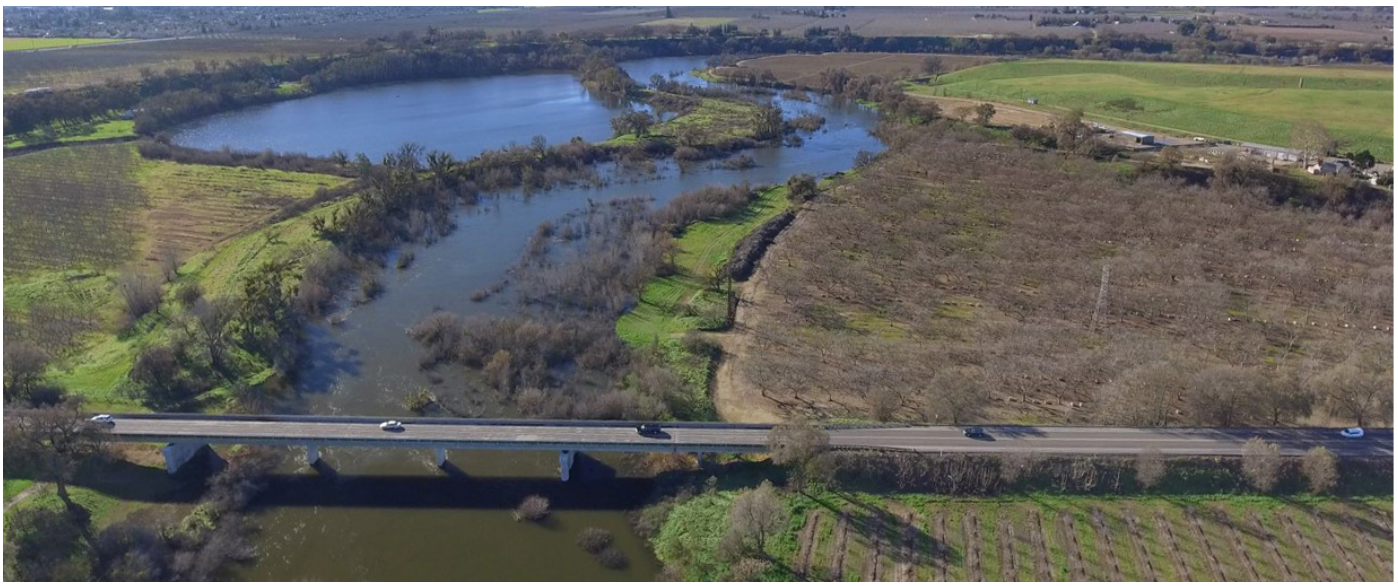
Stanislaus Regional Water Authority

Surface Water Supply Project

Final Environmental Impact Report



Horizon WATER and ENVIRONMENT

July 2018

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Stanislaus Regional Water Authority

Surface Water Supply Project

Final Environmental Impact Report

(State Clearinghouse No. 2017022077)

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July 2018

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Acronyms and Abbreviations

A	
AAQA	ambient air quality analysis
AFY	acre-feet per year
AIA	Air Impact Assessment
B	
Bay-Delta Plan	Water Quality Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary
BUOW	burrowing owl
C	
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
cfs	cubic feet per second
CNDDB	California Natural Diversity Database
D	
DEIR	draft environmental impact report
E	
ESA	Endangered Species Act
F	
FEIR	final environmental impact report
FERC	Federal Energy Regulatory Commission
I	
ISR	Indirect Source Rule
L	
LSAA	Lake and Streambed Alteration Agreement
M	
M&I	municipal and industrial use
MID	Modesto Irrigation District
N	
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
NOP	Notice of Preparation
NO_X	oxides of nitrogen
O	
OEHHA	California Office of Environmental Health Hazard Assessment
OPR	Governor's Office of Planning and Research
P	
proposed project	Surface Water Supply Project

S

SFPUC	San Francisco Public Utilities commission
SJVAPCD	San Joaquin Valley Air Pollution Control District
SRF	State Revolving Fund
SRWA	Stanislaus Regional Water Authority
SWHA	Swainson's hawk
SWRCB	State Water Resources Control Board

T

TAC	toxic air contaminants

U

USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

V

VELB	valley elderberry longhorn beetle
VOC	volatile organic compounds

W

WTP	water treatment plant

Chapter 1
INTRODUCTION

The Stanislaus Regional Water Authority (SRWA) as the lead agency has prepared this Final Environmental Impact Report (FEIR) to provide other responsible agencies and the public with information about the potential environmental effects of the proposed Surface Water Supply Project (proposed project). The document has been prepared in compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended) and the State CEQA Guidelines (14 California Code of Regulations [CCR] 15000 et seq.). Together with the draft EIR (DEIR), this document constitutes the FEIR for the proposed project.

1.1 FEIR Context

SRWA, a joint powers authority whose member agencies consist of the Cities of Ceres and Turlock, proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) in Phase 1 (up to 50,400 AFY at buildout in 2040) of water from the Tuolumne River; convey it to a new water treatment plant; and convey the treated water through transmission mains to storage facilities in Ceres and Turlock. The surface water that would be provided as part of the proposed project would assist the Cities in achieving sustainable groundwater pumping levels. In addition, 2,000 AFY of offset water (recycled water or groundwater) provided to the Turlock Irrigation District (TID) would assist TID in implementing its water conservation and conjunctive water use programs. The proposed project was evaluated in a DEIR in accordance with CEQA and the State CEQA Guidelines and was circulated for a 45-day public review period.

CEQA requires the lead agency to prepare an FEIR, addressing all substantive comments received on the DEIR, before approving a project. The FEIR must include a list of all individuals, organizations, and agencies that provided comments on the DEIR, and must contain copies of all comments received during the public review period along with the lead agency's responses.

1.2 Summary of Public Participation

1.2.1 Notice of Preparation and Public Scoping

Scoping refers to the public outreach process used under CEQA to determine the coverage and content of an EIR. The scoping comment period offers an important early opportunity for public review and comment on the focus of the CEQA analysis. The scoping process for an EIR is initiated by publication of the Notice of Preparation (NOP), as required by CEQA, which provides formal notice to the public and to interested agencies and organizations that a DEIR is in preparation. Additionally, the NOP informs responsible agencies and the public whether the proposed project could have significant effects on the environment and to solicit their comments so that any concerns raised could be considered during the preparation of the

DEIR. During the scoping period, agencies and the public are invited to comment on the project, the approach to environmental analysis, and any issues of concern to be discussed in the DEIR. Scoping also can assist the lead agency with identification of project alternatives and mitigation measures. CEQA does not require public meetings during the scoping phase.

In accordance with State CEQA Guidelines Sections 15082(a), 15103, and 15375, SRWA circulated an NOP for the proposed project beginning on February 28, 2017, and ending on March 30, 2017. The NOP was circulated to the public; local, state, and federal agencies; and other interested parties. A copy of the NOP was included in Appendix A, *Scoping Summary,* of the DEIR. Comment letters received in response to the NOP were also compiled in the scoping summary and were considered during preparation of the DEIR.

1.2.2 Notice of Availability of the DEIR and Public Review

Upon completion of the DEIR, SRWA issued a Notice of Availability (NOA), providing agencies and the public with formal notification that the document was available for review. The notice was sent to the Governor's Office of Planning and Research (OPR) State Clearinghouse, responsible and trustee agencies, persons and organizations that requested a copy, and the Stanislaus County Clerk's office for posting. Notices were also published in the *Modesto Bee*.

These actions triggered a 45-day public review period, which began on January 22, 2018, and concluded on March 8, 2018. A notice advertising the availability of the DEIR and the location and time of the DEIR public meeting was published in the *Modesto Bee* on January 22, 2018.

During the review period for the DEIR, all documents related to the proposed project were available for review on SRWA business days, between the hours of 8 a.m. and 5 p.m., at the following location:

Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

In addition, an electronic copy of the DEIR was available for review and download from the SRWA website (www.stanrwa.org/documents), and CD copies of the DEIR were also available by contacting Allison Martin, SRWA Board Secretary. Copies were also available for review at public libraries in Ceres, Turlock, and Hughson.

1.2.3 Comments on the DEIR

Written comments or questions concerning the DEIR were accepted during the public review period at the following address:

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Email: SurfaceWaterSupply-DEIR-comment@horizonh2o.com

A total of 9 comment submittals (letters and emails) were received during the public review period. Chapter 2 provides additional information about comments received on the DEIR.

1.3 FEIR Review and Certification

The FEIR will be distributed to public agencies that provided comments at least 10 days prior to certifying the FEIR. At the close of the 10-day public agency review period, SRWA staff will recommend to the Board of Directors whether or not to certify the FEIR. This governing body then will review the FEIR, consider staff recommendations and public testimony, and decide whether to certify the FEIR.

For significant impacts identified in the EIR that cannot be mitigated, a statement of overriding considerations must be included in the administrative record of the proposed project and, if SRWA chooses to certify the EIR and approve the proposed project, mentioned in the Notice of Determination (NOD) to be filed with OPR and at the office of the County Clerk (14 CCR Section 15093[c]).

1.4 Organization and Content of the FEIR

This FEIR contains the following chapters:

- **Chapter 1, *Introduction*.** This chapter describes the context of the FEIR; summarizes the public participation process to date, including the NOP and public scoping, the DEIR and public review, and comments on the DEIR; explains the FEIR review and certification process; and describes the organization of the document.
- **Chapter 2, *Comments on the DEIR and Responses*.** This chapter contains the substantive comments received on the DEIR and provides SRWA's responses to those comments.
- **Chapter 3, *Revisions to the DEIR*.** This chapter presents revisions to the text of the DEIR made in response to comments received during the public review period or initiated by SRWA.
- **Chapter 4, *Report Preparation*.** This chapter lists the firms and individuals who assisted in the preparation of this FEIR.
- **Chapter 5, *References*.** This chapter provides a list of sources that are cited to support responses to comments on the DEIR.

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Chapter 2
COMMENTS ON THE DEIR AND RESPONSES

2.1 Introduction

CEQA requires the lead agency to prepare an FEIR, addressing all substantive comments received on the DEIR. The FEIR must include a list of all individuals, organizations, and agencies that provided comments on the DEIR, and must contain copies of all comments received during the public review period, along with the lead agency's responses.

This chapter provides a list of comments received, copies of the comments, and responses to those comments that address environmental issues.

Individual comments within each submittal are marked and numbered in the margin of the comment letter. The marked individual comments correspond to the responses to those comments. For example, Comment A-3 from Letter A corresponds to the response to Comment A-3.

2.2 List of Comments Received

SRWA received 9 comment submittals, including letters and emails, during or immediately following the public review period.[1] (Although three comment letters were received after the closing date, SRWA has included those letters in its considerations in this FEIR.) **Table 2-1** lists the identifier for each submittal; the name and affiliation of the individual who submitted each comment; and the date the comment was sent.

[1] Modesto Irrigation District, in its comment letter submitted on March 12, requested a 30-day extension of the public comment period. SRWA granted that extension for MID, extending the comment period to April 9, 2018. A second extension requested by MID was also granted, to April 23, 2018. A letter of clarification was provided by MID on July 13, 2018, which mooted the concerns expressed in the April 23 letter. Both letters are provided in this chapter.

Table 2-1. List of DEIR Comment Submittals Received During the Public Review Period

Comment Letter	Commenter Name and Affiliation	Date Sent
A	Sean Maguire, Division of Water Rights, State Water Resources Control Board	March 8, 2018
B	Arnaud Marjollet, San Joaquin Valley Air Pollution Control District	March 9, 2018
C	Julie Vance, California Department of Fish and Wildlife	March 7, 2018
D	Scott Morgan, Governor's Office of Planning and Research, State Clearinghouse	March 8, 2018
E	Scott Furgerson, Modesto Irrigation District	March 12, 2018
F	Scott Morgan, Governor's Office of Planning and Research, State Clearinghouse	March 9, 2018
G	Patrick Cavanah, Stanislaus County Environmental Review Committee	March 12, 2018
H	Ronda A. Lucas, Modesto Irrigation District	July 13, 2018 April 23, 2018

2.3 Comments and Responses

This section contains a copy of each comment letter received during the DEIR review period. Following each submittal are SRWA's responses to each comment that addresses an environmental issue. Revisions to the DEIR that are indicated in these responses are provided in Chapter 3 of this FEIR.

Letter A – Sean Maguire, Division of Water Rights, State Water Resources Control Board

Letter A: Sean Maguire, State Water Resources Control Board

CALIFORNIA Water Boards

Edmund G. Brown Jr. Governor

Matthew Rodriquez Secretary for Environmental Protection

State Water Resources Control Board

March 8, 2018

In Reply Refer to
JL: A014127

Stanislaus Regional Water Authority
c/o Michael Brinton, Interim General Manager
156 South Broadway, Suite 270 Turlock, CA 95380
Email: SurfaceWaterSupply-DEIR-comments@horizonh2o.com

Dear Mr. Brinton:

COMMENTS ON STANISLAUS REGIONAL WATER AUTHORITY SURFACE WATER SUPPLY PROJECT, DRAFT ENVIRONMENTAL IMPACT REPORT

State Water Resources Control Board (State Water Board), Division of Water Rights (Division), as a responsible agency, appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Stanislaus Regional Water Authority (SRWA) Surface Water Supply Project (Project). SRWA, a joint powers authority whose member agencies consist of the Cities of Ceres and Turlock, proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-feet per year (AFY) of water in Phase 1 (up to 50,400 AFY at buildout in 2040) from the Tuolumne River. SRWA proposes to facilitate the Project by seeking 30,000 AFY of surface water supply through a long-term water transfer from the Turlock Irrigation District (TID). The Division's comments are specific to the long-term water transfer from TID to SRWA.

Comment 1: Page ES-7, Responsible and Trustee Agencies

The State Water Board, as a responsible agency to approve the proposed long-term water right transfer from TID to SRWA, shall be identified as a responsible agency for the Project.

Unless a separate environmental analysis for the water transfer is intended to be completed, TID, as the right holder responsible for filing the long-term water transfer with the State Water Board, should also be included as a responsible agency for purposes of the water right transfer to facilitate the Project.

A-1

Comment 2: Chapter 2 – Project Description

Table 2-1 indicates that the maximum diversion from the Tuolumne River for the Project will be 30,000 AFY for Phase I by 2025, and it will reach 50,400 AFY by 2040 at Project buildout. The DEIR also indicates that TID would file a long-term petition to transfer 30,000 AFY of water to SRWA. It does not appear the DEIR discloses the basis of rights for the additional 20,400 AFY that SRWA plans to divert for the Project beginning in 2025 through buildout. Please provide information regarding how SRWA will pursue the additional 20,400 AFY of water from the Tuolumne River at Project buildout by 2040.

A-2

Felicia Marcus, chair | Eileen Sobeck, executive director

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

TID's petition for long-term change has yet to be submitted and reviewed by the State Water Board. Until an order approving such a change is issued, TID is not authorized to deliver water to SRWA under License 11058. A-3

The DEIR indicates the City of Turlock would provide TID with 2,000 AFY of recycled water during the irrigation season in return for TID's river water. Please be advised that in accordance with Water Code section 1211, the proposed action may require a water right approval if the City of Turlock proposes to make any changes to the point of discharge, place of use, or purpose of use of its treated wastewater. A-4

Comment 3: Page 3.4-10 "To meet the needs of Phase 1 water treatment operations, TID intends to make annual average releases of approximately 24 cfs, in addition to the Federal Energy Regulatory Commission (FERC) minimum flows (below La Grange Dam), resulting in net increased flows in the Tuolumne River between Don Pedro Reservoir and the infiltration gallery."

In order to provide sufficient information to evaluate potential effects to fish and wildlife resources as a result of the project, the DEIR should address TID's proposed additional releases of 24 cfs for Phase 1 of the Project, including the projected schedule for the releases. It is not clear whether the proposed additional releases correspond to SRWA's diversions at the infiltration gallery, nor is there an analysis of the impacts to water storage in Don Pedro Reservoir through changed reservoir release patterns. A-5

The Division is aware that TID and Modesto Irrigation District are in the process of relicensing FERC project No. 2299 and seeking a new license for FERC project No. 14581, which may result in new minimum flow requirements below La Grange Dam. It does not appear that the DEIR includes information about the pending FERC licenses and the potential effects on TID's additional releases due to the Project and future water storage in Don Pedro Reservoir. A-6

Comment 4: Chapter 3.9 Hydrology and Water Quality

Although the DEIR indicates the Project may benefit the Turlock groundwater subbasin by reducing groundwater pumping for water supplies to the Cities of Turlock and Ceres, it does not identify whether there are any impacts to groundwater recharge by changing the purpose of use of the 30,000 AFY of transfer water from irrigation use to municipal and industrial uses. The proposed changes could potentially change deep percolation of applied irrigation water and reduce return flows from agriculture for groundwater recharge. A-7

Changes in the use of the 30,000 AFY transfer water from irrigation to municipal and industrial use could also affect reservoir refill and releases on the Don Pedro Reservoir due to the seasonal differences between municipal and industrial demand and irrigation demand. The DEIR should evaluate the Project's impact to operation of the Don Pedro Reservoir, which may cause potential impact to other water right holders downstream of the Reservoir. A-8

In addition, moving the point of rediversion (PORD) from La Grange Dam to the infiltration gallery could potentially result in conveyance losses of a portion of the transfer water as it moves 26 miles downstream, depending on the hydrological characteristics of the Tuolumne River. For instance, if the Tuolumne River stretch between La Grange Dam and the infiltration gallery is a losing stream, a portion of the transfer water could infiltrate before it reaches the A-9

1

infiltration gallery. The DEIR should discuss the potential impacts to stream flows due to the change in the PORD for the transfer water. A-9, cont.

Comment 5: Page 3.17-6 "TID provides irrigation water to agricultural lands in Stanislaus County and operates the New Don Pedro Reservoir…TID uses water stored in Don Pedro Reservoir to irrigate approximately 5,800 farms within its 307-square-mile irrigation service area."

TID proposes to transfer 30,000 AFY of water to SRWA under the Project. The DEIR does not address or attempt to quantify a decrease in agricultural demand or describe the methodology for calculating such a decrease that would provide the source water for the Project. Is this amount of water currently served to the farms within TID's service area? What is TID's plan with regard to the water supply to these farms once the water transfer is effective; will these farms continue to receive water from TID's license or another source, will the farms begin to use groundwater as a supply source, or will these irrigated lands no longer be in operation? Although the DEIR indicates in Chapter 2 that the City of Turlock would provide TID with 2,000 AFY of recycled water to offset TID's transfer water, the offset recycled water is a very small amount compared to the total amount of transfer water. A-10

Comment 6: Page 3.17-9 "While no new entitlements are needed, TID's existing water right (License 11085) would need to be amended to accommodate the changes contemplated under the proposed project. Specifically, TID would add a POD at the location of the infiltration gallery under the water right. This would be accomplished through a Petition for Change through SWRCB, in which the SWRCB would need to find that the proposed change would not adversely affect existing water right holders or instream beneficial uses. Because the project would increase flows in the reach between the reservoir and the infiltration gallery, as described in Impact BIO-3 in Section 3.4, Biological Resources, and result in no other changes upstream or downstream, there would be no potential for adverse impacts. In fact, these increased flows would have beneficial impacts on instream beneficial uses."

As indicated above in Comment 4, TID's long-term water transfer to SRWA could potentially affect the Tuolumne River flow and return flows for groundwater recharge. It does not appear that the DEIR contains sufficient information to support its claim that the proposed project would have no potential for adverse impacts to existing water right holders or instream beneficial uses. The DEIR should address the potential impacts to the Tuolumne River and the Turlock groundwater subbasin resulting from the changes in the PORD and purpose of use for the 30,000 AFY transfer water. Also, the infiltration gallery would need to be added as a PORD, not a POD under TID's water right transfer. A-11

Comment 7: As you are aware, the State Water Board is currently in the process of amending the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to establish new flow objectives on the Lower San Joaquin River and its three eastside tributaries – the Merced, Stanislaus, and Tuolumne Rivers. Changes to the Bay-Delta Plan will be implemented through water rights requirements, FERC licensing requirements or other measures. The EIS/EIR should disclose that the Bay-Delta Plan update is occurring. A-12

1

Mr. Brinton
Stanislaus Regional Water Authority - 4 - March 8, 2018

Thank you for considering these comments to the Stanislaus Regional Water Authority Surface Water Supply Project Draft Environmental Impact Report. Should you have any questions regarding this letter, please contact Jane Ling, the staff person assigned to this project, at (916) 341-5335 or via email at jane.ling@waterboards.ca.gov.

