. A target Old River diversion of just 500 cfs is suggested. More San Joaquin River water will flow past Stockton with the SDIP.

COS1-7

WQ-13 evaluation is based on the DSM2 modeling of tidal hydraulic conditions in the south Delta channels. The results (Figure 5.3-21) indicate that flows will increase past Stockton because a target diversion of just 500 cfs was assumed in the summer months. This diversion would be controlled by operation of the gate at the head of Old River. This will likely improve DO conditions in the DWSC during the summer months (Figure 5.3-22).

COS1-8

DSM2 modeling indicates that EC will be nearly identical at Mossdale and Brandt Bridge as at Vernalis. Two years of daily EC data from these three locations are shown in Figure 5.3-11. DWR and Reclamation are committed to meeting the D-1641 EC objectives at Brandt Bridge. As discussed in Section 5.3, this may require reducing the EC at Vernalis to slightly below the EC objectives to allow for the natural effects of agricultural drainage to the San Joaquin River. The SDIP will have no significant effects on the EC at Brandt Bridge.

COS1-9

The SDIP will have no significant impact on salinity at Stockton's new water intake location, at the confluence of Little Potato Slough and the San Joaquin River. This is generally indicated in Section 5.3, Water Quality, by the small changes at the CCWD Rock Slough and Old River intakes. Stockton's future intake will be influenced even more than CCWD's intakes are by Sacramento

River water, with very low EC values. DSM2 modeling results indicate that EC at the planned intake on the San Joaquin River at Little Potato Slough will be slightly increased from an average of 265 µS/cm for the 2001 baseline conditions to an average of 268 µS/cm under Stage 1 operation of the tidal gates, with an average of 269 µS/cm for Alternative 2A Stage 2. This increase of 4 µS/cm is less than 2% of the baseline, and is similar to the increased EC at CCWD intakes and at the SWP intake. This increase in EC is generally caused by more San Joaquin River flowing past Stockton. This is considered to be a less-than-significant impact.

COS1-10

Please see Master Response Q, *Effects of the South Delta Improvements Program on San Joaquin River Flow and Salinity*.

COS1-11

The Stockton DWSC was not included in the cumulative impact assessment because it was not quite certified or permitted at the time of the SDIP evaluations. Nevertheless, it deserves recognition as an actively considered project. Because the DWSC is not expected to have any water quality impacts, and will not cause any environmental impacts similar to or greater than those caused by the SDIP, it does not need to be added to the SDIP cumulative impact analysis.

Comment Letter COS2

COS2

January 18, 2005

Mr. Lester Snow
Director
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Re: Support for South Delta Improvement Program

Dear Director Snow:

On behalf of the City of Stanton, I would like to express support for the South Delta Improvement Program as a means to improve water quality, water supply reliability, and to provide a benefit to the environment. The increased flexibility provided by adding the inflatable gates and channel dredging should also improve the efficiency and cost effectiveness of managing the system. COS2-1

The City of Stanton receives water from the Golden State Water Company, which in turn is provided water by the Municipal Water District of Orange County, a member agency of the Metropolitan Water District of Southern California. We feel that it is in our best interest, as well as in the best interest of other Californians, to support this plan.

Thank you for giving us the opportunity to voice our support.

Sincerely,

BRIAN DONAHUE
Mayor
City of Stanton

BD:bg

7800 Katella Avenue • Stanton, California 90680 • (714) 379-9222

Responses to Comments

COS2-1

DWR and Reclamation acknowledge the City of Stanton's support for the SDIP.

Comment Letter COT

COT

CITY OF TRACY

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City Attorney
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Tracy, CA 95376

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February 7, 2006

Sent electronically (with enclosures) to sdip_comments@water.ca.gov

Originals by Overnight Mail to:

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California Department of Water Resources
South Delta Branch
1416 Ninth Street
Sacramento, CA 95814

Sharon McHale
U.S. Bureau of Reclamation
Mid-Pacific Region
2800 Cottage Way
Sacramento, CA 95825

Re: Comments on Draft EIS/EIR, South Delta Improvements Program

Dear Mr. Marshall and Ms. McHale:

This letter provides the City of Tracy's (the "City" or "Tracy") comments on the Department of Water Resources ("DWR") and Bureau of Reclamation's ("Bureau") Draft Environmental Impact Statement/Environmental Impact Report ("Draft EIS/EIR") for the South Delta Improvement Program ("SDIP").

As described below, the Draft EIS/EIR, as currently proposed, violates the California Environmental Quality Act (Pub. Res. Code §§ 21000) ("CEQA") because the document:

(1) Fails to provide an environmental setting adequate to allow decision-makers and the public to evaluate the SDIP's environmental effects;

(2) Conceals the SDIP's impacts by manipulating the baseline to include temporary changes to the physical environment;

(3) Fails to disclose the project-specific incremental impacts of shifting from temporary to permanent barriers;

(4) Conceals the SDIP's impacts by failing to analyze the combined impacts of all sources of cumulative impacts;

(5) Relies upon a "No Action" Alternative that does not include reasonably foreseeable future conditions; and

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(6) Fails to propose all feasible mitigation measures and alternatives necessary to reduce the SDIP's potentially adverse environmental impacts to less than significant levels.

I. *Background*

Tracy has a population of 80,000 and is located within the legal boundary of the South Delta. The Tracy Waste Water Treatment Plant ("WWTP") was constructed in 1930. The WWTP's discharge to Old River is located between the temporary barriers in Old River, approximately 3 miles downstream from the barrier at the head of Old River. Approved in the 1980s to discharge an average dry weather flow ("ADWF") of 9 million gallons per day of effluent, on October 15, 2002 the City certified an environmental impact report for an expansion to 16 million gallons per day ADWF, as well as the addition of significant treatment improvements, including nitrification, denitrification, and filtration. The City has since undertaken other actions to carry out the construction of the expansion and advanced treatment facilities, including awarding the construction contract for the project on June 15, 2004. Construction is underway.

In 1991, DWR and the Bureau began an experimental project placing temporary barriers at the confluence of Old River and the San Joaquin River and in other locations in the South Delta. Those barriers have impacted: (1) the water quality in the vicinity of the WWTP discharge point; and (2) the ability of the WWTP to function within the regulatory requirements to which it is subject. In short, the barriers cause decreased flows in Old River, affecting water quality and significantly restricting dilution of the WWTP's effluent. More specifically, the barriers affect water quality criteria in Old River, including temperature, dissolved oxygen, and electrical conductivity, and prevent necessary levels of dilution for the effluent from the WWTP.

A. *DWR Has Provided No Meaningful Response to the City's Repeated Efforts to Initiate a Dialogue Regarding the Barriers' Impacts Upon the South Delta Aquatic Environment and the WWTP* COT-1

The City has repeatedly voiced its concerns to DWR about the barriers' impacts upon the environment and the WWTP to no avail. For example:

(1) In a February 14, 1996 letter from Steven Bayley of the City of Tracy to the United States Army Corps of Engineers, the City stated that the environmental documents for the temporary barriers project did not accurately reflect the barriers' impact upon the water available for dilution of the City's wastewater discharge in Old River;

(2) In another letter sent on December 3, 1996 letter from Steven Bayley to Stephen Roberts of DWR, the City described the temporary barriers' environmental impacts, including the fact that the dissolved oxygen content of Old River was below the applicable water quality objective of 5.0 parts per million when the temporary barriers were in place;

(3) In a subsequent October 15, 2002 letter from Steven Bayley to Paul Marshall of DWR, the City requested that the Draft EIS/EIR evaluate the SDIP's impacts upon a baseline that did not assume temporary barriers to be permanent; and

(4) In a November 12, 2002 letter from Steven Bayley to Paul Marshall, the City reiterated its description of the impacts and requested that the Draft EIS/EIR evaluate an

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alternative that pumps water from the San Joaquin River into Old River to improve dilution. COT-1

DWR's only substantive response to Tracy's concerns was made in 1996, when DWR stated that the barriers would actually assist the dispersal of the City of Tracy's wastewater discharge. (*See* April 11, 1996 letter from Kathlin Johnson to Tom Coe.) DWR has provided no concrete evidence that the barriers provide this dispersion assistance, and as discussed below, no such evidence is set forth in the Draft EIS/EIR.

B. *Despite DWR's Unwillingness to Engage in a Dialogue With Tracy Regarding the Barriers' Impacts, DWR Concedes That These Impacts Exist* COT-2

While DWR has provided no meaningful response to the City's continued expressions of concern, DWR is clearly aware of these problems, as is evidenced by *DWR raising these issues in comments upon the City's WWTP Expansion*. Thus, in a February 8, 2000 letter from Daniel Peterson of DWR to Robert Conant of the City of Tracy, DWR stated that modeling showed Old River flows at a stand still or slightly reversed when barriers were in place and that these low flow and stagnant periods might seriously impair the Old River's dilution capacity. Nonetheless, DWR ignores these issues in its environmental documents and remains silent when the same issues are raised with respect to DWR's projects.