Sincerely,

ORIGINALLY SIGNED BY:

Sean Maguire, Manager
Petition, Licensing and Registration Section
Division of Water Rights

ec: Turlock Irrigation District
c/o Andrew M. Hitchings
ahitchings@somachlaw.com

1

Response to Comment A-1

The commenter requests that the DEIR include the State Water Resources Control Board (SWRCB) and TID as responsible agencies for purposes of the water rights transfer to facility the proposed project.

SRWA recognizes that SWRCB is a responsible agency for the proposed project and will be considering TID and SRWA's long-term water rights transfer, as is indicated in Tables ES-1 and 2-5 of the DEIR. TID is currently consulting with SWRCB on this process. The Executive Summary and Section 2.7, "Responsible and Trustee Agencies," of Chapter 2, Project Description, have been revised to explicitly indicate SWRCB's status as a responsible agency. (See Chapter 3 of this FEIR for those revisions.)

TID is already identified as a responsible agency at these locations in the DEIR. No change is necessary regarding TID's status.

Response to Comment A-2

The commenter requests information about the basis of water rights for SRWA's diversion of an additional 20,400 AFY from the Tuolumne River beginning in 2025 through buildout.

The 50,400 AFY number was provided for informational purposes only. The Water Sales Agreement between SWRA and TID only provides for the transfer of 30,000 AFY and TID's long-term petition is to transfer only 30,000 AFY to SRWA.

On page 2-20 beginning at line 11, in Section 2.4.4, "Water Treatment Plant," under the subheading "Treatment Processes," the DEIR states: "To fully meet buildout demands, approximately 43,000 AFY of water would be needed, requiring SRWA and TID to amend the 2015 Water Sales Agreement and SRWA to purchase (through a long-term lease) additional surface water from TID." Although the statement acknowledges the likelihood that SRWA would need to purchase/lease additional water rights from TID to fully meet buildout demand, any attempt to predict the potential sources of water available to meet those demands would be speculative at this time.

In addition, several ongoing regulatory activities increase the level of uncertainty surrounding potential future water sources and availability. The SWRCB is amending the Water Quality Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) to establish new flow objectives on the Lower San Joaquin River and its tributaries. The Federal Energy Regulatory Commission (FERC) is also engaged with TID, the Modesto Irrigation District (MID), and the San Francisco Public Utilities Commission (SFPUC) in the process of relicensing the operation of Don Pedro Reservoir. As a result of these multiple sources of uncertainty with regard to the sources and quantities of available water supply in the future, TID is willing to commit to the transfer of 30,000 AFY.

Response to Comment A-3

The commenter indicates that TID is not authorized to deliver water to SRWA under its existing License 11058 and cannot do so until an order approving a change to that license is issued.

Table 2-5 indicates that SWRCB's approval of "TID change petition authorizing the long-term transfer of water to SRWA, use of the infiltration gallery as a point of rediversion, and the diversion and use of water for M&I [municipal and industrial] purposes" would be required for the proposed project. Operation of the proposed project would not take place until all required permits and approvals have been obtained. In addition, Section 3.17, *Utilities and Service Systems*, includes a discussion of License 11058 (mistakenly identified as "License 11085") in Impact UTL 3, "Have Insufficient Water Supplies Available to Serve the Project from Existing Entitlements and Resources, or Require New or Expanded Entitlements."

The license number has been corrected as indicated in Chapter 3, *Revisions to the DEIR.*

Response to Comment A-4

The commenter states that California Water Code Section 1211 may require the City of Turlock to obtain a water right approval for changes to the point of discharge, place of use, or purpose of use of its treated wastewater.

California Water Code Section 1211 provides that, before making any change in the point of discharge, place of use, or purpose of use of treated wastewater that would result in decreasing the flow of any portion of a watercourse, the owner of the wastewater treatment plant must obtain SWRCB approval for the change. To the extent this provision applies, the City of Turlock and TID will work with SWRCB to obtain any necessary approvals.

Response to Comment A-5

The commenter requests additional information on TID's proposed additional releases of 24 cubic feet per second (cfs) for Phase 1 of the Proposed Project, including the projected schedule for releases.

TID has analyzed the impacts on Don Pedro Reservoir storage through changed release patterns caused by providing an additional 30,000 AFY year-round, and the impacts are negligible. For reference, TID currently manages reservoir releases to account for water storage impacts caused by evaporation, which is approximately 60,000 AFY year-round. TID expects to manage the reservoir in a similar manner for the proposed additional year-round release of 30,000 AFY for the Proposed Project. TID monitors Tuolumne River flow using an existing stream gauge to ensure required flows are met. The existing stream gage is located at river mile 16.36, which is downstream of the Infiltration Gallery located at river mile 25.95. With the additional releases from the reservoir and with the new diversion at the Infiltration Gallery, TID would continue to use its existing stream gauge at river mile 16.36 to ensure required flows are met and to ensure there is no diminishment of flows below the Infiltration Gallery.

Response to Comment A-6

The commenter requests that the DEIR include information about the pending FERC licenses and potential effects on TID's additional releases.

The commenter is correct that TID, MID, and SFPUC are currently engaged in the FERC relicensing process for Don Pedro Reservoir. Therefore, the relicensing project is reasonably foreseeable. However, the relicensing process is a separate and independent action undertaken by FERC and the operating agencies on an unrelated timeline; the outcome of that

process with respect to any changes in minimum flow requirements is currently unknown and cannot be predicted with any certainty. CEQA disallows speculation about possible impacts that cannot be evaluated with some level of certainty. Therefore, as stated in Response to Comment A-2, any changes in releases from Don Pedro Reservoir as a result of the FERC relicensing effort are not evaluated in the DEIR.

Response to Comment A-7

The commenter requests information on impacts on groundwater recharge from transfer of irrigation water use to municipal and industrial use as a result of the Proposed Project.

While a reduction in irrigation water use as a result of the Proposed Project could reduce deep percolation to the aquifer, this would be more than offset by the corresponding reduction in the pumping of groundwater as a result of the project by SRWA's member agencies and by the transfer of 2,000 AFY of recycled water for irrigation purposes to TID by the City of Turlock. SRWA's member agencies are currently entirely dependent upon groundwater as their source of supply. As described on page 3.9-18 of the DEIR, the City of Turlock pumps almost 22,000 AFY and the City of Ceres pumps approximately 7,000 AFY. The Proposed Project would be a major element in the in-lieu groundwater recharge program under the Groundwater Sustainability Plan being developed for the Turlock Subbasin. The Proposed Project should be viewed within the context of a comprehensive groundwater management program for the Turlock Subbasin.

Response to Comment A-8

The commenter requests information regarding changes to operation of Don Pedro Reservoir due to seasonal differences in irrigation demand versus municipal and industrial demand.

During the irrigation season, municipal and industrial demand and irrigation demand would normally track closely, with higher demands during the summer and lower demands during the shoulder months. During the non-irrigation season months (e.g., winter months), there would be reduced municipal and industrial demand and no or very little irrigation demand. Therefore, no significant shift in reservoir release patterns and no potential impact on other water right holders downstream of the reservoir is anticipated.

Response to Comment A-9

The commenter requests a discussion of conveyance losses resulting from the change in point of rediversion.

The commenter's requested discussion is provided in Response to Comment A-5.

Response to Comment A-10

The commenter questions how TID is making 30,000 AFY available, and indicates that the EIR should address the environmental impacts associated with either a reduction in agricultural water demand or the need to find an alternative source of water supply for the irrigators.

This long-term surface water transfer is being viewed within the context of a developing integrated water resources plan, which seeks to integrate TID's surface water, groundwater,

and recycled water resources and district and on-farm water conservation measures to effectively meet the various demands on TID surface water and groundwater resources. Reduction in agricultural surface water demand within TID is expected to result from a combination of (1) district and on-farm water conservation measures; (2) increased on-farm groundwater pumping offset by a reduction in SRWA member agency pumping; (3) continued urbanization of farm land; and (4) use of recycled water for irrigation. As explained in Response to Comment A-7, the Proposed Project would be a major element in the in-lieu groundwater recharge program under the Groundwater Sustainability Plan being developed for the Turlock Subbasin.

Response to Comment A-11

The commenter expresses concern that the EIR does not contain sufficient information about potential effects on Tuolumne River flow and return flows for groundwater recharge, as well as impacts on existing water right holders and instream beneficial uses.

The EIR adequately addresses the potential impacts to the Tuolumne River and the Turlock groundwater subbasin resulting from releasing an additional 30,000 AFY from Don Pedro Reservoir and rediverting it 26 miles downstream at the infiltration gallery. As described in DEIR Section 3.9, *Hydrology and Water Quality,* in general and Section 3.4, *Biological Resources,* in Impact BIO-3, water conveyed downstream from La Grange Dam to the infiltration gallery site would have beneficial impacts on that 26-mile stretch of the Tuolumne River by increasing flows over that distance. This would have no net impact on water rights holders and would be beneficial to instream beneficial uses as well as to fish and wildlife using the river. See also Responses to Comments A-7, A-8, A-9, and A-10.

SRWA acknowledges that the infiltration gallery is appropriately considered a point of rediversion.

Response to Comment A-12

The commenter notes that the SWRCB is currently amending the Bay-Delta Plan to establish new flow objectives on the Lower San Joaquin River and its tributaries. The commenter requests that the EIS/EIR disclose that the Bay-Delta Plan update is occurring.

Information about the Bay-Delta Plan update process has been added to Section 3.9, *Hydrology and Water Quality*. Similar to the FERC relicensing process, which is also ongoing, the outcome of the Bay-Delta Plan update process and any possible future changes in minimum flow requirements are currently unknown and cannot be predicted at this time with any certainty.

Letter B – Arnaud Marjollet, San Joaquin Valley Air Pollution Control District

Letter B: Arnaud Marjollet, San Joaquin Valley Air Pollution Control District

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

March 9, 2018

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Project: Draft Environmental Impact Report for the Surface Water Supply Project

District CEQA Reference No: 20180060

Dear Mr. Brinton:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Draft Environmental Impact Report (DEIR) for the project referenced above submitted by the Stanislaus Regional Water Authority (SRWA). The project consists of the design, construction, operation, maintenance, and management of new and existing water treatment facilities and infrastructure to convey treated water through transmission mains to storage facilities in Ceres and Turlock (Project). The District offers the following comments:

1. According to the California Environmental Quality Act Guidelines §15064, a project's environmental assessment on whether it may have potential significant impact calls for careful judgement on the part of the lead agency, such as characterization and analysis of potential impacts. This DEIR does not appear to include such assessment of impacts on sensitive receptors. Therefore, the District recommends that such an analysis be performed in order to conclude that the impact would be reduced to a less than significant level with mitigation measures. If the impact cannot be quantified at this time, the District recommends that the resulting impact be changed from a "less than significant impact with mitigation measures" to a "potentially significant impact." B-1

   As identified in Table ES-2 "*Summary of Potential Impacts and Mitigation Measures*" of the DEIR, specifically for Impact AQ-4 *"Potential to Expose Sensitive Receptors to Substantial Pollutant Concentrations,"* the DEIR concludes that the Project will result in a less than significant impact with implementation of "Mitigation Measure AQ1" and "Mitigation Measure AQ2." These proposed mitigation measures include preparation of quantitative construction-related and operation-related emissions analyses. B-2

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Also, these measures state that if the future emissions analyses determine that construction or operational emissions would exceed the air quality significance thresholds, then the SRWA shall identify and implement appropriate future mitigation to the extent feasible at that time to address this AQ-4 impact. It is important to note that "Mitigation Measure AQ1" and "Mitigation Measure AQ2" do not seem to be appropriate mitigation in reducing exposure of substantial pollution concentrations to sensitive receptors to a less than significant level at this time.

B-2 cont.

2. As stated in the DEIR, future development projects within the scope of the Surface Water Supply Project will contribute to significant and unavoidable impacts on air quality. Such future development may require further environmental review and mitigation. The District makes the following recommendations regarding future individual development projects:

   A. Health Risk Screening/Assessment – A Health Risk Screening/Assessment identifies potential Toxic Air Contaminants (TAC's) impact on surrounding sensitive receptors such as hospitals, daycare centers, schools, work-sites, and residences. TAC's are air pollutants identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) (https://www.arb.ca.gov/toxics/healthval/healthval.htm) that pose a present or potential hazard to human health. A common source of TACs can be attributed to diesel exhaust emitted from both mobile and stationary sources. Industry specific TACs generated must also be identified and quantified.

      The District recommends for new developments that may require further environmental review and mitigation at the project-level, an assessment be performed that evaluates potential health impacts to surrounding receptors (on-site and off-site) resulting from multi-year construction and operational TAC emissions.

      i) The District recommends conducting a screening analysis that includes all sources of emissions. A screening analysis is used to identify projects which may have a significant health impact. A prioritization, using CAPCOA's updated methodology, is the recommended screening method. A prioritization score of 10 or greater is considered to be significant and a refined Health Risk Assessment (HRA) should be performed. The prioritization calculator can be found at: http:www.valleyair.org/busind/pto/emission_factors/Criteria/Toxics/Utilities/PRIORITIZATION%20RMR%202016.XLS.

      ii) The District recommends a refined HRA for projects that result in a prioritization score of 10 or greater. It is recommended that the Project proponent contact the District to review the proposed modeling protocol. The Project would be considered to have a significant health risk if the HRA demonstrates that the Project related health impacts would exceed the Districts significance threshold of 20 in a million for carcinogenic risk and 1.0 for the Acute and Chronic Hazard Indices.

B-3

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More information on toxic emission factors, prioritizations and HRAs can be obtained by:

- E-Mailing inquiries to: hramodeler@valleyair.org; or
- The District can be contacted at (559) 230-6000 for assistance; or
- Visiting the Districts website (Modeling Guidance) at http://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm

B-3 cont.

B. Ambient Air Quality Analysis – An ambient air quality analysis (AAQA) uses air dispersion modeling to determine if emissions increases from a project will cause or contribute to a violation of the ambient air quality standards. The District recommends that an AAQA be performed for the Project if emissions exceed 100 pounds per day of any pollutant. If an AAQA is performed, the analysis should include emissions from both Project specific permitted and non-permitted equipment and activities. The District recommends consultation with District staff to determine the appropriate model and input data to use in the analysis. Specific information for assessing significance, including screening tools and modeling guidance is available online at the District's website www.valleyair.org/ceqa.

B-4

C. Construction Emissions – In general, mitigation measures reducing construction exhaust emissions must be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines §15126.4, subd.(a)(2)). Feasible mitigation of construction exhaust emission includes use of construction equipment powered by engines meeting, at a minimum, Tier III emission standards, as set forth in §2423 of Title 13 of the California Code of Regulations, and Part 89 of Title 40 Code of Federal Regulations. The District recommends incorporating, as a condition of Project approval, a requirement that off-road construction equipment used on site achieve fleet average emissions equal to or less than the Tier III emissions standard of 4.8 NOx g/hp-hr. This can be achieved through any combination of uncontrolled engines and engines complying with Tier III and above engine standards.

B-5

D. Individual development projects would be subject to District Rule 9510 (Indirect Source Review) if, for example, upon full build-out the project would include or exceed any one of the following:

- 50 dwelling units
- 2,000 square feet of commercial space;
- 25,000 square feet of light industrial space;
- 100,000 square feet of heavy industrial space;
- 20,000 square feet of medical office space;
- 39,000 square feet of general office space; or
- 9,000 square feet of educational space; or
- 10,000 square feet of government space; or
- 20,000 square feet of recreational space; or
- 9,000 square feet of space not identified above

B-6

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Any applicant subject to District Rule 9510 is required to submit an Air Impact Assessment (AIA) application to the District no later than applying for final discretionary approval. If approval of the subject Project constitutes the last discretionary approval by your agency, the District recommends that demonstration of compliance with District Rule 9510, including payment of all applicable fees before issuance of the first building permit, be made a condition of Project approval. Information about how to comply with District Rule 9510 can be found online at: http://www.valleyair.org/ISR/ISRHome.htm. B-6 cont.

E. Individual development projects may require District permits. Prior to the start of construction the project proponent should contact the District's Small Business Assistance Office at (559) 230-5888 to determine if an Authority to Construct (ATC) is required. B-7

F. Individual development projects may also be subject to the following District rules: Regulation VIII, (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the Project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants). B-8

G. The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm. B-9

2. Referral documents for new development projects should include a project summary detailing, at a minimum, the land use designation, project size, and proximity to sensitive receptors and existing emission sources. B-10

If you have any questions or require further information, please call Stephanie Pellegrini at (559) 230-5820.

Sincerely,

Arnaud Marjollet
Director of Permit Services

Brian Clements
Program Manager

AM: sp

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Response to Comment B-1

The commenter states that the DEIR does not appear to address air quality impacts on sensitive receptors and recommends that, if impacts cannot be quantified at this time, the impact conclusion be revised to "potentially significant."

Section 3.3, *Air Quality*, of the DEIR has multiple sections that provide supporting background or methodology information, and/or address potential toxic air contaminant (TAC) impacts related to sensitive receptors. Section 3.3.4, "Sensitive Receptors," describes the distances between various project features and the nearest sensitive receptors. The "SJVAPCD Thresholds of Significance" discussion in Section 3.3.5, "Environmental Impacts and Mitigation," provides the criteria pollutant and TAC thresholds of significance identified in the *Guidance for Assessing and Mitigating Air Quality Impacts* (SJVAPCD 2015a) and details the CEQA lead agency's approach to determining the impacts of potential construction-related and/or operation-related TAC emissions. Impact AQ-4, "Potential to Expose Sensitive Receptors to Substantial Pollutant Concentrations," identifies the potential impact of both the project's construction and operation in relation to exposing sensitive receptors to TACs and discusses the need for mitigation.

In response to the San Joaquin Valley Air Pollution Control District's (SJVAPCD's) comment, the discussion of TACs in Section 3.3.3, "Environmental Setting," has been modified to explicitly discuss common TACs related to water disinfection treatment and their health effects. In addition, Impact AQ-4 has been revised to provide additional clarity on the specific reasoning and supporting information considered in that impact analysis and conclusion. In particular, the discussion has been revised to make specific reference to the distances between project features and sensitive receptors, accepted risk guidance methodology, permitting processes and requirements, and additional discussions of potential disinfection-related TACs from operation of the water treatment plant (WTP). Mitigation Measure AQ-2 has also been modified to include direct reference to permitting processes and clarify the permitting requirements related to potential TAC sources and health risk assessments. In addition, the information below provides further clarification on why a quantitative health risk assessment is not necessary under CEQA for the proposed project's construction or operation analyses.

The California Office of Environmental Health Hazard Assessment (OEHHA) guidance indicates that an assessment of health risks from air quality emissions on sensitive receptors should be based on proximity of the receptors to the emission source and should be calculated over a 70-year life span. According to the information provided in Chapter 2, *Project Description,* of the DEIR, air pollutant emissions during construction of the proposed project would be temporary in nature—for pipeline installation, construction equipment would progress at approximately 200-400 feet per day, or 1-2 days adjacent to a particular receptor—and even the nearest sensitive receptors would not be substantially affected during that brief period. Concentrations of mobile-source diesel PM emissions are typically reduced by 70 percent at a distance of approximately 500 feet (CARB 2005). As identified in Impact AQ-2, potential construction-related TAC emissions would be reduced to the extent feasible through implementation of Mitigation Measure AQ-1, which would require construction emission reductions through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. Furthermore, given that (1) the construction period for the proposed project, which is

approximately 15 months for the most extensive single location (the WTP), would not involve the use of substantial quantities of construction equipment, and (2) the distance between the WTP site and sensitive receptors would be at least 100-140 feet from the edge of the WTP site and 740-1,800 feet from the center of the WTP site, the potential for the project to expose sensitive receptors to substantial pollutant concentrations during construction activities would be less than significant. Because of the brief period of construction at any given location near sensitive receptors and the OEHHA's recommendation that health risks be evaluated over the lifetime of a receptor (i.e., approximately 70 years), a quantitative health risk assessment was determined not to be necessary under CEQA for the proposed project's construction activities.