DWR's unwillingness to address the City's concerns has resulted in a Draft EIS/EIR that, as set forth below, violates multiple provisions of CEQA. The Draft EIS/EIR must be revised and recirculated to correct fundamental inadequacies in its environmental setting, baseline, project specific impacts, cumulative impacts, "No Action" alternative, and mitigation measures analyses.

II. *Discussion*

A. *The Draft EIS/EIR's Environmental Setting Discussion Ignores the City's WWTP and Therefore Fails to Comply with CEQA*

The environmental setting in the Draft EIS/EIR largely omits discussion of the City's WWTP and therefore precludes the public from fully understanding the SDIP's impacts upon water quality and the WWTP. In *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713 (1994), the appeals court found that an EIR's environmental setting discussion was inadequate under CEQA where the EIR failed to identify areas across a river from the proposed project site, which areas included a wildlife preserve that would be affected by the project. (*See San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713, 710 (1994).) The court found that although the EIR stated generally that the project was located in a region with wetland habitats, the failure to specifically identify the location and extent of those habitats deprived the reader of adequate information to understand "the environmental effects they may suffer as a result of construction of the development project." (*Id.*) As a result, the court found the environmental setting's omission of such information invalid under CEQA. COT-3

The Draft EIS/EIR similarly provides no discussion of the Tracy WWTP's discharge location or imminent expansion to 16 million gallons per day, thereby making it impossible for the reader to understand the environmental effects of the SDIP on the water quality in the WWTP's vicinity. In *San Joaquin Raptor*, the lead agency at least justified the EIR's omission by stating that two

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biological consulting firms had evaluated the project and that an independent investigation had verified the lack of wetlands. (*See id.* at 726 n.5.) DWR provides no such evidence in the Draft EIS/EIR to explain the absence of any discussion of the WWTP's expansion. While foreseeing the unforeseeable is not possible, CEQA requires DWR to "use its best efforts to find out and disclose all that it reasonably can." (14 C.C.R. §15144.) Here, the location of the WWTP and its approved expansion from 9 million gallons per day to 16 million gallons per day of effluent was acknowledged in the DWR letter of February 8, 2000, is clearly foreseeable, was commented on by DWR during the EIR process for the City's WWTP, and should have been discussed and analyzed fully in the Draft EIS/EIR. COT-3

B. *The Draft EIS/EIR Conceals Impacts by Relying Upon the Conditions With the Temporary Barriers as the Baseline for Determining Impacts*

Despite the fact that the Temporary Barrier Program was put into effect as a *temporary* experimental project with no comprehensive CEQA review, the Draft EIS/EIR treats the temporary barriers as permanent. The CEQA Guidelines recognize that the actual setting at the time the Notice of Preparation is published will not always be the baseline for purposes of evaluating impacts. The CEQA Guidelines state that "[t]he environmental setting will *normally* constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." (14 C.C.R. §15125. *See also* Resources Agency Discussion following 14 C.C.R. §15125 (reiterating that the environmental setting *normally* constitutes the baseline conditions).) COT-4

Moreover, courts have repeatedly found circumstances in which CEQA obligated the lead agency to consider other factors in determining the baseline. The underlying principle is that the appropriate baseline is that which ensures "meaningful assessment of the environmental impacts of the proposed project." (*Save Our Peninsula Committee v. Monterey County*, 87 Cal.App.4th 99, 119 (2001).) Thus, in *Save Our Peninsula*, the court found that CEQA required the preparers of the EIR to evaluate historical water usage to support the selected baseline and to assure that the public was not manipulated by a baseline that relied upon temporary conditions. (*Save Our Peninsula Committee v. Monterey County*, 87 Cal.App.4th 99, 122 (2001).) Similarly, in *County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th 944 (1999), the court found that the EIR's discussion of water levels represented an inadequate baseline absent any discussion of the historical duration and timing of releases. (*County of Amador v. El Dorado County Water Agency*, 76 Cal.App.4th 944, 124 (1999).) Additionally, in *Fairview Neighbors v. County of Ventura*, 70 Cal.App.4th 238 (1999), the court upheld the lead agency's decision not to rely upon actual traffic counts where such counts failed to reflect an accurate historical perspective. (*Fairview Neighbors v. County of Ventura*, 70 Cal.App.4th 238, 243 (1999).)