As disclosed in the "SJVAPCD Thresholds of Significance" discussion in Section 3.3.5, "Environmental Impacts and Mitigation," risks from TACs were evaluated by identifying the proposed project's potential to generate TAC emissions and determining whether sensitive receptors could be affected by those emissions. Permanent (i.e., long-term, stationary) sources of emissions would occur at four project locations: the WTP, the infiltration gallery/wet well/raw water pump station site, and the Ceres and Turlock terminal tank sites. At the WTP, permanent sources would be emergency generators and chemicals involved in the treatment process, which may include chlorine (either liquid or gas) and ozone. The Ceres and Turlock terminal tank facilities and the infiltration gallery/wet well/raw water pump station site would have emergency generators. Maintenance-related vehicle emissions of TACs that occur at these locations would be short term and infrequent. Based on the information in Section 3.3.4, the nearest sensitive receptors would be 100-140 feet from the edge of the WTP site, at least 500 feet from the Ceres and Turlock terminal tank sites, and approximately 500-1,200 feet from the infiltration gallery/wet well/raw water pump station site.

Implementation of Mitigation Measure AQ-2 would reduce the amount of operational emissions to the extent feasible through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. The proposed project would be designed and operated in compliance with all SJVAPCD rules and regulations, including those that are specifically targeted to permitted sources and/or TACs, such as Rules 2010, 2201, 2280, 2550, and those from Regulation IV, as summarized in "SJVAPCD Rules" in Section 3.3.2, "Regulatory Setting," of the DEIR. Compliance with these rules and regulations would include obtaining appropriate permits. The WTP's operation would require SRWA to obtain a permit under SJVAPCD's Authority to Construct (Rule 2010), under which a health risk screening/assessment may be required, and under the New and Modified Stationary Source Review Rule (Rule 2201). Emergency generators would be operated infrequently and their operation would be permitted separately by the SJVAPCD. During the SJVAPCD new source review permitting process for the project, operational sources of TACs would be quantitatively evaluated to ensure that they would not result in health impacts above the applicable thresholds listed in the risk management policy of 20 in a million cancer risk and an acute and/or chronic hazard index of 1.0. As described in Mitigation Measure AQ-2, the project's permitted sources would be mitigated, if necessary, by implementation of appropriate pollution control devices and/or limitations on process design and throughput as determined during the new source review permitting process with SJVAPCD. This would include appropriate mitigation for both criteria pollutant and TAC emissions such that all impacts on sensitive receptors from long-term emissions would be less than significant with mitigation. A quantitative health risk assessment is not necessary

under CEQA for the proposed project's operational activities but is required for permitting processes instead.

In conclusion, the construction and operational practices described above, along with the SJVAPCD permitting process, would ensure that sensitive receptors are not exposed to substantial pollutant concentrations. In addition, the distances between sensitive receptors and these sources would further minimize any impacts. Thus, the proposed project would not pose long-term or substantial health risks to nearby residents and workers in the vicinity of the project sites.

Revisions to Impact AQ-4 of the DEIR, Mitigation Measure AQ-2, and other portions of Section 3.3, *Air Quality*, as shown in Chapter 3 of this FEIR, are not in response to a new or more severe significant impact, and do not change the impact conclusion. Therefore, they do not raise the need for recirculation of the DEIR.

Response to Comment B-2

The commenter states that Mitigation Measures AQ-1 and AQ-2 do not seem to be appropriate measures to mitigate air quality impacts on sensitive receptors.

Mitigation Measures AQ-1 and AQ-2 require, for construction-related and operational emissions, respectively, quantitative modeling of air pollutant emissions when sufficient information is available to determine whether SJVAPCD thresholds would be exceeded. The measures require that, in the case of an exceedance, emission reduction measures be implemented to reduce the pollutants below the threshold levels. Mitigation Measure AQ-2 has been revised as shown in Chapter 3 of this FEIR to explicitly state that "[f]or permitted sources, appropriate pollution control devices and/or limitations on process design and throughput would be enacted, as determined during the new source review permitting process with SJVAPCD. This would include appropriate mitigation for both criteria pollutant and TAC emissions." Thus, emissions from all permanent, stationary sources would be mitigated to a less-than-significant level. In addition, for the reasons detailed in Response to Comment B-1 and in the text revisions to Impact AQ-4, impacts on sensitive receptors from construction or operation emissions of criteria pollutants and TACs would not be significant.

Response to Comment B-3

The commenter states that, "As stated in the DEIR, future development projects within the scope of the Surface Water Supply Project will contribute to significant and unavoidable impacts on air quality" and suggests that further environmental review and mitigation may be required. The commenter goes on to discuss the possible need for a health risk screening/ assessment for future projects.

The source of the commenter's statement is unclear. While future development projects within the same air basin as the Surface Water Supply Project may contribute to significant cumulative air quality impacts, no "future development projects within the scope of the Surface Water Supply Project" are proposed by SRWA. The commenter may be referring to SRWA's water treatment, storage, and distribution system removing an obstacle to urban development and population growth within the Ceres/Turlock service area and that growth resulting in associated physical environmental impacts (as disclosed in Impact PH-3 in the DEIR). For the reasons described herein, health risk screenings/assessments and a

quantitative evaluation of air quality-related impacts of that growth cannot be conducted at this time because the details of that growth are unknown. Further, this development in the Ceres/Turlock service area would occur in accordance with the Cities' general plans and thus would not result in unplanned or disorderly growth. In addition, each of these individual projects would be required to comply with the SJVAPCD's rules and regulations, including permitting requirements related to new sources, indirect sources, and Authority to Construct permits (as detailed in, but not limited to, the SJVAPCD's Rules 2010, 2201, 2550, and 9510).

If the commenter was stating that TAC emissions from the proposed project's operation of the WTP or other proposed project components should be screened and/or quantified, then the commenter is referred to the Response to Comment B-1.

If the commenter was referring to future expansion of the WTP to accommodate buildout water demands, then it is important to note that the EIR for the proposed project does not evaluate that expansion because, as described in the Response to Comment A-2, many aspects of that expansion are speculative at this time.

Response to Comment B-4

The commenter recommends that SRWA consult with SJVAPCD regarding the need for ambient air quality analysis (AAQA) and air dispersion modeling.

The recommended analysis would be required as part of SRWA's application to obtain an Authority to Construct permit from SJVAPCD. SRWA would consult with SJVAPCD at that time regarding the appropriate model and input data to use in the analysis.

Response to Comment B-5

The commenter describes mitigation measures to reduce construction exhaust emissions but does not provide a comment related to the DEIR. Mitigation Measure AQ-1, "Prepare Quantitative Analysis of Construction-related Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap Emissions," has been revised, as described in the Response to Comment B-1, and contains requirements similar to those recommended.

Response to Comment B-6

The commenter lists the criteria for determining whether a project is subject to District Rule 9510 (Indirect Source Review, or ISR) and requires an Air Impact Assessment (AIA).

The proposed project would be subject to SJVAPCD review under the ISR and may require completion of an AIA as part of that review process. No changes to the DEIR are required, as this regulatory approval is separate from the environmental review process under CEQA.

Response to Comment B-7

The commenter states that individual development projects may require permits from SJVAPCD.

Section 3.3, *Air Quality*, in the discussion of Impact AQ-1 (page 3.3-20, lines 41-43) indicates that "The proposed project would follow all federal, state, and SJVAPCD regulations and policies related to sources of air pollutants. In addition, construction of the proposed project

would follow local air district regulations for fugitive dust, VOCs, and NO_X emissions." As part of this compliance and as project details are further developed, SRWA and its consultants would contact SJVAPCD to identify the agency's permitting requirements and applicable rules and regulations. SRWA would then implement the necessary activities to obtain applicable permits, including an Authority to Construct.

Response to Comment B-8

The commenter identifies additional SJVAPCD regulations that may apply to individual development projects.

See the Response to Comment B-7 regarding project compliance with SJVPACD regulations. The proposed project would not involve demolition of existing buildings.

Response to Comment B-9

The commenter recommends coordination with SJVAPCD regarding permit requirements and regulations that may apply to the proposed project.

See the Response to Comment B-7 regarding project compliance with SJVPACD permits and regulations.

Response to Comment B-10

The commenter indicates information that should be submitted along with referral documents for new development projects.

See the Response to Comment B-7 regarding SRWA's intent to coordinate with SJVAPCD.

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1 # Letter C – Julie Vance, California Department of Fish and Wildlife

Letter C: Julie Vance, California Department of Fish and Wildlife

State of California – Natural Resources Agency
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EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director

March 7, 2018

Michael Brinton, Interim General Manager
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E-mail: Michael.Brinton@ci.ceres.ca.us

Subject: Surface Water Supply Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2017022077

Dear Mr. Brinton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Stanislaus Regional Water Authority for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines[1]. CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Stanislaus Regional Water Authority, whose member agencies consist of the Cities of Ceres and Turlock.

Objective: Stanislaus Regional Water Authority proposes to operate an existing infiltration gallery to withdraw water from the Tuolumne River, convey extracted water to a new water treatment plant, and convey the treated water through transmission mains to storage facilities in the Cities of Ceres and Turlock. The initial withdrawals would be up to 30,000 acre-feet per year (AFY) in Phase I, increasing over time to up to 50,400 AFY at buildout in 2040. The proposed project is intended to serve as a major in-lieu groundwater recharge project under the Sustainable Groundwater Management Act to ensure the long-term sustainability of the groundwater resources within the Turlock Subbasin.

The proposed Project consists of the installation and operation of an infiltration gallery, a wet well, a raw water pump station, a 60-inch diameter raw water transmission main, a water treatment plant, a 30-inch and 42-inch diameter transmission mains, and terminal facilities consisting of one or more storage tanks.

Location: The Project is located in Stanislaus County, extending from Fox Grove Regional Park near Hughson on the north, to the Cities of Ceres and Turlock on the west and south, respectively. The raw water pump station would be located adjacent to the existing infiltration gallery on the south bank of the Tuolumne River west of Geer Road. A pipeline will convey water from the infiltration gallery and raw water pump station to a new Water Treatment Plant north of the Ceres Main Canal and west of Aldrich Road. Treated water will be conveyed from the Water Treatment Plant through pipelines to connect to the City of Ceres water system in the west and the City of Turlock's water system in the south.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Stanislaus Regional Water Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The DEIR prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the DEIR outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened Swainson's hawk (*Buteo swainsoni*), the State fully protected white-tailed kite (*Elanus leucurus*), the Federal threatened Central Valley DPS steelhead (*Oncorhynchus mykiss*), the Federal and State threatened Central Valley spring-run ESU Chinook salmon (*O. tshawytscha*), the Federal candidate and State species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), and the State species of special concern hardhead (*Mylopharodon conocephalus*), burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and Western red bat (*Lasiurus blossevillii*).

C-1

CDFW recommends that the following modifications and/or edits be incorporated into the DEIR.

I. Mitigation Measure or Alternative and Related Impact Shortcoming

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-5 Page 3.4-42

Issue: Mitigation Measure BIO-6 states that if construction occurs between February 1 and August 31, surveys for SWHA and WTKI shall be conducted within a minimum 500-foot radius around the construction area. The measure also states that buffers around active nests will be 500 feet unless a qualified biologist

C-2

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determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. The mitigation measure indicates that this buffer will be sufficient to ensure that breeding is not likely to be disrupted or adversely affected, but the DEIR analysis does not explain how this buffer size was determined to be adequate to avoid significant impacts, including but not limited to take (as defined pursuant to (Fish and Game Code Section 86), as a result of Project implementation.

Specific impact: As noted in the DEIR, SWHA and WTKI are known to the Project area and have the potential to nest in riparian habitat and mature trees located within the Project site and within ½ mile of the Project. In addition, suitable foraging habitat for SWHA and WTKI exists within the vicinity of the Project site; dairy pasture that may be used for foraging is present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: Mature trees and agricultural fields provide suitable nesting and foraging habitat in the vicinity of the Project. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of SWHA, it could also result in take under CESA. Project activities near the nest that differ from baseline disturbance regimes in type, timing, and/or magnitude can affect adults caring for eggs and young in the nest, and can affect nestling behavior. Project activities including noise, vibration, odors, visual disturbance, and movement of workers or equipment could affect nesting individuals and have the potential to result in nest abandonment or reduced nesting success, significantly impacting local nesting SWHA and WTKI.

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to SWHA and WTKI, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

SWHA Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. As described above, removal of known nest trees is a potentially

C-2 cont.

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significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA and WTKI, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation, within the Project area and a ½-mile buffer around the Project area. In addition, if Project activities will take place during the typical breeding season (February 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

SWHA Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site or parental care for survival.

SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of a State Incidental Take Permit for SWHA may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision(b).

Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI. Therefore, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer around identified WTKI nest(s) until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

C-2
cont.

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COMMENT 2: Burrowing Owl (BUOW)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-6 Page 3.4-42

Issue: Mitigation Measure BIO-7 describes focused BUOW surveys within 14 days prior to construction; however, CDFW is concerned that this survey effort may not be sufficient in detecting BUOW occupying the Project area or its vicinity. This mitigation measure also describes avoidance for occupied BUOW burrows through implementation of a 160-foot buffer during the non-nesting season and a 626-foot buffer during the nesting season, unless a Project biologist determines that a smaller buffer may be implemented. For ground-disturbing activities involved in the Project, these buffers may not be sufficient to avoid impacts. In addition, the mitigation measure describes passive relocation of BUOW detected on the Project site; however, according to CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), passively relocating and excluding BUOW in and of itself is not a take avoidance, minimization, or mitigation method. The mitigation measure also doesn't specify at what time of year passive relocation would occur.

Specific impact: BUOW rely on burrow habitat year-round for their survival and reproduction. BUOW forage in areas with relatively short vegetation and only sparse shrub cover (Gervais et al. 2008). As described in the DEIR, the Project area and its vicinity is suitable for BUOW. Without appropriate avoidance and minimization measures for BUOW, potential significant impacts include nest abandonment, which may result in reduced nesting success such as reduced health or vigor of eggs or young, in addition to direct mortality at any time of the year as a result of encroachment and increased potential of vehicle strikes, impacts to foraging success, and potentially increased predation. Potentially significant direct impacts associated with eviction and passive relocation of BUOW include inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Indirect impacts associated with temporary or permanent closure of burrows include increased stress and competition.

Evidence impact is potentially significant: The Project site is within the range of BUOW and, as described in the DEIR, supports potentially suitable burrow and foraging habitat. The Project has the potential to result in loss of burrow habitat for local populations. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), passively relocating and excluding BUOW is considered a potentially significant impact under CEQA.

C-3

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Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

CDFW recommends assessing presence/absence of BUOW by conducting surveys following the California Burrowing Owl Consortium's "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993). CDFW further recommends that the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012) be followed prior to and during any ground-disturbing activities associated with Project implementation. CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found to occupy a Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion in and of itself is not a take avoidance, minimization, or mitigation method. If deemed necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of a minimum 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. In addition, CDFW further recommends that burrow closure be employed only where there are adjacent natural burrows and sufficient non-impacted habitat for BUOW to occupy with permanent protection mechanisms in place. In addition, BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during project activities, at a rate that is sufficient to detect BUOW if they return.

C-3 cont.

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II. Editorial Comments and/or Suggestions

Fisheries Analysis: CDFW has questions and comments regarding the Project description and implications for special status fisheries. It is not yet clear if adequate Project information has been provided to allow CDFW to fully evaluate potential Project-related impacts to fisheries. Mitigation Measure BIO-4 addresses impacts to special status fisheries by limiting the timing of air purging of the Infiltration Gallery to the period from April 1 to September 30, to address the effects of suspended sediments. CDFW has provided review, analysis, and comment related to the relicensing process for the Federal Energy Regulatory Commission (FERC) in the Tuolumne River (FERC No. 2299 Don Pedro, FERC No. 14581 La Grange), and the following requested information items will make clearer how the DEIR analysis is consistent with FERC relicensing. In the items that follow, CDFW recommends clarification in the DEIR for documenting certain fisheries details and the regulatory framework for fisheries; specific Project implementation details; and elaboration of potential impacts to fisheries. C-4

Regulatory Framework: CDFW recommends that Table 2-5 on Page 2-52 of the DEIR include FERC as a regulatory agency required to approve Project activities related to the current location (La Grange) of instream compliance monitoring and a change in the location of diversion. In addition, CDFW recommends adding National Oceanic and Atmospheric Administration (NOAA) Fisheries as another agency that addresses Endangered Species Act compliance. C-5

CDFW recommends that Table 3.4-2 on Page 3.4-12 of the DEIR display light gray shading (i.e., potential activity) for Adult spawning of Chinook salmon in January. C-6

CDFW recommends modifying Table 3.4-4 on Page 3.4-21 of the DEIR to indicate that any stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population. Spring-run strays resulting from San Joaquin River Restoration Program activity do have the potential to occur. C-7

CDFW recommends that the description of fish species present or likely to be present in the Project vicinity on Page 3.4-10 of the DEIR note the limitations of the 2015 study that is referenced; documentation of fish at a stationary point in the river cannot reliably be used to assert the absence of steelhead from the lower Tuolumne River. CDFW also recommends that additional years of data at the weir location be used. C-8

Infiltration Gallery Operation: CDFW requests additional clarification in the DEIR to address operation of the Infiltration Gallery. It is not clear when the Infiltration Gallery will operate, for example, if it will operate and withdraw water year-round. C-9

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and also if it will operate and withdraw the same amount in all water year types. The 2001 study referred to in Impact BIO-3 on Page 3.4-35 of the DEIR appears to have analyzed water diversion from mid-March to mid-October, and it is not clear that FERC proceedings to date have addressed Infiltration Galley operation outside summer months. In addition, it is not clear how river flow will change after the Water Treatment Plant is operating at buildout capacity. C-9 cont.

CDFW recommends that the DEIR include additional detail on Page 3.4-10, regarding an increase in average annual flow of the Tuolumne River by 24 cubic feet per second, specifically, clarification of where measurements will be taken, and whether averaging the measurement could result in a substantially larger release over a very short time. This increase also pertains only to Phase 1 and not release when the Water Treatment Plant is operating at full capacity. C-10

Air Purging and Fine Sediments: The DEIR discussion of fine sediments on Page 3.4-38 indicated that no sediment was found in stream samples taken in October 2017. CDFW notes that Tuolumne River flows from January through August 2017 were above 2,000 cubic feet per second, higher than baseline flows described in the DEIR as150 to 300 cubic feet per second, and as a result, samples taken in October would not represent typical baseline levels of fine sediment accumulation in the Tuolumne River. CDFW recommends that additional sampling be used to inform the analysis in the DEIR to provide more representative baseline data. C-11

CDFW recommends that the DEIR address whether air purging could affect or disrupt out-migrating Chinook salmon during the migration internal from April through June. Additionally, back flushing is described on Page 3.9-16 of the DEIR as occurring for approximately five days, twice annually. CDFW recommends an analysis of potential impacts such as creating a barrier during juvenile Chinook salmon migration, and also including potential indirect effects such as increasing predation pressure. C-12

Change in Point of Water Diversion: The change in the point of diversion described in Impact HYD/WQ-3 appears to warrant a change in the State water right. CDFW recommends that the DEIR provide clarification of how additional water to be released from the La Grange Dam will be memorialized; for example, will FERC licensing require changes in stream flow and address a change in the location of compliance requirements? C-13

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take. possession or needless destruction of the nest or eggs of any C-14

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bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

The Project area likely provides nesting habitat for birds. CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct preconstruction surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there are compelling biological or ecological reasons to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

C-14 cont.

Diurnal Bat Roosts: The DEIR includes Mitigation Measure BIO-8 to address surveys and avoidance measures for roosting bats associated with bridges that provide suitable habitat. The mitigation measure describes methods to reduce impacts to maternity roosts, such as reducing activity near a roost or excluding bats from a site prior to the maternity season; however, the mitigation measure also indicates that a biologist may develop an alternative minimization measure, and that specifications for bat exclusion from a roost will be submitted to CDFW for approval. This measure appears to defer

C-15

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the analysis of the potential impact (i.e., consultation with CDFW) and the determination of appropriate mitigation to a later date, after Project approval and potentially during Project implementation. CDFW recommends that the DEIR include all potential mitigation measures based on any necessary consultation prior to Project approval, to avoid, minimize, and mitigate as warranted any impacts that may be significant to roosting bats, including maternity roosts and roosts of resident or migratory bats.

C-15 cont.

Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways onsite, which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore, notification is warranted. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation): (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

C-16

Water Rights: The use of unallocated stream flows are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

C-17

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS and NOAA Fisheries prior to any ground disturbance related to this Project due to potential impacts to Federal listed species. Take under the Federal Endangered Species Act (ESA) is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS and NOAA Fisheries in order to comply with ESA is advised well in advance of Project implementation.

C-18

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp. C-19

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089). C-20

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Stanislaus Regional Water Authority in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Annette Tenneboe, Senior Environmental Scientist (Specialist) at (559) 243-4014 ext. 231 or annette.tenneboe@wildlife.ca.gov .

Sincerely,

Julie A. Vance
Regional Manager

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cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Annette Tenneboe
John Shelton
Abimael Leon
Bonna Newell
Steve Tsao
California Department of Fish and Wildlife

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CBOC. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Pages 171-177 *in* Lincer, J. L. and K. Steenhof (editors). 1993. The Burrowing Owl, Its Biology and Management. Raptor Research Report Number 9.

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.

Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*) *In* California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California (W. D. Shuford and T. Gardali, editors). Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

SWHA TAC. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

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Response to Comment C-1

The commenter expresses a general concern about the adequacy of the mitigation measures for several species: the state threatened Swainson's hawk (*Buteo swainsoni*), the state fully protected white-tailed kite (*Elanus leucurus*), the federal threatened Central Valley DPS steelhead (*Oncorhynchus mykiss*), the federal and state threatened Central Valley spring-run ESU Chinook salmon (*O. tshawytscha*), the federal candidate and state species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), and the state species of special concern hardhead (*Mylopharodon conocephalus*), burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and Western red bat (*Lasiurus blossevillii*). The commenter then indicates that the comment letter will set forth specific modifications and edits, which should be incorporated into the EIR.

Comments C-2, C-3, C-12, C-14, and C-15 contain specific proposed modifications and edits. For SRWA's responses, please see Responses to Comments C-2, C-3, C-12, C-14, and C-15, below.

Response to Comment C-2

The commenter indicates that the EIR does not explain the rationale used to determine the size of the buffers (500 feet) around active nests for Swainson's hawk (SWHA) and the potential loss of suitable nest trees. The commenter states that removal of known bird-of-prey nest sites, even outside of the nesting season, could result in a significant impact and possibly "take" under CESA. The commenter then recommends alternative mitigation measures for SWHA, including: avoiding impacts to known nest trees at all times of year, or replacing nesting trees that are removed with appropriate native trees planted at a ratio of 3:1; conducting preconstruction surveys no more than 10 days before the start of construction; and establishing a ½ mile non-disturbance buffer if the preconstruction surveys find an active SWHA or white-tailed kite (WTKI) nest, or obtaining a CESA Incidental Take Permit for SWHA and establishing a ½ mile non-disturbance buffer for WTKI until the breeding season has ended or a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

Impact BIO-9, "Impacts on Riparian Habitat," in Section 3.4, *Biological Resources*, states on page 3.4-45 that the removal of native tree and shrub species during construction is not expected, although trimming of some individual oak trees is possible adjacent to the access road. Therefore, it is not anticipated that any suitable nest trees would be removed. However, in the event that it is necessary to remove nest trees, Mitigation Measure BIO-10 states: "Any plants of native woody species of 4 inches dbh or greater that are damaged or removed as a result of construction activity shall be replaced at a 1:1 ratio; this ratio will increase to 3:1 for native trees of 24 inches dbh and greater."

SRWA appreciates the California Department of Fish and Wildlife's (CDFW's) input and acknowledges that the requirements of regulatory permits, including a Section 1602 Streambed Alteration Agreement, would be negotiated with CDFW following project approval, before project construction would begin. In response to the commenter's recommendations, Mitigation Measure BIO-6 has been revised to indicate that surveys would cover a minimum ½-mile radius around the construction area and that, if nesting SWHA or

WTK are detected, buffers around active nests will be ½ mile. Mitigation Measure BIO-10 has been revised to include mitigation for nesting trees that must be removed at a 3:1 ratio.

Response to Comment C-3

The commenter indicates that the EIR's proposed surveys for Burrowing Owl (BUOW) might not be sufficient to detect BUOW occupying the Project area. The commenter also questions the sufficiency of the proposed buffers (160 feet during non-nesting season and 626 feet during nesting season), the potential loss of suitable burrow habitat, and the timing and efficacy of passive relocation and exclusion as a mitigation measure. The commenter recommends alternative mitigation measures for BUOW, including conducting surveys following the California Burrowing Owl Consortium's "Burrowing Owl Survey Protocol and Mitigation Guidelines," and following the "Staff Report on Burrowing Owl Mitigation;" if it is not possible to avoid BUOW, replacing occupied burrows with artificial burrows at a 1:1 ratio; closing burrows only where there are adjacent natural burrows and sufficient protected non-impacted habitat for BUOW; and ongoing surveillance of the mitigation site.

Impact BIO-6, "Impacts to Burrowing Owls," in Section 3.4, *Biological Resources*, describes on page 3.4-42 that the Proposed Project has marginal, but potentially suitable, habitat for BUOW. The buffers identified in Mitigation Measure BIO-7 correspond to those recommended in Comment C-3 for impacts on BUOW in low-disturbance areas. The extent of disturbance from potential project impacts to BUOW and any burrows is expected to be low because the amount of potential habitat present is very limited in extent, the duration of construction is relatively short, and the total amount of acreage disturbed is very low and would not be likely to result in habitat fragmentation.

As stated in Response to Comment C-2 above, SRWA appreciates CDFW's input and acknowledges that the requirements of regulatory permits, including a Section 1602 Streambed Alteration Agreement, would be negotiated with CDFW following project approval, before project construction would begin. In response to the commenter's recommendations, the language of Mitigation Measure BIO-7 has been revised to clarify the time of year when passive relocation would be allowed to take place.

Response to Comment C-4

The commenter indicates that "it is not yet clear" whether the EIR includes adequate information about the Project to allow CDFW "to fully evaluate" potential project-related impacts to fisheries.

The EIR contains sufficient information to permit an informed evaluation of the Project's potential impacts on fisheries. This information is provided in Impact BIO-3, on pages 3.4-35 through 3.4-40. The impact analysis evaluates the potential effects of additional releases of up to 24 cfs on migration, spawning, and rearing; potential for fish entrainment or impingement; potential effects from mobilization of fine sediment due to air purging; and potential effects of stormwater from construction site on water quality. Impacts of air purging were determined to be potentially significant, and Mitigation Measure BIO-4, "Schedule Air Purging to Avoid or Minimize Increased TSS and Sediment Deposition," is identified to reduce this impact to a less-than-significant level.

The commenter also questions whether the DEIR analysis for special-status fisheries is consistent with FERC relicensing for Don Pedro Reservoir.

TID, MID, and the San Francisco Public Utilities Commission (SFPUC) are currently engaged in the FERC relicensing process for Don Pedro Reservoir. However, the relicensing process is a separate and independent action undertaken by FERC and the operating agencies on an unrelated timeline. The analysis of the effects of the relicensing on water and aquatic resources, including special-status fisheries, is ongoing since at least 2013 and has entailed at least 20 different studies (the entire list of studies may be found at www.donpedro-relicensing.com/documents.aspx under Initial Study Reports). The outcome of that process with respect to special-status fisheries is currently unknown and cannot be predicted with any certainty. CEQA disallows speculation about possible impacts that cannot be evaluated with some level of certainty. Therefore, the analysis of the potential effects of the Proposed Project on special-status fisheries provided in the DEIR in Section 3.4, *Biological Resources*, on pages 3.4-37 to 3.4-41, is not evaluated in terms of consistency with the FERC relicensing effort.

With regard to the FERC relicensing process, see also the detailed information in Responses to Comments C-5 and C-6 below.

Response to Comment C-5

The commenter requests that the DEIR include FERC and National Oceanic and Atmospheric Administration (NOAA) Fisheries as "regulatory" agencies for the Proposed Project.

The FERC relicensing process is a separate and independent action undertaken by FERC and the operating agencies that is subject to compliance with the National Environmental Policy Act (NEPA). It is uncertain at this time whether operation of the infiltration gallery that is part of the proposed project will be included in FERC's relicensing process for Don Pedro Reservoir. In addition, federal entities are not responsible agencies under CEQA because their involvement requires compliance with NEPA; therefore, neither FERC nor NOAA Fisheries is a responsible agency for the Proposed Project under CEQA.

NOAA Fisheries (also known as the National Marine Fisheries Service [NMFS]) has jurisdiction over anadromous fish species. NMFS and the U.S. Fish and Wildlife Service (USFWS) have joint authority under Section 10(a)(1)(B) of the federal Endangered Species Act (ESA) for administering the permitting program for incidental take of federally listed wildlife or fish species by non-federal entities. USFWS has jurisdiction over wildlife species and all non-anadromous fish. SRWA anticipates the Proposed Project may affect valley elderberry longhorn beetle (VELB) and has therefore submitted an application for an incidental take permit to USFWS along with the required Low-effect Habitat Conservation Plan pursuant to Section 10(a) of the ESA. USFWS must conduct an intra-service consultation with NMFS under Section 7(a)(2) of the ESA when there is a federal nexus that would require an ESA Section 7 consultation. Section 7(a)(2) directs federal agencies to consult with USFWS and NMFS regarding discretionary actions they fund, authorize, or carry out that may affect a listed species or its designated critical habitat. Currently, the Proposed Project is not reliant on federal funds; therefore, no other Section 7 consultation is expected.

However, SRWA is consulting with both USFWS and NMFS in the process of obtaining approvals for the proposed project.

Response to Comment C-6

The commenter recommends that Table 3.4-2 of the DEIR be revised to show adult spawning of Chinook salmon in January. The commenter does not cite any scientific report or study to support this requested revision.

In Section 3.4.3 of the DEIR, "Biological Resources – Environmental Setting," Table 3.4-2 on page 3.4-12 presents the temporal and spatial distribution of life stages of special-status fish species known to occur in the project vicinity. As indicated in the footnotes to the table, the source of this information is the Salmonid Population Synthesis study conducted by Stillwater Sciences in 2013. The study is one of the 20 studies on water and aquatic resources required by the Don Pedro Project FERC relicensing process. The table shows peak spawning time of Chinook in the Tuolumne River as occurring in November with a potential for spawning in September, October, and December. The timing in the table is specific to the Tuolumne River and is based on at least 10 years of monitoring conducted by TID and MID in 1995-2005. Very few instances of adult chinook spawning activity have been observed in the Tuolumne River in January; however, at the request of the commenter, Table 3.4-2 has been modified to indicate that there is limited potential for Chinook salmon to spawn in the San Joaquin River and tributaries (including the Tuolumne River) in January.

Response to Comment C-7

The commenter states that stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population designation. The commenter recommends modifying Table 3.4-4 to indicate that any stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population.

Spring-run Chinook salmon have been restored to the mainstem San Joaquin River through the San Joaquin River Restoration Settlement Agreement and its implementing legislation. Spring-run Chinook salmon that stray into the Tuolumne River are subject to the specific provisions of Public Law 111-11 and the 4(d) Rule that was promulgated for their reintroduction. To the extent spring-run Chinook salmon are encountered in the Tuolumne River in the vicinity of the Proposed Project, SRWA will comply with all applicable laws and regulations.

Response to Comment C-8

The commenter questions whether a 2015 study used in the EIR is reliable and states that absence of steelhead cannot be demonstrated based on the lack of documentation of that species at a specific stationary point on the river.

The commenter has not cited any scientific study or report to support its conclusion. The identified text in the EIR is taken from an expert report prepared by FishBio in 2016 for the FERC relicensing project. The study and others cited in the EIR have been relied on by FERC in its relicensing effort, and SRWA finds no evidence to suggest that its findings are questionable.

Response to Comment C-9

The commenter requests information on operation of the infiltration gallery, including whether it would operate year-round and whether it would withdraw the same amount of water in all water year types. The commenter also requests information on whether operation of the infiltration gallery has been analyzed outside of the summer months (mid-October to mid-March) and how river flow would change when the water treatment plant is operating at full build-out capacity.

As described in the DEIR, the proposed project would increase flows from La Grange Dam by approximately 24 cfs and would divert that additional water at the infiltration gallery. No adverse impacts would result from increasing flows in this portion of the Tuolumne River; in fact, increased flows would be beneficial to fish and other aquatic resources. During infiltration gallery operations in Phase 1, TID would make average annual releases of approximately 24 cfs, in addition to the releases required by the 1996 FSA to meet FERC-mandated minimum flows. The analysis assumes that the same amount of water would be released and diverted year round, in other words, at a constant flow rate (of approximately 24 cfs). Under all circumstances, the project would be operated such that all regulatory flows would be complied with; it is possible that, in some years, this could result in reduced diversions based on the amount of water available from TID, as indicated in the FSA and described in DEIR Section 3.9, *Hydrology and Water Quality*.

The commenter appears to be confused because Impact BIO-3 (on page 3.4-35) refers to the 2001 IS/MND (EDAW 2001), which analyzed water diversions from the infiltration gallery occurring from mid-March to mid-October. As also stated in Impact BIO-3, however, the 2006 *Regional Surface Water Supply Project Draft Environmental Impact Report* (EIP 2006) analyzed year-round water diversion at a rate of up to 66 cfs. Although portions of the analysis in each of these previous documents provide useful information for the purposes of the DEIR, neither of the projects evaluated in those documents is identical to the proposed project. In contrast to the seasonal diversion analyzed in the 2001 IS/MND, the Proposed Project would release about 24 cfs from Don Pedro Reservoir and divert it 26 miles downstream at the infiltration gallery throughout the year.

Response to Comment C-10

The commenter requests additional information regarding the increase in average annual flow of the Tuolumne River by 24 cfs, the locations where measurements would be taken, and whether averaging the measurement could result in a substantially larger release over a very short period of time.

See Response to Comment A-5. To accommodate the withdrawal of Tuolumne River water during infiltration gallery operation and maintain instream flow minimums, flow from Don Pedro Reservoir would be increased to 150-350 cfs, depending on the water year type. The FERC minimum flow requirements are shown in Table 3.4-1 on page 3.4-9. For example, if infiltration gallery testing occurred in "Critical Year and Below" conditions, instream flows would need to be increased to 150 cfs (measured at La Grange Bridge below Don Pedro Reservoir) to maintain required minimum instream flows of 50 cfs between June 1 and September 30. In "All Years above Median Below-Normal Years" conditions, instream flows would need to be increased to 350 cfs during infiltration gallery testing to maintain required minimum flows of 250 cfs between June 1 and September 30.

A substantially larger release than 350 cfs would not occur as a result of operation of the infiltration gallery. However, much larger releases from La Grange Dam do occur over short periods of time as a result of dam operations unrelated to the Proposed Project.

Response to Comment C-11

The commenter requests additional information regarding the stream samples collected in October 2017 and indicates there is a possibility that the measurements of stream sediments taken in that year may not represent typical baseline conditions of fine sediment accumulation due to the high flows that occurred earlier in the year.

Average flows in the Tuolumne River exceeded 2,000 cfs during several months in 2017 as shown in **Table C-1** (U.S. Geological Survey [USGS] 2018). However, the 2016-2017 water year included record rainfall in the region and some of the greatest flooding ever observed on the Tuolumne River. Record mean monthly discharge was observed in February, March, May and June that year. Over the long term (1968-2017), October is the month with the lowest average flow (Table C-1), and so stream samples collected in that month may not be representative of conditions in higher flow months. SRWA is conducting additional sampling on an ongoing basis; however, the long-term mean data indicate that sediment measurements are typically low in October.

Table C-1. Mean Discharge in the Tuolumne River (cfs)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2017	1,763	2,143	594	1,072	5,204	6,512	2,193	270	97	N/A	N/A	N/A
1968-2017	135	114	91	230	1,206	1,738	771	153	79	53	61	79

Note: N/A = information not available

Source: USGS 2018

Response to Comment C-12

The commenter requests information about the effects of air purging and back-flushing on out-migrating Chinook salmon from April through June.

Impact BIO-3 in Section 3.4, *Biological Resources*, contains a discussion of this topic under the subheading "Potential Effects from Mobilization of Fine Sediment due to Air Purging" beginning on page 3.4-38. As described previously in the section (most notably on page 3.4-35 beginning on line 34), this analysis is based on information from the 2006 EIR prepared by EIP for TID's Regional Surface Water Supply Project, with modifications to account for modifications to the project.

Section 4.3, *Aquatic Resources,* of the 2006 EIR (pages 4.3-14 to 4.3-16) explained that turbidity resulting from air purging of the infiltration gallery would provide cover for out-migrating salmon. The following information on backflushing is taken from that document (EIP 2006):

> Like many Central Valley streams, the amount of sediment transported by the Tuolumne River is a function of the flows, water year, land use conditions, and stream gradient. Work on the Tuolumne River indicates that most sediment

> is moved during high flow events that are mainly in winter and spring (Figure 4.3-3). The January 1997 flood moved substantial amounts of fine sediments into the Tuolumne River below La Grange Dam.[38] The current operational plan is to backflush the infiltration gallery once annually between mid-April and mid-May. This timing would coincide with the spring outmigration pulse flow established in the FERC license and is intended to benefit juvenile salmon outmigration. Studies have shown that increased turbidity can reduce predation because it makes it harder for predatory fish, such as largemouth bass (*Micropterus salmoides*), to find the juvenile fish. Each infiltration bay would be flushed individually, with overall backflushing not expected to take more than a few hours. This process is expected to create a noticeable plume of fine sediments, but one that is relatively short-lived and would rapidly dissipate in the river.
>
> … The proposed project includes operations of the infiltration gallery throughout the year and backflushing may need to be scheduled at other times, such as during the fall pulse attraction flow or in winter. Again, it is expected that backflushing events will only briefly raise local TSS levels and the increase in localized TSS generated by backflushing is expected to be minor if it is even noticeable against background levels. Under low flow conditions, this material will likely be deposited in nearby areas of low velocity. Under high flows, materials may be transported for some distance downstream before settling.
>
> Primary spawning areas for Chinook and *O. mykiss* are upstream of SRP 9. Because of this, sedimentation resulting from backflushing will not impact spawning habitat for these species. … Overall, none of the effects of backflushing are expected to have a substantial adverse effect on any of the sensitive species of fish that may be found within the project area. Because of this, the impact of potential increased backflushing is considered a less-than-significant impact to sensitive fish species.
>
> [38] Turlock Irrigation District and Modesto Irrigation District 2005. 2005 Ten year summary report pursuant to Paragraph (G) of the 1996 FERC order issued July 31, 1996. FERC Project No. 2299-024. Figures 3.5.1.2-2 through 5, page 3-62 and 63).

Although the current EIR evaluates a project with somewhat different features than the 2006 EIR, operation of the infiltration gallery would be consistent with that analysis.

Response to Comment C-13

The commenter requests information on the change in the point of diversion described in Impact HYD/WQ-3 and indicates that it may warrant a change in the state water right.

As indicated in Table 2-5 in Chapter 2, *Project Description*, TID (as a partner in the Proposed Project) intends to submit a change petition to the SWRCB Division of Water Rights for authorization of the long-term transfer of water to SRWA, use of the infiltration gallery as a point of rediversion, and the diversion and use of water for M&I purposes. The FERC relicensing process is a separate action unrelated to the Proposed Project or the change of water right.

Response to Comment C-14

The commenter provides information on nesting birds and notes that SRWA is responsible for compliance with the Migratory Bird Treaty Act and Fish and Game Code.

SRWA acknowledges responsibility for ensuring that implementation of the Project does not result in violations of the Migratory Bird Treaty Act or relevant Fish and Game Code sections. Impact BIO-6, "Impacts on Nesting Birds," in Section 3.4, *Biological Resources,* states on pages 3.4-40 and 3.4-41 that riparian woodlands present near the infiltration gallery and site of the proposed pump station provide potentially suitable nesting habitat for a variety of bird species, including special-status species, and identifies Mitigation Measure BIO-5 to address this impact.