By failing to address the fact that the temporary barriers were indeed intended to be *temporary*, the Draft EIS/EIR fails to provide the accurate historical perspective necessary for a meaningful analysis of the SDIP's impacts. The Draft EIS/EIR provides no analysis of the impacts that the SDIP would cause to an environment in which the temporary barriers are discontinued. The record is clear that the temporary barriers were approved in 1991 merely for a temporary five-year test period. (*See, e.g.*, United States Army Corps of Engineers, Public Notice Number 199600027 (January 31, 1996) (attached hereto as **Exhibit A**).) In fact, because the approval was for a finite period of time, DWR affirmatively applied for authorization to continue the barriers beyond 1996. (*See id.; see also* Biological Assessment for the South Delta Temporary

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Barriers Project 1996 at vii, 1-2, 2-1 (December 1995) (attached hereto as **Exhibit B**) (proposing the extension of the temporary five-year study interval); Draft Environmental Impact Report/Environmental Impact Statement Interim South Delta Program (ISDP) Volume I (1996) at 1-4 to 1-5 (attached hereto as **Exhibit C**) (characterizing the barriers as "temporary"); Comprehensive Monitoring Report for the Proposed Test Program Temporary Barriers Project (1995) at xi, xiv, 1-1, 1-7 (attached hereto as **Exhibit D**) (also referring to the temporary nature of the barriers installed in 1991).)

COT-4

Removal or modification of the barriers is not merely a theoretical possibility. As set forth in the Initial Study Proposed Test Program Temporary Barriers Project (1995) by DWR itself, the *temporary barriers would be removed*, replaced, or modified, if they were shown to have significant negative impacts that could not be mitigated. (*See* Initial Study Proposed Test Program Temporary Barriers Project (1995) at 5 (attached hereto as **Exhibit E**).) There is ample evidence that the temporary barriers *do* cause such impacts and, therefore, must be removed, replaced, or modified pursuant to DWR's own commitment. The City has conducted modeling that definitively shows that the temporary barriers reduce flow in Old River, detrimentally affecting water quality and precluding adequate and reliable dilution of the WWTP's effluent. (*See* Availability of Adequate Flow in Old River for City of Tracy WWTP Discharge – Preliminary Observations from the SDIP DEIS/EIR, DSM2 Results ("Preliminary Modeling") (attached hereto as **Exhibit F**).) As a result, under the DWR's own criteria, these impacts must be mitigated or the temporary barriers must be *removed*, replaced, or modified.

Correcting the baseline to recognize the temporary nature of the barriers is particularly important given that no comprehensive CEQA review was performed prior to DWR's approval of their placement. By failing to recognize that the temporary barriers were in fact temporary, the Draft EIS/EIR allows the real world impacts of approving permanent barriers to escape review under CEQA.

C. *The Draft EIS/EIR Does Not Correctly Identify the Incremental Impact of Shifting from Temporary Barriers to the SDIP*

Setting aside the baseline issue, the Draft EIS/EIR fails to analyze the incremental impact of switching from the temporary barriers to the permanent barrier technology proposed in the SDIP. Although the temporary barriers significantly affected water quality in the vicinity of the WWTP, those barriers at least provided some leakage of water into Old River. The SDIP would reduce this leakage, thereby further reducing flows in Old River below the current levels occurring with the temporary barriers. As a result, the Draft EIS/EIR dramatically understates the SDIP's impacts on water quality and dilution in Old River.

COT-5

Given the Draft EIS/EIR's omission of the requisite impacts analysis, the City has conducted this analysis at its own expense. The Preliminary Modeling definitively concludes that the SDIP's incremental impact is significant. For example, the Draft EIS/EIR fails to discuss the potential impacts of the complete closure of the fish gate at the Head of Old River on the flows at the Tracy WWTP discharge location. (*See* Draft EIS/EIR at 5.2-22 – 5.2-23.) Page 5.2-48 of the Draft EIS/EIR incorrectly concludes that the changes in tidal flow at the head of Old River are considered beneficial and that no mitigation is required. This incorrect conclusion is restated on pages 5.2-52, 57, 60, 63, and 65 for the other alternatives that include the complete closure of the fish gate in April and May.

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In fact, the SDIP will cause flows in Old River to be inadequate for dilution for an approximately 60-day period every year. Figure 1 of the Preliminary Modeling shows DWR DSM2 model simulation results for Alternative 2C 16-year mean daily flows in the reach of Old River where the City of Tracy outfall is located. The figure demonstrates that there is inadequate flow to meet the minimum dilution criteria (250 cfs) when the head of Old River fish gate is completely closed in Alternative 2C for the 60 day VAMP period (April 1 – May 31). The above minimum dilution criteria is based on water quality objectives to comply with Human Health Effluent Limits for Trihalomethanes (such as Dibromochloromethane and Bromodichloromethane). The harmonic mean flows and the mean daily flows in this reach are less than 250 cfs during the VAMP period, except when the head of Old River gate was open during the wet years of 1982 and 1983 and the above-normal year of 1978, when the flow at Vernalis is above 10,000 cfs. This reduction in flow in Alternative 2C caused by the complete closure of the fish gate at the head of Old River has a significant impact on the flows and resulting dilution at the Tracy WWTP discharge. COT-5

Figure 3 of the Preliminary Modeling shows that the flow will be less than the required 250 cfs approximately 2% of the time in the "No Action" Alternative and approximately 13% of the time in Alternative 2C. Thus, even accepting the temporary barriers as the baseline for evaluating impacts, *the SDIP's preferred alternative increases the frequency by which inadequate flows will be in Old River by 600%*.

D. *The Draft EIS/EIR's Cumulative Impacts Analysis is Inadequate*

The Draft EIS/EIR piecemeals the environmental analysis by failing to address the cumulative impacts of the temporary barriers and the SDIP. CEQA requires an EIR to discuss the cumulative effect on the environment of the subject project in conjunction with other closely related *past*, *present* and reasonably foreseeable probable future projects. (Pub. Res. Code §21083(b) (emphasis added).) The term "'[c]umulative impacts refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (14 C.C.R. §15355.) These guidelines must be interpreted to afford the fullest possible protection to the environment within the reasonable scope of their language. (*See San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal.App.3d 61 (1984).) COT-6

The Draft EIS/EIR's cumulative impacts discussion virtually omits any reference of the City's WWTP or its expansion. Pages 5.3-6 and 5.3-7 of the Draft EIS/EIR, which discuss Delta Water Quality Issues and Delta Water Quality Variables, include no discussion of the Tracy WWTP. Page 7.3-4 of the Draft EIS/EIR merely mentions that the City of Tracy "operates a sanitary sewer system and community treatment plant."

Moreover, the Draft EIS/EIR's cumulative impacts discussion includes no analysis of the combined impact of the SDIP and the temporary barriers along with other sources of cumulative impacts such as the Tracy WWTP, despite the fact that they certainly have a combined impact on water quality. By ignoring the temporary barriers' impacts, DWR ignores CEQA's specific direction to consider past projects as potential sources of cumulative impacts and runs counter to the legal maxim that "[i]n analyzing statutory language, we seek to give meaning to every word and phrase in that statute." (*Hughes v. Bd. of Architectural Examiners*, 17 Cal.4th 763, 775 (1998).)

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Not only does the Draft EIS/EIR virtually omit mention of the WWTP, the Draft EIS/EIR also fails to analyze adequately the cumulative impacts of the SDIP in combination with the temporary barriers and/or other effluent distributors that are sources of closely related impacts. For example, Chapter 10 of the Draft EIS/EIR mentions "Mountain House" in passing, but provides no indication that the analysis of the cumulative impacts upon water quality and utilities took into account the effluent from that project. In fact, Mountain House Wastewater Treatment Facility is located approximately 8 miles downstream of the City WWTP's outfall and is projected to discharge 5.4 mgd of tertiary treated wastewater into Old River in the near future. It is certainly reasonably foreseeable that the impacts of this discharge are closely related to those of the SDIP and the City's WWTP. The failure to discuss this combined impact is further evidence that the Draft EIS/EIR fails to satisfy CEQA's requirements. COT-6

E. *The Draft EIS/EIR Also Conceals Impacts By Relying Upon an Improper "No Action" Alternative* COT-7

The Draft EIS/EIR's "No Action" Alternative similarly conceals the barriers' real world impacts. Page 5.3-28 of the Draft EIS/EIR states that Alternative 1 (No Action) consists of existing conditions, which in turn includes placement of the temporary barriers. Under the CEQA Guidelines, the No Project Alternative includes the conditions that "would be reasonably expected to occur in the foreseeable future if the project were not approved...." (14 C.C.R. §15126.6(e).) The "No Action" Alternative assumes that these same conditions would exist in 2020 despite the fact that, as described above, DWR had to affirmatively request permission to continue the temporary barriers, and had committed itself to remove, replace, or modify the barriers if shown to have significant negative impacts. Nonetheless, the Draft EIS/EIR's "No Action" Alternative fails to incorporate the reasonable assumption that *temporary* barriers would be discontinued during the proposed project's 20 year term. By utilizing a "No Action" Alternative that assumes continuation of the temporary barriers, the Draft EIS/EIR's alternatives analysis wholly ignores the real world impacts to the City's WWTP that the SDIP will cause.