As stated in Response to Comment C-2 above, SRWA acknowledges that the requirements of regulatory permits would be negotiated with CDFW following project approval, before project construction would begin. Mitigation Measure BIO-5 was developed in coordination with qualified biologists and in consultation with the project engineers to be sufficiently protective of nesting habitat while also allowing construction to proceed in the constrained area of the raw water pump station and transmission pipeline. At this time, no revisions to these mitigation measures are necessary.

Response to Comment C-15

The commenter states that Mitigation Measure BIO-9, "Conduct Preconstruction Surveys and Implement Measures to Avoid or Minimize Impacts on Special-status Bats," appears to defer the analysis of the potential impact and the determination of appropriate mitigation (i.e., consultation with CDFW) to a later date, after project approval and potentially during project implementation.

Mitigation Measure BIO-9 appropriately indicates the process that SRWA would undertake to determine, before construction begins, whether special-status bats could be affected in the vicinity of the Geer Road Bridge. The measure identifies protections that would be put in place, should the preconstruction survey indicate that a maternity roost is present; these protections are based on regulatory agency guidelines. No inappropriate deferral of mitigation is proposed. In fact, a qualified biologist conducted an early habitat assessment of the area on April 19, 2018, and found that no signs of bats were detected at the bridge. However, the requirement to conduct preconstruction surveys remains in place. In addition, SRWA is working with CDFW to obtain applicable permits and comply with all relevant regulatory requirements.

Response to Comment C-16

The commenter notes that the project would require a Lake and Streambed Alterations Agreement (LSAA) pursuant to Fish and Game Code Section 1602.

On March 20, 2018, CDFW issued Agreement 1600-2017-0181-R4 to SRWA for the Infiltration Gallery Testing Project, which will construct the wet well that is needed to access and test the infiltration gallery. SRWA is in the process of requesting an LSAA amendment to address construction activities in the same area for the proposed project.

Response to Comment C-17

The commenter notes that the use of unallocated stream flows is subject to appropriation and approval by SWRCB pursuant to California Water Code Section 1225. CDFW, as a Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources.

SRWA acknowledges that CDFW has a material interest in ensuring that there are adequate flows in the Tuolumne River for the protection of aquatic ecosystems. As described in Response to Comment C-13, SRWA's partner agency, TID, intends to file a water right petition with SWRCB with regard to the proposed project.

Response to Comment C-18

The commenter recommends consultation with USFWS and NOAA Fisheries prior to any ground disturbance related to the proposed project due to potential impacts on federally listed species.

SRWA conducted a meeting regarding VELB ESA compliance for the Proposed Project with the USFWS at the Sacramento Office on March 21, 2017. As described in Response to Comment C-5, SRWA anticipates obtaining a permit to authorize the incidental take of VELB as a result of the Proposed Project and has submitted an application for an incidental take permit to USFWS, along with the required Low-effect Habitat Conservation Plan pursuant to Section 10(a) of the ESA. Currently, because the Proposed Project is not reliant on federal funds and has no other federal involvement, no intra-service Section 7 consultation with NMFS is expected.

Response to Comment C-19

The commenter requests that any special-status species and natural communities detected during project surveys be reported to the California Natural Diversity Database (CNDDB).

As is common practice, biologists working with SRWA on the proposed project will complete and electronically submit CNDDB survey forms to CNDDB@wildlife.ca.gov.

Response to Comment C-20

The commenter notes that projects that would have an impact on fish and/or wildlife require an assessment of filing fees to help defray the cost of environmental review by CDFW.

SRWA acknowledges that fees are payable upon filing of the Notice of Determination by the Lead Agency and will pay the required fees.

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1 # Letter D – Scott Morgan, State Clearinghouse

Letter D: Scott Morgan, Governor's Office of Planning and Research

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

EDMUND G. BROWN JR.
GOVERNOR

KEN ALEX
DIRECTOR

March 8, 2018

Michael Brinton
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Subject: Surface Water Supply Project
SCH#: 2017022077

Dear Michael Brinton:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on March 7, 2018, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. D-1

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
1-916-445-0613 FAX 1-916-558-3164 www.opr.ca.gov

2

Document Details Report
State Clearinghouse Data Base

SCH#	**2017022077**
Project Title	Surface Water Supply Project
Lead Agency	Stanislaus Regional Water Authority
Type	**EIR** Draft EIR
Description	SRWA proposes to operate an existing infiltration gallery to withdraw up to 30,000 acre-ft per year in phase 1 of water from the Tuolumne River; convey it to a new water treatment plant; and convey the treated water through transmission mains to storage facilities in Ceres and Turlock. The surface water that would be provided as part of the proposed project would assist the cities in achieving sustainable groundwater pumping levels. In addition, 2,000 afy of offset water provided to TID would assist TID in implementing its water conservation and conjunctive water use programs.

Lead Agency Contact

Name	Michael Brinton
Agency	Stanislaus Regional Water Authority
Phone	209-538-5758 ***Fax***
email	
Address	156 South Broadway, Suite 270
City	Turlock ***State*** CA ***Zip*** 95380

Project Location

County	Stanislaus
City	Ceres, Hughson, Turlock
Region	
Lat / Long	37° 37' 0.90" N / 120° 50' 25.92" W
Cross Streets	E. Hatch Road and Geer Road, John Fox Road and Berkeley Ave.
Parcel No.	018-003-006, 016-006-013, multiple
Township	4S ***Range*** 10E ***Section*** 2 ***Base*** MD

Proximity to:

Highways	
Airports	
Railways	BNSF
Waterways	Tuolumne River
Schools	mult
Land Use	mult

Project Issues	Agricultural Land; Air Quality; Archaeologic-Historic; Biological Resources; Flood Plain/Flooding; Geologic/Seismic; Minerals; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Soil Erosion/Compaction/Grading; Toxic/Hazardous; Traffic/Circulation; Vegetation; Water Quality; Water Supply; Wetland/Riparian; Landuse; Growth Inducing; Cumulative Effects; Aesthetic/Visual; Drainage/Absorption; Economics/Jobs; Forest Land/Fire Hazard; Schools/Universities; Septic System; Sewer Capacity; Solid Waste
Reviewing Agencies	Resources Agency; Central Valley Flood Protection Board; Department of Conservation; Department of Fish and Wildlife, Region 4; Department of Parks and Recreation; Department of Water Resources; Caltrans, District 10; State Water Resources Control Board, Division of Drinking Water; State Water Resources Control Board, Division of Drinking Water, District 10; Regional Water Quality Control Bd., Region 5 (Sacramento); Delta Protection Commission; Delta Stewardship Council; Native American Heritage Commission; Public Utilities Commission; State Lands Commission
Date Received	01/22/2018 ***Start of Review*** 01/22/2018 ***End of Review*** 03/07/2018

Note: Blanks in data fields result from insufficient information provided by lead agency.

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Response to Comment D-1

The commenter indicates that the 30-day circulation period for the SRWA DEIR was closed on March 7, 2018, and that SRWA has complied with the applicable CEQA requirement.

This is a standard letter provided at the close of every CEQA comment period. No response is required.

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Letter E – Scott Furgerson, Modesto Irrigation District

Letter E: Scott Furgerson, Modesto Irrigation District

MID Modesto Irrigation District
Water and Power

1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352
(209) 526-7373

March 12, 2018

Via Email: SurfaceWaterSupply-DEIR-comments@horizonh2o.com

Michael F. Brinton, SRWA Interim General Manager
c/o City Turlock Administrative Services
156 South Broadway, Suite 230
Turlock, CA 95380

Re: Stanislaus Regional Water Authority Surface Water Project Draft Environmental Report – Request for Documents

Dear Mr. Brinton:

Modesto Irrigation District (MID), the second oldest irrigation district in the State of California, was formed in 1887 and is a not for profit publically owned utility. MID, in partnership with Turlock Irrigation District (TID), owns and operates the New Don Pedro Dam, Don Pedro Reservoir and La Grange Dam, collectively referred to as ("Project") as well as jointly holding certain water rights. For more than a century, the Project has proudly contributed to California's position as the sixth largest economy in the world providing a reliable source of clean, affordable surface water to over 3,000 agricultural customers irrigating close to 60,000 acres. The Project supports approximately $4.109 billion in economic output and $734.8 million in labor income. MID's 130 year track record of pro-active, scientifically sound environmental stewardship within the Tuolumne River watershed and our early implementation of innovative conjunctive use management practices has allowed MID to be a leader in groundwater management as well. None of this legacy would be possible without the prudent, responsible management of our water rights portfolio.

MID is currently reviewing the Stanislaus Regional Water Authority's (SRWA) Draft Environmental Impact Report (DEIR) for the proposed Surface Water Project.

We appreciate the extension of our comment deadline to April 9, 2018 due, in part, to the inadvertent failure to provide MID the Notice of Preparation given your identification of MID as a Responsible Agency in Section 2.7 of the DEIR. As stated at the March 1, 2018 public hearing, MID's primary focus centers around the treatment of and potential impact to our jointly held water rights which may be affected by SRWA's project, particularly in light of the current state and federal regulatory climate we and TID are experiencing. E-1

In order to thoroughly review the DEIR, we request that you please provide the below documents that are not included, but are referenced, in the DEIR. E-2

2

- 2015 Water Sales Agreement between Turlock Irrigation District (TID) and SRWA[1]
- Final EIR for the TID Regional Surface Water Supply Project
- Stillwater Sciences temperature studies referenced in § 3.4-11
- McBain and Trust study entitled *Habitat Restoration Plan for the Lower Tuolumne River Corridor* referenced in § 3.9-13

E-2 cont.

Also, please provide all writings[2] that reflect communications with the State Water Resources Control Board, or any other person or entity, concerning TID's Petition for Change to Water Right License Number 11085.

E-3

Thank you for your assistance on this matter. Should you have any questions regarding this matter, please do not hesitate to contact Kelsey Gowans at (209) 526-7386.

Sincerely,

Scott Furgerson
General Manager

cc: Ronda Lucas, General Counsel
Kelsey Gowans, Staff Attorney
John Davids, Assistant General Manager, Water Operations

[1] Chapter 7 of the DEIR does reference the Water Sales Agreement; however, the URL provided includes TID's PowerPoint presentation regarding the Water Sales agreement, not the actual contract itself.
[2] As used in this letter, "writings" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic email or facsimilie, and every other means of recordings upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored. (Govt. Code § 6252(g)). Further, we request that any writing in an electronic format be made available in an electronic format. (*Id.* at § 6253.9.)

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Response to Comment E-1

The commenter notes that SRWA granted MID a 30-day extension of the public comment period for the DEIR. The commenter states that MID's primary focus is the joint water rights held by MID and TID.

The comment is informational; no response is required.

Response to Comment E-2

The commenter requests copies of several documents cited in the DEIR to assist MID in its review of the document.

SRWA provided the requested documents to MID on March 14, 2018. No additional response is required.

Response to Comment E-3

The commenter requests copies of communications between SRWA and SWRCB or others regarding the water right petition.

SRWA provided the requested documents to MID. No additional response is required.

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1 # Letter F – Scott Morgan, State Clearinghouse

Letter F: Scott Morgan, Governor's Office of Planning and Research

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

EDMUND G. BROWN JR.
GOVERNOR

KEN ALEX
DIRECTOR

March 9, 2018

Michael Brinton
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Subject: Surface Water Supply Project
SCH#: 2017022077

Dear Michael Brinton:

The enclosed comment (s) on your Draft EIR was (were) received by the State Clearinghouse after the end of the state review period, which closed on March 7, 2018. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

F-1

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2017022077) when contacting this office.

Sincerely,

Scott Morgan
Director, State Clearinghouse

Enclosures
cc: Resources Agency

1400 10th Street P.O. Box 3044 Sacramento, California 95812-3044
1-916-445-0613 FAX 1-916-558-3164 www.opr.ca.gov

2

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

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

1 of C
3-7-18
E

March 7, 2018

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, California 95380
E-mail: Michael.Brinton@ci.ceres.ca.us

Subject: Surface Water Supply Project (Project)
Draft Environmental Impact Report (DEIR)
State Clearinghouse No. 2017022077

Dear Mr. Brinton:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability of a DEIR from Stanislaus Regional Water Authority for the above-referenced Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines[1]. CDFW previously submitted comments in response to the Notice of Preparation of the DEIR.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, CDFW appreciates the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code. F-2

CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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CDFW is also submitting comments as a **Responsible Agency** under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority (Fish & G. Code § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required.

PROJECT DESCRIPTION SUMMARY

Proponent: Stanislaus Regional Water Authority, whose member agencies consist of the Cities of Ceres and Turlock.

Objective: Stanislaus Regional Water Authority proposes to operate an existing infiltration gallery to withdraw water from the Tuolumne River, convey extracted water to a new water treatment plant, and convey the treated water through transmission mains to storage facilities in the Cities of Ceres and Turlock. The initial withdrawals would be up to 30,000 acre-feet per year (AFY) in Phase I, increasing over time to up to 50,400 AFY at buildout in 2040. The proposed project is intended to serve as a major in-lieu groundwater recharge project under the Sustainable Groundwater Management Act to ensure the long-term sustainability of the groundwater resources within the Turlock Subbasin.

The proposed Project consists of the installation and operation of an infiltration gallery, a wet well, a raw water pump station, a 60-inch diameter raw water transmission main, a water treatment plant, a 30-inch and 42-inch diameter transmission mains, and terminal facilities consisting of one or more storage tanks.

Location: The Project is located in Stanislaus County, extending from Fox Grove Regional Park near Hughson on the north, to the Cities of Ceres and Turlock on the west and south, respectively. The raw water pump station would be located adjacent to the existing infiltration gallery on the south bank of the Tuolumne River west of Geer Road. A pipeline will convey water from the infiltration gallery and raw water pump station to a new Water Treatment Plant north of the Ceres Main Canal and west of Aldrich Road. Treated water will be conveyed from the Water Treatment Plant through pipelines to connect to the City of Ceres water system in the west and the City of Turlock's water system in the south.

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COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the Stanislaus Regional Water Authority in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

The DEIR prepared for the Project indicates that the Project area has the potential to support several sensitive biological resources. The Project therefore has the potential to impact these resources. CDFW recognizes that the DEIR outlines mitigation measures to reduce impacts to biological resources; however, CDFW is concerned that, as currently drafted, these measures may not be adequate to reduce impacts to a level that is less than significant. CDFW is concerned regarding adequacy of mitigation measures for the State threatened Swainson's hawk (*Buteo swainsoni*), the State fully protected white-tailed kite (*Elanus leucurus*), the Federal threatened Central Valley DPS steelhead (*Oncorhynchus mykiss*), the Federal and State threatened Central Valley spring-run ESU Chinook salmon (*O. tshawytscha*), the Federal candidate and State species of special concern Central Valley fall-run and late fall-run ESU Chinook salmon (*O. tshawytscha*), and the State species of special concern hardhead (*Mylopharodon conocephalus*), burrowing owl (*Athene cunicularia*), pallid bat (*Antrozous pallidus*), Townsend's big-eared bat (*Corynorhinus townsendii*), and Western red bat (*Lasiurus blossevillii*).

CDFW recommends that the following modifications and/or edits be incorporated into the DEIR.

I. **Mitigation Measure or Alternative and Related Impact Shortcoming**

Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by CDFW or United States Fish and Wildlife Service (USFWS)?

COMMENT 1: Swainson's Hawk (SWHA) and White-Tailed Kite (WTKI)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-5 Page 3.4-42

Issue: Mitigation Measure BIO-6 states that if construction occurs between February 1 and August 31, surveys for SWHA and WTKI shall be conducted within a minimum 500-foot radius around the construction area. The measure also states that buffers around active nests will be 500 feet unless a qualified biologist

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determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. The mitigation measure indicates that this buffer will be sufficient to ensure that breeding is not likely to be disrupted or adversely affected, but the DEIR analysis does not explain how this buffer size was determined to be adequate to avoid significant impacts, including but not limited to take (as defined pursuant to (Fish and Game Code Section 86), as a result of Project implementation.

Specific impact: As noted in the DEIR, SWHA and WTKI are known to the Project area and have the potential to nest in riparian habitat and mature trees located within the Project site and within ½ mile of the Project. In addition, suitable foraging habitat for SWHA and WTKI exists within the vicinity of the Project site; dairy pasture that may be used for foraging is present in the Project vicinity. Without appropriate avoidance and minimization measures for SWHA and WTKI, potential significant impacts include nest abandonment and reduced reproductive success that includes mortality of young, and reduced health and vigor of eggs and/or young.

Evidence impact is potentially significant: Mature trees and agricultural fields provide suitable nesting and foraging habitat in the vicinity of the Project. In the San Joaquin Valley, suitable nest trees may be a limiting factor for SWHA occupation and reproduction. As a result, loss of suitable nest trees, particularly in proximity to foraging habitat, has the potential to significantly impact local SWHA (CDFW 2016). CDFW considers removal of known bird-of-prey nest trees, even outside of the nesting season, a potentially significant impact under CEQA, and, in the case of SWHA, it could also result in take under CESA. Project activities near the nest that differ from baseline disturbance regimes in type, timing, and/or magnitude can affect adults caring for eggs and young in the nest, and can affect nestling behavior. Project activities including noise, vibration, odors, visual disturbance, and movement of workers or equipment could affect nesting individuals and have the potential to result in nest abandonment or reduced nesting success, significantly impacting local nesting SWHA and WTKI.

Recommended Potentially Feasible Mitigation Measures: To evaluate potential Project-related impacts to SWHA and WTKI, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

SWHA Avoidance

In addition to avoiding occupied nest trees, CDFW recommends that impacts to known nest trees be avoided at all times of year. The removal of mature trees is a potentially significant impact to nesting birds of prey and CDFW advises mitigation of these impacts. As described above, removal of known nest trees is a potentially

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significant impact under CEQA and could also result in take under CESA. This is especially true with species such as SWHA, which exhibit high nest-site fidelity year after year. Regardless of nesting status, if potential or known SWHA and WTKI nesting trees are removed, CDFW recommends they be replaced with an appropriate native tree species, planted at a ratio of 3:1 (replaced to removed), in an area that will be protected in perpetuity. This mitigation will offset potential impacts of the loss of potential nesting habitat.

Focused SWHA Surveys

To reduce potential Project-related impacts to SWHA and WTKI, CDFW recommends that a qualified wildlife biologist conduct surveys for nesting birds of prey, including SWHA and WTKI, following the survey methodology developed by the SWHA Technical Advisory Committee (SWHA TAC 2000) prior to Project initiation, within the Project area and a ½-mile buffer around the Project area. In addition, if Project activities will take place during the typical breeding season (February 1 through September 15), CDFW recommends that additional preconstruction surveys for active nests be conducted by a qualified biologist no more than 10 days prior to the start of construction.

SWHA Buffers

If an active SWHA or WTKI nest is found during preconstruction surveys, CDFW recommends implementing a minimum ½-mile no-disturbance buffer until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest site or parental care for survival.

SWHA Take Authorization

If a ½-mile no-disturbance nest buffer is not feasible, consultation with CDFW is warranted, and acquisition of a State Incidental Take Permit for SWHA may be necessary prior to project implementation, to avoid unauthorized take, pursuant to Fish and Game Code section 2081, subdivision(b).

Pursuant to Fish and Game Code section 3511, CDFW cannot authorize incidental take of WTKI. Therefore, CDFW recommends implementation of a minimum ½-mile no-disturbance buffer around identified WTKI nest(s) until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival.

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COMMENT 2: Burrowing Owl (BUOW)

Section 3.4.4 Biological Resources, Environmental Impacts and Mitigation, Impact BIO-6 Page 3.4-42

Issue: Mitigation Measure BIO-7 describes focused BUOW surveys within 14 days prior to construction; however, CDFW is concerned that this survey effort may not be sufficient in detecting BUOW occupying the Project area or its vicinity. This mitigation measure also describes avoidance for occupied BUOW burrows through implementation of a 160-foot buffer during the non-nesting season and a 626-foot buffer during the nesting season, unless a Project biologist determines that a smaller buffer may be implemented. For ground-disturbing activities involved in the Project, these buffers may not be sufficient to avoid impacts. In addition, the mitigation measure describes passive relocation of BUOW detected on the Project site; however, according to CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), passively relocating and excluding BUOW in and of itself is not a take avoidance, minimization, or mitigation method. The mitigation measure also doesn't specify at what time of year passive relocation would occur.