F. *The Draft EIS/EIR Fails to Identify All Feasible Mitigation Measures and Alternatives that could Reduce the Impacts to a Less Than Significant Level*

In large part because the Draft EIS/EIR unlawfully manipulates the baseline and piecemeals the project, the Draft EIS/EIR improperly determines the level of potentially significant environmental impact, and then fails to include measures to mitigate those impacts to less than significant levels. Most importantly, the Draft EIS/EIR fails to identify pumping of water into Old River as necessary mitigation during all times when dilution is not otherwise available to the Tracy WWTP. (*See* 14 C.C.R. §15126.4(a)(1) (stating that an EIR must identify all feasible measures that could minimize significant adverse impacts). *See* Preliminary Modeling at 5-6.) As discussed in the Preliminary Modeling, the minimum flow necessary to provide adequate water quality and temperature in Old River, as well as sufficient dilution of the WWTP's discharges into Old River, is approximately 250 cfs. Absent a mitigation measure or project alternative that provides such diluting flows, the Draft EIS/EIR is inadequate under CEQA. COT-8

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III. *Conclusion*

As set forth above, the Draft EIS/EIR violates multiple provisions of CEQA including the statute's and Guidelines' requirements regarding environmental setting, baseline, project-specific impacts, cumulative impacts, alternatives, and mitigation measures. Because of these legal deficiencies, the Draft EIS/EIR must be revised and recirculated to reflect accurately the SDIP's environmental impacts.

Sincerely,

Debra Corbett
City Attorney

cc: (w/enclosures)

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Responses to Comments

COT-1

The proposed gate operations in the SDIP Draft EIS/EIR (as described in Chapter 2 of the Draft EIS/EIR) include maintaining flows from the San Joaquin River into Old River. The tidal operation of the three agricultural tidal gates will provide net flows in Old River, Middle River, and Grant Line Canal that were not possible under the temporary barriers program. Therefore, the proposed operations will provide net flows in Old River that could meet dilution requirements of the RWQCB. Model runs were shared with the City's consultant during the SDIP Draft EIS/EIR comment period.

COT-2

The memorandum from Mr. Peterson is still correct, the temporary barriers program causes very slow-moving water in Old River between Grant Line Canal and the temporary barrier near the Mountain House development. The proposed operations will provide net flows in Old River and eliminate stagnant areas. Model runs were shared with the City's consultant during the SDIP Draft EIS/EIR comment period.

COT-3 and COT-5

The City of Tracy WWTP dilution flow needs of 250 cfs in Old River downstream of Middle River were not directly discussed in the SDIP Draft EIS/EIR. Tidal flows at this location will be considered in the gate operations, which will be directed by the GORT (see Master Response O, *Gate Operations Review Team*). Modeling indicates that the City's minimum dilution flow requirement may be possible approximately half of the time.

COT-4 and COT-7

Please see Master Response G, *No-Barrier Conditions Compared with the No-Action Baseline.* The City of Tracy wastewater dilution flows would be similar for the existing conditions (with temporary barriers) and for conditions without temporary barriers. The head of Old River diversions are only slightly restricted by the temporary barriers in the summer. The head of Old River fall placement has been the existing conditions since about 1965. The spring barrier includes culverts to allow a minimum flow of about 250 cfs into Old River.

COT-6

The Cumulative Impacts analysis does not include wastewater treatment plants located in the Delta. The pertinent effects associated with water quality effects from the SDIP involve salinity and the routing of San Joaquin River water in the south Delta. Although Mountain House and the City of Tracy will discharge increased wastewater effluent into the south Delta in the future, their treatment and dilution are adequate to satisfy water quality standards. The small effects of the temporary barriers program on salinity are described in Master Response G, *No-Barriers Conditions Compared with the No-Action Baseline.*

COT-8

Please see response to comment COT-3.