Specific impact: BUOW rely on burrow habitat year-round for their survival and reproduction. BUOW forage in areas with relatively short vegetation and only sparse shrub cover (Gervais et al. 2008). As described in the DEIR, the Project area and its vicinity is suitable for BUOW. Without appropriate avoidance and minimization measures for BUOW, potential significant impacts include nest abandonment, which may result in reduced nesting success such as reduced health or vigor of eggs or young, in addition to direct mortality at any time of the year as a result of encroachment and increased potential of vehicle strikes, impacts to foraging success, and potentially increased predation. Potentially significant direct impacts associated with eviction and passive relocation of BUOW include inadvertent entrapment, nest abandonment, reduced reproductive success, reduction in health and vigor of eggs and/or young, and direct mortality of individuals. Indirect impacts associated with temporary or permanent closure of burrows include increased stress and competition.

Evidence impact is potentially significant: The Project site is within the range of BUOW and, as described in the DEIR, supports potentially suitable burrow and foraging habitat. The Project has the potential to result in loss of burrow habitat for local populations. Habitat loss and degradation are considered the greatest threats to BUOW in California's Central Valley (Gervais et al. 2008). In addition, and as described in CDFW's "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012), passively relocating and excluding BUOW is considered a potentially significant impact under CEQA.

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Recommended Potentially Feasible Mitigation Measure(s)
To evaluate potential Project-related impacts to BUOW, CDFW recommends conducting the following evaluation of the Project site and including the following measures in the DEIR.

CDFW recommends assessing presence/absence of BUOW by conducting surveys following the California Burrowing Owl Consortium's "*Burrowing Owl Survey Protocol and Mitigation Guidelines*" (CBOC 1993). CDFW further recommends that the "*Staff Report on Burrowing Owl Mitigation*" (CDFG 2012) be followed prior to and during any ground-disturbing activities associated with Project implementation. CDFW's Staff Report recommends that impacts to occupied burrows be avoided in accordance with the following table unless a qualified biologist approved by CDFW verifies through non-invasive methods that either: 1) the birds have not begun egg laying and incubation; or 2) that juveniles from the occupied burrows are foraging independently and are capable of independent survival.

Location	Time of Year	Level of Disturbance		
		Low	Med	High
Nesting sites	April 1-Aug 15	200 m*	500 m	500 m
Nesting sites	Aug 16-Oct 15	200 m	200 m	500 m
Nesting sites	Oct 16-Mar 31	50 m	100 m	500 m

* meters (m)

If BUOW are found to occupy a Project site and avoidance is not possible, it is important to note that according to the Staff Report (CDFG 2012), exclusion in and of itself is not a take avoidance, minimization, or mitigation method. If deemed necessary, CDFW recommends that burrow exclusion be conducted by qualified biologists and only during the non-breeding season, before breeding behavior is exhibited and after the burrow is confirmed empty through non-invasive methods, such as surveillance. CDFW recommends replacement of occupied burrows with artificial burrows at a ratio of a minimum 1 burrow collapsed to 1 artificial burrow constructed (1:1) as mitigation for the potentially significant impact of evicting BUOW. In addition, CDFW further recommends that burrow closure be employed only where there are adjacent natural burrows and sufficient non-impacted habitat for BUOW to occupy with permanent protection mechanisms in place. In addition, BUOW may attempt to colonize or re-colonize an area that will be impacted; thus, CDFW recommends ongoing surveillance of the Project site during project activities, at a rate that is sufficient to detect BUOW if they return.

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II. Editorial Comments and/or Suggestions

Fisheries Analysis: CDFW has questions and comments regarding the Project description and implications for special status fisheries. It is not yet clear if adequate Project information has been provided to allow CDFW to fully evaluate potential Project-related impacts to fisheries. Mitigation Measure BIO-4 addresses impacts to special status fisheries by limiting the timing of air purging of the Infiltration Gallery to the period from April 1 to September 30, to address the effects of suspended sediments. CDFW has provided review, analysis, and comment related to the relicensing process for the Federal Energy Regulatory Commission (FERC) in the Tuolumne River (FERC No. 2299 Don Pedro, FERC No. 14581 La Grange), and the following requested information items will make clearer how the DEIR analysis is consistent with FERC relicensing. In the items that follow, CDFW recommends clarification in the DEIR for documenting certain fisheries details and the regulatory framework for fisheries; specific Project implementation details; and elaboration of potential impacts to fisheries.

Regulatory Framework: CDFW recommends that Table 2-5 on Page 2-52 of the DEIR include FERC as a regulatory agency required to approve Project activities related to the current location (La Grange) of instream compliance monitoring and a change in the location of diversion. In addition, CDFW recommends adding National Oceanic and Atmospheric Administration (NOAA) Fisheries as another agency that addresses Endangered Species Act compliance.

CDFW recommends that Table 3.4-2 on Page 3.4-12 of the DEIR display light gray shading (i.e., potential activity) for Adult spawning of Chinook salmon in January.

CDFW recommends modifying Table 3.4-4 on Page 3.4-21 of the DEIR to indicate that any stray spring-run Chinook salmon that are found in the Tuolumne River would not be considered part of the nonessential experimental population. Spring-run strays resulting from San Joaquin River Restoration Program activity do have the potential to occur.

CDFW recommends that the description of fish species present or likely to be present in the Project vicinity on Page 3.4-10 of the DEIR note the limitations of the 2015 study that is referenced; documentation of fish at a stationary point in the river cannot reliably be used to assert the absence of steelhead from the lower Tuolumne River. CDFW also recommends that additional years of data at the weir location be used.

Infiltration Gallery Operation: CDFW requests additional clarification in the DEIR to address operation of the Infiltration Gallery. It is not clear when the Infiltration Gallery will operate, for example, if it will operate and withdraw water year-round,

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and also if it will operate and withdraw the same amount in all water year types. The 2001 study referred to in Impact BIO-3 on Page 3.4-35 of the DEIR appears to have analyzed water diversion from mid-March to mid-October, and it is not clear that FERC proceedings to date have addressed Infiltration Galley operation outside summer months. In addition, it is not clear how river flow will change after the Water Treatment Plant is operating at buildout capacity.

CDFW recommends that the DEIR include additional detail on Page 3.4-10, regarding an increase in average annual flow of the Tuolumne River by 24 cubic feet per second, specifically, clarification of where measurements will be taken, and whether averaging the measurement could result in a substantially larger release over a very short time. This increase also pertains only to Phase 1 and not release when the Water Treatment Plant is operating at full capacity.

Air Purging and Fine Sediments: The DEIR discussion of fine sediments on Page 3.4-38 indicated that no sediment was found in stream samples taken in October 2017. CDFW notes that Tuolumne River flows from January through August 2017 were above 2,000 cubic feet per second, higher than baseline flows described in the DEIR as150 to 300 cubic feet per second, and as a result, samples taken in October would not represent typical baseline levels of fine sediment accumulation in the Tuolumne River. CDFW recommends that additional sampling be used to inform the analysis in the DEIR to provide more representative baseline data.

CDFW recommends that the DEIR address whether air purging could affect or disrupt out-migrating Chinook salmon during the migration internal from April through June. Additionally, back flushing is described on Page 3.9-16 of the DEIR as occurring for approximately five days, twice annually. CDFW recommends an analysis of potential impacts such as creating a barrier during juvenile Chinook salmon migration, and also including potential indirect effects such as increasing predation pressure.

Change in Point of Water Diversion: The change in the point of diversion described in Impact HYD/WQ-3 appears to warrant a change in the State water right. CDFW recommends that the DEIR provide clarification of how additional water to be released from the La Grange Dam will be memorialized; for example, will FERC licensing require changes in stream flow and address a change in the location of compliance requirements?

Nesting birds: CDFW has jurisdiction over actions with potential to result in the disturbance or destruction of active nest sites or the unauthorized take of birds. Fish and Game Code sections that protect birds, their eggs and nests include, sections 3503 (regarding unlawful take, possession or needless destruction of the nest or eggs of any

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bird), 3503.5 (regarding the take, possession or destruction of any birds-of-prey or their nests or eggs), and 3513 (regarding unlawful take of any migratory nongame bird).

The Project area likely provides nesting habitat for birds. CDFW encourages Project implementation occur during the bird non-nesting season. However, if ground-disturbing activities must occur during the breeding season (February through mid-September), the Project applicant is responsible for ensuring that implementation of the Project does not result in violation of the Migratory Bird Treaty Act or relevant Fish and Game Code sections as referenced above.

To evaluate Project-related impacts on nesting birds, CDFW recommends that a qualified wildlife biologist conduct preconstruction surveys for active nests no more than 10 days prior to the start of ground disturbance to maximize the probability that nests that could potentially be impacted are detected. CDFW also recommends that surveys cover a sufficient area around the work site to identify nests and determine their status. A sufficient area means any area potentially affected by a project. In addition to direct impacts (i.e., nest destruction), noise, vibration, odors, and movement of workers or equipment could also affect nests. Prior to initiation of construction activities, CDFW recommends a qualified biologist conduct a survey to establish a behavioral baseline of all identified nests. Once construction begins, CDFW recommends a qualified biologist continuously monitor nests to detect behavioral changes resulting from the project. If behavioral changes occur, CDFW recommends the work causing that change cease and CDFW consulted for additional avoidance and minimization measures.

If continuous monitoring of identified nests by a qualified wildlife biologist is not feasible, CDFW recommends a minimum no-disturbance buffer of 250 feet around active nests of non-listed bird species and a 500-foot no-disturbance buffer around active nests of non-listed raptors. These buffers are advised to remain in place until the breeding season has ended or until a qualified biologist has determined that the birds have fledged and are no longer reliant upon the nest or parental care for survival. Variance from these no disturbance buffers is possible when there are compelling biological or ecological reasons to do so, such as when the construction area would be concealed from a nest site by topography. CDFW recommends that a qualified wildlife biologist advise and support any variance from these buffers and notify CDFW in advance of implementing a variance.

Diurnal Bat Roosts: The DEIR includes Mitigation Measure BIO-8 to address surveys and avoidance measures for roosting bats associated with bridges that provide suitable habitat. The mitigation measure describes methods to reduce impacts to maternity roosts, such as reducing activity near a roost or excluding bats from a site prior to the maternity season; however, the mitigation measure also indicates that a biologist may develop an alternative minimization measure, and that specifications for bat exclusion from a roost will be submitted to CDFW for approval. This measure appears to defer

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the analysis of the potential impact (i.e., consultation with CDFW) and the determination of appropriate mitigation to a later date, after Project approval and potentially during Project implementation. CDFW recommends that the DEIR include all potential mitigation measures based on any necessary consultation prior to Project approval, to avoid, minimize, and mitigate as warranted any impacts that may be significant to roosting bats, including maternity roosts and roosts of resident or migratory bats.

Lake and Streambed Alteration: Project-related activities have the potential to substantially change the bed, bank, and channel of wetlands and waterways onsite, which are subject to CDFW's regulatory authority pursuant Fish and Game Code section 1600 et seq., therefore, notification is warranted. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation): (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. "Any river, stream, or lake" includes those that are ephemeral or intermittent as well as those that are perennial. CDFW is required to comply with CEQA in the issuance of a Lake or Streambed Alteration Agreement (Agreement); therefore, if the CEQA document approved for the Project does not adequately describe the Project and its impacts, a subsequent CEQA analysis may be necessary for Agreement issuance. For additional information on notification requirements, please contact our staff in the Lake and Streambed Alteration Program at (559) 243-4593.

Water Rights: The use of unallocated stream flows are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code Section 1225. CDFW, as Trustee Agency, is consulted by the SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic ecosystems, which in turn are reliant upon adequate flows of water. CDFW therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. CDFW provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

Endangered Species Act Consultation: CDFW recommends consultation with the USFWS and NOAA Fisheries prior to any ground disturbance related to this Project due to potential impacts to Federal listed species. Take under the Federal Endangered Species Act (ESA) is more stringently defined than under CESA; take under ESA may also include significant habitat modification or degradation that could result in death or injury to a listed species, by interfering with essential behavioral patterns such as breeding, foraging, or nesting. Consultation with the USFWS and NOAA Fisheries in order to comply with ESA is advised well in advance of Project implementation.

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ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database that may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist Stanislaus Regional Water Authority in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Annette Tenneboe, Senior Environmental Scientist (Specialist) at (559) 243-4014 ext. 231 or annette.tenneboe@wildlife.ca.gov .

Sincerely,

Julie A. Vance
Regional Manager

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Michael Brinton
Stanislaus Regional Water Authority
March 7, 2018
Page 13

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: Annette Tenneboe
John Shelton
Abimael Leon
Bonna Newell
Steve Tsao
California Department of Fish and Wildlife

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REFERENCES

CBOC. 1993. Burrowing Owl Survey Protocol and Mitigation Guidelines. Pages 171-177 *in* Lincer, J. L. and K. Steenhof (editors). 1993. The Burrowing Owl, Its Biology and Management. Raptor Research Report Number 9.

CDFG. 2012. Staff Report on Burrowing Owl Mitigation. California Department of Fish and Game. March 7, 2012.

CDFW. 2016. Status Review: Swainson's Hawk (*Buteo swainsoni*) in California. Reported to California Fish and Game Commission. Five years status report.

Gervais, J. A., D. K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*) *In* California Bird Species of Special Concern: A Ranked Assessment of Species, Subspecies, and Distinct Populations of Birds of Immediate Conservation Concern in California (W. D. Shuford and T. Gardali, editors). Studies of Western Birds 1. Western Field Ornithologists, Camarillo, California, and California Department of Fish and Game, Sacramento.

SWHA TAC. 2000. Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley of California. Swainson's Hawk Technical Advisory Committee. May 31, 2000.

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Response to Comment F-1

The commenter indicates that, after the close of the 30-day circulation period for the SRWA DEIR, comments were received from CDFW.

No response is required.

Response to Comment F-2

The comment letter provided as an attachment to the SCH letter is responded to fully in Responses to Comments C-1 through C-20. No additional response is required.

Letter G – Patrick Cavanah, Stanislaus County Environmental Review Committee

Letter G: Patrick Cavanah, Stanislaus County Environmental Review Committee

Stanislaus County

CHIEF EXECUTIVE OFFICE

Jody L. Hayes
Chief Executive Officer

Patricia Hill Thomas
Chief Operations Officer/
Assistant Executive Officer

Keith D. Boggs
Assistant Executive Officer

Patrice M. Dietrich
Assistant Executive Officer

STANISLAUS COUNTY ENVIRONMENTAL REVIEW COMMITTEE

March 12, 2018

Michael Brinton, Interim General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

SUBJECT: ENVIRONMENTAL REFERRAL – STANISLAUS REGIONAL WATER AUTHORITY (SRWA) – HORIZON WATER AND ENVIRONMENT, LLC. – SRWA'S SURFACE WATER SUPPLY PROJECT – NOTICE OF PUBLIC REVIEW AND NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)

Mr. Brinton:

Thank you for the opportunity to review the above-referenced project.

The Stanislaus County Environmental Review Committee (ERC) has reviewed the subject project and has no comments at this time. I G-1

The ERC appreciates the opportunity to comment on this project.

Sincerely,

Patrick Cavanah
Sr. Management Consultant
Environmental Review Committee

PC:ss

cc: ERC Members

STRIVING TOGETHER TO BE THE BEST!

1010 10th Street, Ste. 6800, Modesto, CA 95354 Post Office Box 3404
Modesto, California 95353 Phone: 209.525.6333 Fax: 209.544.6226

Response to Comment G-1

The commenter indicates that the Stanislaus County Environmental Review Committee has no comments on the SRWA DEIR.

No response is required.

1 # Letter H – Ronda A. Lucas, Modesto Irrigation District

Letter H: Ronda A. Lucas, Modesto Irrigation District

MID Modesto Irrigation District
Water and Power

1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352
(209) 526-7373

July 13, 2018

Bob Granberg, General Manager
Stanislaus Regional Water Authority
156 South Broadway, Suite 270
Turlock, CA 95380

Re: Stanislaus Regional Water Authority – Surface Water Project DEIR

Dear Mr. Granberg:

In 2015, Turlock Irrigation District (TID) entered into a Water Sales Agreement wherein TID agreed to annually sell and deliver up to 30,000 acre feet of raw Tuolumne River surface water to be diverted at the existing infiltration gallery and then treated at a Stanislaus Regional Water Authority (SRWA) owned and operated water treatment plant under TID's post-1914 water rights License 11058.[1]

Pursuant to the California Environmental Quality Act, the SRWA released a Draft Environmental Impact Report (DEIR) for the Surface Water Project (Project) on January 22, 2018. The DEIR identified Modesto Irrigation District (MID) as a responsible agency and acknowledged that, in order to obtain the surface water, TID must submit a Petition for Change to the State Water Resources Control Board to change the point of diversion and the type of use because, currently, TID's portion of License Number 11058 is for agricultural use only. MID testified at the public hearing on March 1, 2018 and submitted comments on April 23, 2018. As you may recall, MID, throughout this process, has sought adequate assurances that the Project and/or the change petition will not adversely affect our jointly-held water right under License 11058. On this basis, MID ultimately objected to the Project in its April comment letter.

Prior to submitting that letter and since the close of the comment period, MID has held meetings and discussions with TID in the hopes of reaching a legally binding solution that, in MID's opinion, adequately protects MID's water rights. I am pleased to inform you that we have reached such an agreement. On June 26, 2018, both the MID and TID boards executed the attached Clarification Agreement (Agreement). This Agreement ensures that the Project and corresponding Petition for Change will be implemented in a manner that is not injurious to MID's water rights and provides MID the adequate assurances it has been seeking. Thus, MID's concerns regarding our water rights expressed in both our testimony and written comments, have been satisfactorily addressed, and we consider them to be mooted by the Agreement. Due to the assurances and contractual obligations set forth in the attached Agreement, MID now supports the Project.

H-1

[1] Water Right License number 11058 is a water right that is jointly held by both Modesto Irrigation District and TID.

ORGANIZED 1887 ● IRRIGATION WATER 1904 ● POWER 1923 ● DOMESTIC WATER 1994

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July 13, 2018
Page 2

Should you have any questions regarding this matter, please do not hesitate to contact this office at (209) 526-7330.

Sincerely,

Ronda A. Lucas
General Counsel

Attachment: 1

cc: Scott Furgerson, General Manager
Casey Hashimoto, Turlock Irrigation District
Roger Masuda, Turlock Irrigation District

ORGANIZED 1887 ● IRRIGATION WATER 1904 ● POWER 1923 ● DOMESTIC WATER 1994

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CLARIFICATION AGREEMENT

This Agreement is entered into as of June 26, 2018, between the Modesto Irrigation District (MID) and the Turlock Irrigation District (TID), both irrigation districts, collectively "Districts," with reference to the following:

RECITALS

A. The Districts are joint owners of the Don Pedro Project and of State Water Resources Control Board (SWRCB)-issued Water Right License 11058.

B. The Districts along with the California Department of Fish and Game, City and County of San Francisco, Friends of the Tuolumne, San Francisco Bay Area Water Users Association, Tuolumne River Expeditions, Tuolumne River Preservation Trust, and U.S. Fish and Wildlife Service entered into that certain Settlement Agreement (1995 FERC Settlement Agreement), in which the parties agreed, among other things, to amend Article 37 of the Federal Energy Regulatory Commission (FERC) license for the Don Pedro Project.

C. Section 11, Fishery Flows, of the 1995 FERC Settlement Agreement prescribed the required minimum fish flow volumes for ten different water year types. The Section then went on to state the following:

> In addition, the participants agree to work cooperatively in an effort to obtain additional flows in the Tuolumne River.
>
> The participants will have fully complied with this cooperative effort to obtain additional flows by implementing, to the extent practicable, the following actions:
>
> * * *
>
> - TID will promote the proposed Turlock Area Drinking Water Project, the diversion for which is proposed to be located between river miles 19 and 26. The project will be implemented so that it will not be injurious to MID's water rights. FWS and CDFG agree to expedite the review of any permits and applications necessary for the drinking water project.

In addition, Section 18, Support for Ancillary Programs stated the following:

> The participants to the settlement agree to support the following ancillary programs. Those participants with permitting, licensing, or approval authority agree to work with the applicant to develop acceptable options and to expedite the review and approval process. All other participants [e.g., MID] agree not to oppose or delay the following:

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- Turlock Area Drinking Water Project, the diversion for which is proposed to be located between river miles 19 and 26. The project will be implemented so that it will not be injurious to MID's water rights.

D. In 1995, the referenced Turlock Area Drinking Water Project was a project proposed by TID to provide treated drinking water to cities and other public water purveyors within TID's irrigation boundaries via a river diversion to be located between Tuolumne River miles 19 and 26. In 2001, TID constructed an infiltration gallery with an engineered diversion capacity of 100 cfs at river mile 26 within the river reach specified in the 1995 FERC Settlement Agreement.

E. In 2006, TID completed a Final Environmental Report for the Turlock Irrigation District Regional Surface Water Supply Project (EIR). The 2006 EIR states that TID "intends to use its pre-1914 water rights and to treat and deliver a maximum of 42.5 mgd or 47,606 AFY of its pre-1914 water for domestic uses to be served by the communities of Ceres, Hughson, Keyes, South Modesto and Turlock." The 2006 EIR also noted that the contemplated uses were within the existing place of use for both TID's pre-1914 and post-1914 water rights, and that the Water Code permits TID and other pre-1914 water right holders to change the place of diversion and purpose of use of a portion of their pre-1914 water rights without the approval of the SWRCB if others are not injured by the change. The more extensive Project contemplated and analyzed in the 2006 EIR was never completed and will not be in the future.

F. In 2015, TID and the Stanislaus Regional Water Authority (SRWA), a joint powers authority, now consisting of the City of Turlock and the City of Ceres, entered into a Water Sales Agreement dated July 28, 2015, wherein among other things, TID agreed to sell and deliver up to 30,000 AFY of raw Tuolumne River surface water to be diverted at the existing infiltration gallery and then treated at a SRWA owned and operated water treatment plant under TID's post-1914 water rights license 11058. The SRWA project is known as the Stanislaus Regional Water Authority Regional Surface Water Supply Project (SRWA Project).

G. The Districts agree it is in their best interest to clarify the change in the project name.

NOW, THEREFORE, the Districts agree as follows:

1. As between the Districts, the references in the 1995 FERC Settlement Agreement to the TID "Turlock Area Drinking Water Project" shall now be considered to refer to the "Stanislaus Regional Water Authority Regional Surface Water Supply Project."

2. TID will be filing a Petition for Change Involving Water Transfers for Water Right License 11058 with the SWRCB. TID agrees any Petition for Change filed will only apply to the portion of License 11058 allowing for use of post-1914 water by TID south of the Tuolumne River. TID further agrees the SRWA Project will be implemented

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so that it will not be injurious to MID's water rights.

3. MID agrees that upon approval of this agreement by both Districts, MID will provide a letter to the SRWA stating that as a result of this agreement, MID's concerns and objections raised in its April 23, 2018 comments on the SRWA Surface Water Supply Project Draft Environmental Impact Report have been satisfactorily addressed and MID now considers these concerns and objections moot and no response by the SRWA to those comments is required. In consideration of TID's obligations under Paragraph 2, MID further agrees that MID will not oppose or protest TID's Petition for Change so long as the Petition is implemented so that it will not be injurious to MID's water rights.

Modesto Irrigation District

By _____
President

By _____
General Manager

Approved as to form

By _____
General Counsel

Turlock Irrigation District

By _____
President

By _____
General Manager

Approved as to form

By _____
General Counsel

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RESOLUTION NO. 2018 – 26

RESOLUTION APPROVING THE CLARIFICATION AGREEMENT BETWEEN THE MODESTO IRRIGATION DISTRICT AND THE TURLOCK IRRIGATION DISTRICT REGARDING THE STANISLAUS REGIONAL WATER AUTHORITY REGIONAL SURFACE WATER SUPPLY PROJECT

WHEREAS, the Turlock Irrigation District (TID) previously proposed to construct a domestic water supply project, known as the Turlock Area Drinking Water Project; and

WHEREAS, a 1995 Federal Energy Regulatory Commission (FERC) Settlement Agreement involving the Modesto Irrigation District (MID), TID and others specified that TID planned to construct the Turlock Area Drinking Water Project and would do so in a manner that would not be injurious to MID's water rights; and

WHEREAS, the drinking water project is now proposed to be constructed by the Stanislaus Regional Water Authority (SRWA) and is now known as the Stanislaus Regional Water Authority Regional Surface Water Supply Project; and

WHEREAS, MID desires to clarify the drinking water project's name; and

WHEREAS, the Clarification Agreement between MID and TID specifies that all references in the 1995 FERC Settlement Agreement to the TID "Turlock Area Drinking Water Project" shall now be considered to refer to the "Stanislaus Regional Water Authority Regional Surface Water Supply Project;" and

WHEREAS, upon approval of the Clarification Agreement by both Districts, MID will provide a letter to the SRWA stating that as a result of this agreement, MID's concerns and objections raised in its April 23, 2018, comments on the SRWA Surface Water Supply Project Draft Environmental Impact Report have been satisfactorily addressed and MID now considers these concerns and objections moot and no response by the SRWA to those comments is required; and

WHEREAS, MID agrees not to oppose or protest TID's Petition for Change with the State Water Resources Control Board so long as the Petition is implemented in a manner that will not be injurious to MID's water rights.

NOW THEREFORE, BE IT HEREBY RESOLVED by the Board of Directors of the Turlock Irrigation District that:

1) The Board approves the Clarification Agreement between MID and TID regarding the SRWA Regional Surface Water Supply Project, and

2) The General Manager and his designee are hereby authorized and directed to execute all documents necessary to carry out this resolution.

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Moved by Alamo, seconded by Santos, that the foregoing resolution be adopted.

Ayes:	Directors Santos, Frantz, Alamo, Macedo, Fernandes
Noes:	Directors - None
Absent:	Directors - None
Abstain:	Directors - None

I, Tami Wallenburg, Executive Secretary to the Board of Directors of the TURLOCK IRRIGATION DISTRICT, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a regular meeting of said Board of Directors held the 26th day of June, 2018.

Executive Secretary to the Board of
Directors of the Turlock Irrigation District

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RESOLUTION 2018-42
APPROVING AND AUTHORIZING THE GENERAL MANAGER AND BOARD PRESIDENT TO EXECUTE A CLARIFICATION AGREEMENT BETWEEN THE MODESTO IRRIGATION DISTRICT AND THE TURLOCK IRRIGATION DISTRICT REGARDING THE PROTECTION OF THE DISTRICT'S WATER RIGHTS WITH RESPECT TO THE STANISLAUS REGIONAL WATER AUTHORITY'S SURFACE WATER PROJECT

WHEREAS, on July 28, 2015, Turlock Irrigation District (TID) and the Stanislaus Regional Water Authority (SRWA), a joint powers authority consisting of the cities of Ceres and Turlock, entered into a Water Sales Agreement wherein TID agreed to sell and deliver up to 30,000 Acre Feet per Year of raw Tuolumne River surface water to be diverted at the existing infiltration gallery and then treated at a SRWA owned and operated water treatment plant under TID's post-1914 water rights license 11058; and

WHEREAS, on January 22, 2018, SRWA released a Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act for a Surface Water Treatment Project (Project) that would use the water in the Water Sales Agreement between TID and SRWA; and

WHEREAS, TID must file a Petition for Change to jointly held water right Number 11058 with the State Water Resources Control Board to provide the water to SRWA; and

WHEREAS, on April 23, 2018, Modesto Irrigation District (MID) submitted comments in opposition to the Project because of the failure to ensure that MID's water rights would not be impacted by the Petition for Change or the Project generally; and

WHEREAS, TID agreed to enter into a Clarification Agreement, wherein TID agrees to file the Petition for Change so that it only applies to TID's portion of License Number 11058 and further agrees that the SRWA Project will be implemented such that it will not be injurious to MID's water rights.

BE IT RESOLVED, That the Modesto Irrigation District Board of Directors hereby finds, determines, and/or declares as follows:

1. The Board of Directors declares its intent to adopt a resolution approving and authorizing the Board President and General Manager to execute a Clarification Agreement between MID and TID regarding the protection of MID's water rights with respect to the SRWA Surface Water Project.

2. Upon approval of the Clarification Agreement by both Districts, MID will provide a letter to the SRWA stating that as a result of this agreement, MID's concerns and objections raised in its April 23, 2018 comments on the SRWA Surface Water Supply Project Draft Environmental Impact Report have been satisfactorily addressed and MID now considers these concerns and objections moot and no response by the SRWA to those comments is required.

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3. MID will not oppose or protest TID's Petition for change so long as the Petition is implemented so that it will not be injurious to MID's water rights.

Moved by Director Byrd, seconded by Director Gilman, that the foregoing resolution be adopted.

The following vote was had:
Ayes: Directors Blom, Byrd, Campbell, Gilman and Mensinger
Noes: Director None
Absent: Director None
The President declared the resolution adopted.

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I, Angela Cartisano, Board Secretary of the Modesto Irrigation District, do hereby CERTIFY that the foregoing is a full, true and correct copy of a resolution duly adopted at a special meeting of said Board of Directors held the twenty-sixth day of June 2018.

Board Secretary of the
Modesto Irrigation District

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MID Modesto Irrigation District
Water and Power

1231 Eleventh Street
P.O. Box 4060
Modesto, CA 95352
(209) 526-7373

April 23, 2018

Michael F. Brinton, SRWA Interim General Manager
c/o City Turlock Administrative Services
156 South Broadway, Suite 230
Turlock, CA 95380

Via Email: SurfaceWaterSupply-DEIR-comments@horizonh2o.com

Re: Stanislaus Regional Water Authority Surface Water Project Draft Environmental Report – MID Comments

Dear Mr. Brinton:

Modesto Irrigation District (MID), the second oldest irrigation district in the State of California, was formed in 1887 and is a not for profit publically owned utility. MID, in partnership with Turlock Irrigation District (TID), owns and operates the New Don Pedro Dam, Don Pedro Reservoir and La Grange Dam, collectively referred to as (Don Pedro Project) as well as jointly holding certain water rights. For more than a century, the Don Pedro Project has proudly contributed to California's position as the sixth largest economy in the world providing a reliable source of clean, affordable surface water to over 3,000 agricultural customers irrigating close to 60,000 acres. The Don Pedro Project supports approximately $4.109 billion in economic output and $734.8 million in labor income. MID's 130 year track record of pro-active, scientifically sound environmental stewardship within the Tuolumne River watershed and our early implementation of innovative conjunctive use management practices has allowed MID to be a leader in groundwater management as well. None of this legacy would be possible without the prudent, responsible management of our water rights portfolio.

MID has reviewed the Stanislaus Regional Water Authority's (SRWA) Draft Environmental Impact Report (DEIR) for the proposed Surface Water Project (Project) and appreciates the opportunity to comment.

I. GENERAL COMMENTS

MID received the DEIR when it was released on January 22, 2018. This was the first time the District was identified as a Responsible Agency. After preliminary review of the document, MID staff attended the SRWA public hearing on March 1, 2018[1] and testified that MID had several questions regarding the planned treatment of and potential impact to our jointly-held water right affected by this Project, particularly in light of the current regulatory

[1] SRWA originally scheduled the public hearing for February 22, 2018 but canceled that hearing due to a lack of a quorum.

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environment at the state and federal level.[2] Despite our efforts to express our concerns, including testifying at the sole public hearing and a California Public Records Act request (PRA) for documents[3] SRWA and TID staff have not reached out to MID to date.[4] This omission is even more troubling because SRWA identified MID as a Responsible Agency. Per MID's request, TID staff did meet with MID on two separate occasions. The first was a brief meeting wherein MID expressed its concerns regarding our jointly-held water right. Due, in part to a lack of meaningful answers, the parties agreed a follow-up meeting would be necessary. At the second meeting, MID again expressed our concerns and asked for written confirmation that, should the State Water Resources Control Board (SWRCB) include any conditions on the Petition for Change (Petition), TID would not move forward with the Petition. Unfortunately, TID staff was only able to ensure that, "should the SWRCB propose any condition ***that is unacceptable to TID***, then TID would withdraw the petition. The Water Sales Agreement with SRWA allows TID to make that determination in TID's sole discretion." See Exhibit 1. Because MID does not have adequate assurances the Project and/or the Petition will not adversely affect our jointly-held water right and has not received the information necessary for the District to accurately analyze the Project, unfortunately, we have no other option but to object to the Project at this present time. However, we continue to hope that we can work together to reach a solution.

As evidenced by MID's actions, as a general matter, MID strongly advocates innovative, comprehensive solutions to ensuring a stable water supply for the betterment of the entire region. Unfortunately, as currently written, this Project and its environmental document do not appear, at this time, to represent such a solution. As explained in greater detail below, additional information is needed within the DEIR to properly address and analyze the material changes that appear to have occurred between previous California Environmental Quality Act (CEQA) documents concerning this Project and this DEIR in the critical area of water rights. Information regarding the water right, specifically the Petition with the SWRCB, is critical to fully analyzing the environmental setting of the Project. Failure to include an analysis of the SWRCB's SED proceedings and the FERC relicensing process, especially as it relates to the Petition, leaves the DEIR with an insufficient environmental setting description, therefore causing the cumulative impacts section of the document to be inadequate. In addition to failing to thoroughly analyze the regulatory setting of the Project, the DEIR improperly piecemeals the project because construction has begun on parts of the project even though this EIR process is still ongoing. Not only does the DEIR piecemeal the project, but it also references phases of the project to be carried out in the future, but fails to identify the document as programmatic. These deficiencies coupled with the fact MID is identified as a Responsible Agency and has not been given the proper notice or ability to comment on all phases of the CEQA process cause the document to run counter to the intent of CEQA, as the public and decision-makers have not been properly

[2] Specifically the Federal Energy Regulatory Commission (FERC) Don Pedro Project relicensing, the FERC La Grange Project licensing, and the State Water Resources Control Board's (SWRCB) release of the Bay Delta Water Quality Control Plan's Phase One, Substitute Environmental Document (SED).

[3] See Exhibit 15 for all responsive documents provided pursuant to MID's PRA request.

[4] SRWA staff did produce documents in compliance with the PRA.

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alerted of the environmental effects of the project in order to provide meaningful feedback. Further information and a recirculation in the public arena are necessary to ensure this Project does, in fact, result in a water-supply solution that creates a win-win for the entire region.

II. SPECIFIC COMMENTS

A. The DEIR fails to address a material change between this project document and the TID Final EIR regarding the surface water supply used to sustain the Project.

If "significant new information is added to an environmental impact report" after the close of the public comment period, but before the certification of the final EIR, it must be recirculated. Cal. Pub. Resources Code §21092.1.[5] Information is considered "significant" if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect. . . ." *Laurel Heights Improvement Association v. Regents of the University of California*, 864 P.2d 502, 510 (Cal. 1993). The CEQA Guidelines specifically state information is "significant" if "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." Code Reg. tit. 14 §15088.5(a)(4).

In 2006, TID released a Draft Environmental Impact Report (TID DEIR) evaluating the environmental impact of the same project proposed in the current DEIR[6]. However, the TID DIER states, "[f]or the proposed project, TID intends to use its pre-1914 water rights.... TID has the right to change the place of diversion and purpose of use of a portion of its pre-1914 water rights without the approval of the State Water Resources Control Board (SWRCB) if others are not injured by such change." Exhibit 2[7], TID DEIR, Ch. 4.2 at pg. 7-8. The TID DEIR concludes, in the Cumulative Impacts section, that because the project "would not exceed TID's pre-1914 Tuolumne River water rights nor adversely affect other Tuolumne River users" the cumulative impact is less than significant. *Id.* at 31-32.

Unlike the TID DEIR, which anticipates using TID's pre-1914 water rights to supply surface water to the Project, this DEIR indicates that TID will use its water supply under License No. 11058.[8] SRWA DEIR, Ch. 3.17 at pg. 6. The DEIR briefly states TID holds existing water rights pursuant to License No. 11058. *Id.* TID will have to file a Petition with the SWRCB to amend the existing water right. *Id.* at pg. 9. There is no acknowledgement of the previous plan to use pre-1914 water rights and no explanation for this change or its potential impacts on the

[5] All citations are to California authorities unless otherwise noted.

[6] As noted below, parts of the project analyzed in the TID DEIR are already under construction; however, all parts analyzed in the current DEIR were also analyzed in the TID DEIR.

[7] All documents cited herein are attached as Exhibits to and hereby made part of the record.

[8] License No. 11058 is a joint water right that is owned by both MID and TID.

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environment, specifically because pre-1914 water rights do not require a Petition with the SWRCB while utilizing License No. 11058 does require SWRCB permission to change the license under an entirely independent and new permitting process which is also subject to CEQA. Furthermore, there is no analysis of how the Petition may impact License No. 11058 specifically with regard to MID's water rights. This new plan for utilizing post-1914 water rights is a significant change precluding meaningful public input on the critically important issue of water supply impacts. This shift regarding water rights necessarily imposes another, independent regulatory and permitting process governed by the SWRCB and in which the SWRCB is the ultimate decision-maker regarding the Petition. Moreover, TID's pre-1914 water rights, which were originally going to be used, are not jointly-held by MID. However, this new approach will impact a water right of which MID is a co-owner.[9] As such, the DEIR should be recirculated for comments because the public should be given the opportunity to fully evaluate the impact of using a license-based water right as opposed to a pre-1914 water right.

B. The DEIR lacks sufficient information and analysis regarding the Petition TID must file with the SWRCB for water right License No. 11058.

The Legislature's intent in adopting CEQA was to ensure that California "...take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." Pub. Res. Code, §21001(a). An EIR is considered the "heart of CEQA" and its responsibility is to "alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Laurel Heights Improvement Assn. v. Regents of University of California*, 764 P.2d 278, 282 (Cal. 1988). As explained in greater detail below, the DEIR fails to include information regarding the Petition to MID and TID's jointly-held water right under License No. 11058, and therefore, fails to alert the public to the potential impacts of the project.

The SWRCB has the authority to "consider a petition for a long-term transfer of water or water rights involving a change of point of diversion, place of use, or purpose of use." Water Code §1735. The SWRCB must first provide notice and an opportunity for hearing, and may approve the petition if "the change would not result in substantial injury to any legal user of water and would not unreasonably affect fish, wildlife, or other instream beneficial uses." *Id.* at §1736. Because the Petition process allows for public notice and a public hearing where interested parties, including government agencies, can express concerns with the project's effects and file specific protests to the project, it is possible the SWRCB would impose conditions on the Petition impacting our water right and the water resources.

[9] Although MID co-owns the water right SRWA is now contemplating using, neither TID nor SRWA has had a single substantive discussion with MID regarding this change prior to the end of the Project's original comment period, notwithstanding numerous internal meeting between the agencies, preliminary meetings with SWRCB, and outside agencies submitting official comments to SRWA raising questions concerning this very topic. *See* Exhibits 5, 6, 11, 12 and 13. After significant outreach by MID, TID and MID finally had a meetings on April 18, 2018 and April 17, 2018 but our concerns remain. *See* Exhibit 1.

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Though the DEIR states it provides a "new and complete environmental analysis," it fails to explain the Petition process. SWRA DEIR, Ch. 1 at pg. 2. The DEIR briefly mentions TID will have to file a Petition with the SWRCB to amend the existing water right[10], but fails to thoroughly explain how the water right will be amended or the amount of water to be impacted.[11] Furthermore, the DEIR fails to analyze the potential impacts of the Petition, including potential conditions on the license. If the Petition is not approved or is approved with conditions such as environmental flows for fish, TID may not be able to provide surface water for the Project. The public does not have adequate information to provide meaningful comments on the Project without a detailed analysis of how TID will change our jointly-held water rights under License 11058 to provide surface water to SRWA. Further, as MID is co-owner of this water right and has been designated a responsible agency for this Project, MID lacks any basis to provide meaningful analysis and comment and fulfil its legal responsibilities as a responsible agency.[12] Unfortunately, SRWA did not properly notify or inform MID about its responsible agency designation or the decision to utilize MID's co-owned water right as the Project's water source.[13] Instead MID received the DEIR as part of the general public, in violation of CEQA, and neither TID nor SRWA has had substantive discussions with MID regarding how our jointly-held water right may be used. Once again, it is currently impossible for MID to assess what impacts, if any, this Project poses to our water right, and MID simply cannot assess or analyze the Project's potential impacts to water supply. Until both SRWA and/or TID identify, with some degree of specificity, the proposal for and treatment of our jointly-held water right and inform both MID and the general public of this information, the DEIR carves out the "heart of CEQA" and must be rescinded.

C. The DEIR fails to adequately describe the environmental setting of the Project with respect to the FERC Relicensing process and the SED.

An EIR must include a description of the physical environmental conditions in the vicinity of the project. Code Regs. tit. 14 §15125(a). This environmental setting will "constitute

[10] The DEIR mentions that TID will "file a petition with the SWRCB to request approval of a long-term water transfer, the use of the infiltration gallery as a point of rediversion, and the addition of M&I water uses…", but fails to provide any additional information regarding the Petition process. SRWA DEIR Ch. 2 at Pg. 33, 52; Ch. 3.17 at Pg. 9.

[11] The California Department of Fish and Wildlife submitted comments during the Notice of Preparation (NOP) phase of the CEQA process and specifically recommended that the DEIR "outline water rights associated with all Project-related diversion and storage flows, and fully describe all available water supplies that will be used for the project. This should include information on whether any water right applications or change petitions will be filed with the State Water Resources Control Board." Exhibit 5, Pg. 5, Comment 8. However, even after receiving the request from an agency involved in the SWRCB Petition, SRWA failed to do any more than mention that TID would be filing a Petition.

[12] Discussion of Responsible Agency responsibilities can be found in Section G.

[13] In an email dated December 20, 2017, counsel for TID notified SRWA staff that MID needed to be listed as a responsible agency. See Exhibit 3. Though it is not clear exactly when SRWA decided to identify MID as a responsible agency, it is clear that they knew for at least a month prior to the release of the DEIR and yet failed to contact MID.

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the baseline physical conditions by which a lead agency determines whether an impact is significant" and the setting is "critical to the assessment of environmental impacts." *Id.* at (a), (c). By ensuring the environmental setting is adequate, a lead agency is also ensuring that analysis of significant effects is as accurate as possible. *Friends of Eel River v. Sonoma County Water Agency*, 134 Cal. Rptr. 2d 322, 335 (Cal. App. 1st Dist. 2003). (*Friends of Eel River*). In *Friends of Eel River*, the Court determined the lead agency should have considered the proposals before FERC because failure to do so "fails to alert the public and the decision makers to the real possibility that these diversions, on which the Agency depends, will be curtailed." *Id.* The lead agency did not properly "set the stage" for discussion of the cumulative impact of the FERC proceeding. *Id.*

Similarly here, SRWA failed to include an analysis of the FERC relicensing proceedings or the SWRCB's release of the SED even though both could potentially reduce the amount of water available for the Project. SRWA does explain the current flow proposal on the Tuolumne River pursuant to the 1995 FERC Settlement Agreement; however, their analysis stops there.[14] SRWA DEIR, Ch. 3 at Pgs. 9-10. Though, as explained below, SRWA and TID are intimately aware of both the FERC and SWRCB proceedings, the DEIR fails to include either in its description of the environmental setting. This omission fails to alert the public and decision makers to the fact that the water supply necessary for the Project may not be available should environmental flows increase on the Tuolumne River.

D. The DEIR is inadequate in its cumulative impacts analysis because it fails to address the FERC Don Pedro Project relicensing or the SWRCB's release of the SED, both of which could greatly impact the water supply for the project.

Pursuant to CEQA Guidelines, an EIR must include a detailed evaluation of cumulative impacts. Code Regs. tit. 14 §15130(a). The EIR must use a list or projection approach to identify related projects, summarize the possible effects of those projects, reasonably analyze the cumulative contribution of the proposed project, and suggest potential mitigation measures for the project's contribution. *Id.* at §15130(b). "The discussion of cumulative impacts shall reflect the severity of the impacts and their likelihood of occurrence…" *Id.* A cumulative effects analysis should include past, present and probable future projects. *Id.* at §15130(b)(1)(A).

In *Friends of Eel River*, the lead agency prepared an EIR for a project that would increase the agency's withdrawal of water from the Russian River. Plaintiffs/Appellants challenged the EIR for its inadequate cumulative impacts and alternatives analysis[15] because the agency failed to analyze the impacts of the Potter Valley Project FERC relicensing process on the Eel River[16]

[14] Interestingly, the environmental analysis of the impact on special species does cite to multiple studies that are currently being conducted "as part of the Don Pedro Project relicensing process," making it clear that SRWA is aware of the ongoing proceedings. SRWA DEIR, Ch. 3 at Pgs. 36-37. However, this blurb is the only mention of those proceedings.

[15] The Plaintiffs also challenged the EIR on other grounds not relevant to this matter.

[16] Though the Lead Agency's project would increase water withdrawal on the Russian River, not the Eel River, the Russian River water supply was greatly dependent on the diversions from the Eel River, so the FERC proposals to

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and the Court of Appeals agreed. 134 Cal. Rptr. 2d at 327-8. At the time the lead agency had released the EIR, the FERC process had progressed to the point that, according to the Court, it would be reasonably foreseeable that curtailment of Eel River diversions would occur, specifically because every proposal before FERC posited a decrease in the amount of water available.[17] *Id.* at 331. Furthermore, not only did the agency have knowledge of the FERC process, but actively participated in the proceedings. *Id.* at 332. Nonetheless, the agency failed to include any analysis of the impacts of the curtailment in the cumulative impacts section of the EIR, and, therefore, their alternatives analysis was insufficient because the project's environmental setting was not "accurately and fully assessed." *Id.* at 334. "Because the discussion of alternatives omitted relevant, crucial information, it subverted the purposes of CEQA and is legally inadequate." *Id.*

Like the lead agency in *Friends of Eel*, SRWA and TID not only have knowledge of both the FERC relicensing process and also the SED, but TID is an owner of the Don Pedro Project and has actively participated in both relicensing and the SED.[18] Though SRWA is aware of the potential impacts of both processes, it fails to analyze either in its cumulative impacts report. This failure makes it impossible for the public to adequately understand the true impacts of the project.[19] Furthermore, it makes the alternatives analysis inadequate because relevant, crucial information is missing. As discussed below, SRWA fails to alert the public and decision makers to the possibility that it will not be able to supply water to its customers should either (or both) of these proceedings require increased environmental flows on the Tuolumne River.

i. The DEIR fails to consider the FERC relicensing process for the Don Pedro Project.

MID and TID are currently in the process of relicensing the Don Pedro dam and licensing the La Grange dam with FERC. This process has been ongoing for years, and has involved numerous meetings with interested parties. On October 11, 2017, the Districts submitted their final license application for La Grange and amendment of final license application for Don Pedro to FERC. At the time of the filing of SRWA's NOP[20], the amended final license application had not been submitted; however, the Districts originally filed their Final License Application on April 28, 2014, workshops with interested parties were ongoing, and TID was intimately

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curtail those diversions to protect fish species on the Eel River could greatly impact the agency's access to water on the Russian River for the project.

[17] This is also the case for both the FERC relicensing process and the SED process. Though MID and TID argue that their science shows that non-flow measures will also better improve habitat on the Tuolumne River, both proposals acknowledge at least a minimal increase in environmental flows in conjunction with these non-flow measures.

[18] The cities that compromise SRWA also actively participated in the SED process.

[19] Specifically the availability of water for the project.

[20] March 1, 2017.

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involved in the process as an owner of the Don Pedra Project.[21] Furthermore, the National Marine Fisheries Service (NMFS), West Coast Region submitted comments during the NOP comment period stating that, "NMFS is currently engaged in a lengthy relicensing process for the Federal Energy Regulatory Commission (FERC) project in the Tuolumne River…We encourage SRWA to take into account the interim FERC flow schedule when drafting the EIR." Exhibit 6, Pg. 2, Comment 2. These comments, in addition to all of the other ongoing workshops and FERC activities, should provide adequate information for SRWA to thoroughly analyze the impacts of the relicensing process.

The relicensing process allows agencies with mandatory conditioning authority to include prescriptions on the license. These conditions may increase the required environmental flows on the Tuolumne River for the benefit of fish populations. Additionally, FERC has its own authority to require additional flows as part of the licensing process. Should the license include additional flows, it is possible that the Districts will have less water to provide to their customers. If this is the case, TID may not have as much surface water to provide to SRWA for the Project. Though the license conditions could dramatically affect the conditions on the river, the DEIR fails to consider those impacts.

ii. The DEIR fails to consider the SWRCB's release of the Substitute Environmental Document (SED).

In addition to the relicensing process, the Districts also face potential impacts to their water supply from the SWRCB's SED. On September 15, 2016, the SWRCB released the draft SED for public comment.[22] The SED proposes an increase in flows on the Tuolumne River of 30%-50% with a starting point of 40%.[23] This would be a dramatic increase in the amount of environmental flows that the Districts are required to release, reducing the amount of water available to MID and TID customers.

SRWA filed its NOP on March 1, 2017. Though this was approximately two weeks after the SED comment deadline, comments were originally due November 15, 2016.[24] Furthermore, TID[25], the City of Ceres and the City of Turlock all submitted comments on the project. See Exhibit 7. The City of Turlock even noted that, as a member of SRWA, they are in the planning stages of pursuing a surface water treatment plant on the Tuolumne River. Exhibit 8, Page 2,

[21] An email from SRWA staff dated April 14, 2017 specifically addresses the need to consider the FERC process, further showing that not only did TID staff have intimate knowledge of the process, but so did SRWA staff. See Exhibit 4.

[22] Following the release of the document, the SWRCB held five public workshops, two in Sacramento, one in Merced, one in Modesto, and one in Stockton.

[23] The SED also proposes increased flows on the Merced and Stanislaus Rivers.

[24] After extensive public outreach, the SWRCB extended its comment deadline to March 17, 2017.

[25] Please note that TID also submitted joint technical comments with MID and as part of the San Joaquin Tributaries Association.

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Paragraph 3. In addition to filing their own comments on the SED (in their individual capacities as the City of Ceres and the City of Turlock), SRWA also received comments from the California Department of Fish and Wildlife during the NOP comment period recommending that the DEIR "evaluate potential cumulative impacts that the Project could have on the watershed, including an analysis of the relationship of all flow prescriptions, and any surface and ground water diversions that the project may affect…"[26] Exhibit 5, Pg. 5-6, Comment 9. It is clear the cities of Ceres and Turlock (the same parties that make up SRWA) and TID were well aware of the SED's release and its potential impacts on the project. However, the SED is not mentioned at all in the DEIR. Specifically, the DEIR fails to consider the SED in the cumulative impacts section even though, as the City of Turlock noted in their SED comments, should the SED be adopted, "[u]nfortunately, preliminary estimates from TID indicate that they will lack an adequate supply of Tuolumne River water to make the SRWA's drinking water project viable." Exhibit 8, Page 4, Paragraph 3.

The DEIR is inadequate because it fails to consider the cumulative impacts of both the FERC relicensing process and the SED, even though the lead agency and TID would have had intimate knowledge of the potential effects of both.

E. The DEIR improperly piecemeals the project because SRWA has begun construction on part of the project[27] making it difficult for them to stop the project regardless of the environmental analysis in the DEIR.

Lead agencies are required to prepare an EIR for any project which "they propose to carry out or approve that may have a significant effect on the environment." Pub. Resources Code §21100(a). "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment." Pub. Resource Code §15004(b). The intent of CEQA is to allow decision makers and the public an opportunity to thoroughly evaluate projects before too much of a commitment has been made for the lead agency to stop work. Lead agencies should not begin the EIR process before enough information is available to allow for meaningful evaluation. However, the later the EIR process begins, "the more bureaucratic and financial momentum there is behind a proposed project, thus providing strong incentives to ignore environmental concerns…" *Save Tara v. City of West Hollywood,* 194 P.3d 344, 354 (Cal. 2008). Approval of the EIR after the project has begun would allow for *post hoc* rationalizations of actions already taken. *Id.*

In 2006, TID approved the Final EIR for the Turlock Irrigation District Regional Surface Water Supply Project. SRWA DEIR, Ch. 1 at pg. 2. That document analyzed the entire surface water project, including the pieces analyzed in the current DEIR. SRWA then filed this DEIR on

[26] This comment likely refers to both the FERC relicensing project and the SED.

[27] Please note the portion of the project that is currently under construction was not analyzed in the DEIR, but was analyzed in the 2006 TID Final Environmental Impact Report for the Turlock Irrigation District Regional Surface Water Supply Project. SRWA DEIR, Ch. 2 at Pg. 3, Footnote 1.

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January 22, 2018 and analyzed all of the project except for the infiltration galleries and the raw water pump station. SRWA has approved the contract to begin construction of the Raw Water Pump Station, Phase 1. Exhibit 9, pgs. 2-4, Items A-C, E. This approval shows the agency has essentially already decided to approve the Project regardless of the environmental impacts identified in the EIR. Should SRWA fail to adopt a final EIR approving the Project, then the raw water pump station would be useless, and the agency would have invested money for no reason. SRWA has violated the spirit of CEQA through improper piecemealing by beginning construction on parts of the Project prior to completing this EIR process.

F. The DEIR references two phases of the project, but fails to identify the Project as programmatic.

CEQA allows lead agencies to tier their projects so that a lead agency can focus on "issues ripe for decision at each level of environmental review." Pub. Resources Code §21093. "'Tiering' refers to the coverage of general matters in broader EIRs…with subsequent narrower EIRs or ultimately site-specific EIRs…" Code Regs. tit. 14 §15385. A program EIR may be appropriate when a lead agency is preparing an EIR on a "series of actions that can be characterized as one large project and are related…" *Id.* at §15168.

Throughout the DEIR, SRWA indicates the project will initially provide up to 30,000 acre-feet per year (AFY) of water, increasing to up to 50,400 AFY by 2040.[28] However, the DEIR is never identified as a programmatic document nor indicates the agency will file a second EIR (or negative declaration) to explore the environmental impacts of Phase 2. Instead, the DEIR notes: (1) the needed facilities for build out "would be phased in, as needed and as determined by the Cities"; (2) provides a list of the needed buildout improvements; and (3) ends the discussion. SRWA DEIR, Ch. 2 at Pgs. 25-26. Because the amount of water TID will provide is increased over 20,000 AFY, it is possible this increase will have significant environmental impacts. The DEIR also fails to indicate how much water will be included in the SWRCB Petition. SRWA DEIR, Ch. 3.17 at Pg. 6. For example, will TID have to go back to the SWRCB before increasing the water provided to Phase 2 numbers? SRWA does not analyze these impacts, nor do they state they will be doing additional environmental reviews prior to increasing the volume of water provided. SRWA fails to address Phase 2 of the project and fails to identify the project as programmatic, thus violating CEQA.

G. The DEIR identifies MID as a responsible party, but SRWA has failed to communicate with MID to ensure they have the opportunity to actively participate in the CEQA process.

Pursuant to CEQA, a "responsible agency" is a public agency that "has the responsibility of carrying out or approving a project." Pub. Resources Code §21069. A responsible agency must actively participate in the CEQA process, review the lead agency's CEQA document, and approve or disapprove of the project. Code Regs. tit. 14 §15050, 15096. A responsible agency's

[28] All locations where the DEIR references two phases of the project can be found as follows: Notice of Availability of an Environmental Impact Report, Pg. 1; Executive Summary, Pg. 1; Ch. 2, Pgs. 1, 13-14, 16, 20, 25, 34; Ch. 3.2, Pg. 15; Ch. 3.4, Pg. 10, 36; Ch. 3.9, Pg. 19-21.

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comments should include "those project activities which are within the agency's area of expertise or which are required to be carried out or approved by the agency or which will be subject to the exercise of powers by the agency." *Id.* at §15096(d).[29]

SRWA, as the lead agency, and TID, as the party submitting the Petition to the SWRCB have not contacted MID.[30] MID and TID share a jointly-held water right under License No. 11058, and to comply with CEQA, MID must determine if the District's jointly-held water rights are impacted. As noted above, in an attempt to determine what SRWA and TID have done regarding the Petition, MID submitted a PRA request to SRWA requesting "all writings that reflect communications with the State Water Resources Control Board, or any other person or entity, concerning TID's Petition to Water Right License Number 11085."

Based on the information SRWA provided, it is clear that the parties have had at least two meetings with the SWRCB regarding the Petition. See Exhibit 11 and 12.[31] An email following the parties' February 21, 2018 meeting with the SWRCB states, "…TID to provide a description of the separation/water sharing arrangement with MID for water rights license 11058…" See Exhibit 13, Pg. 2, Paragraph c. The SWRCB staff must have had questions about MID's water rights interests in regard to the Petition. However, MID staff has not received any information from SRWA or TID that would give the District the opportunity to thoughtfully comment on the project or determine whether our water rights would be impacted.[32] Contrary to the intent of CEQA, SRWA and TID have failed to communicate with MID, as a responsible agency, in order to ensure that MID can provide comments within the District's area of expertise.

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[29] Once a lead agency decides to prepare an EIR, it must send a copy of the NOP to any responsible or trustee agencies involved in the project. Code Regs. tit. 14 §15082(a). Within thirty days of the notice of the NOP, the responsible agency must send a written reply providing the agency with a record showing that the notice was received and specifying "the scope and content of the environmental information which would be germane to the Responsible Agency's statutory responsibilities in connection with the proposed project." *Id.* at §15096(b)(2). The lead agency must then include this information in the DEIR. *Id.* SRWA identified MID as a responsible agency, however MID never received notice of the NOP, and therefore, was unable to provide comments. However, the District noted in its PRA that our "primary focus centers around the treatment of and potential impact to our jointly-held water rights which may be affected by SRWA's project, particularly in light of the current state and federal regulatory climate we and TID are experiencing." See Exhibit 10, pg. 1.

[30] The CEQA guidelines encourage early consultation with interested parties to solve "many potential problems that would arise in more serious forms later in the review process." Code Regs. tit. 14 §15083(a). "Scoping has been found to be an effective way to bring together and resolve the concerns of the affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds." *Id.* at (b).

[31] Exhibit 11 references a meeting "tomorrow" (January 26, 2018) and Exhibit 12 references a meeting "tomorrow" (February 21, 2018).

[32] An email dated January 16, 2018 does note that TID would like to contact MID regarding the Project to "advise them there's no impact to their water rights." Exhibit 14. However, MID was never contacted.

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Mr. Michael Brinton

April 23, 2018

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III. CONCLUSION

MID has a one hundred thirty year track record of actions evidencing innovative, comprehensive, and balanced solutions to ensure a stable water supply for the entire region. As a general principal, MID practices and supports sound conjunctive use water management approaches in order to ensure stabile ground and surface water supplies. Unfortunately, as currently written, MID cannot support this Project, in its present form, as an example of such a balanced solution because of the insufficient information regarding the impacts on the Tuolumne River. Specifically, SRWA's failure to analyze the FERC relicensing and SWRCB permitting and their failure to include meaningful information regarding the SWRCB Petition to MID and TID's jointly-held water right, MID is unable to support the project at this time, but we look forward to working with you to address our concerns. Again, thank you for the opportunity to comment on this Project.

Sincerely,

RONDA LUCAS

GENERAL COUNSEL

cc: Mr. Scott Furgerson, General Manager, Modesto Irrigation District
Mr. Casey Hashimoto, General Manager, Turlock Irrigation District

KG:sm

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Response to Comment H-1

The commenter states that a letter was submitted by MID on April 23, 2018, noting concerns about TID's petition for change with regard to its water right jointly held with MID under License 11058. The commenter explains that, prior to and since the close of the comment period, MID has held meetings and discussions with TID to address those concerns and that, on June 26, 2018, both MID and TID boards executed a Clarification Agreement that provides MID the adequate assurances it has been seeking. As a result, MID's concerns have been satisfactorily addressed and mooted.

SRWA appreciates the efforts by MID and TID to address and clarify the water rights concerns expressed by MID. SRWA appreciates MID's statement of support for the project and agrees to treat the April 23, 2018 letter as moot. No additional responses is necessary.

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Chapter 3
REVISIONS TO THE DEIR

This chapter presents revisions to the DEIR in response to the public review and comment process. Changes made in response to comments are discussed in FEIR Chapter 3 and indicated below. Text added to the DEIR is underlined, and deleted text is shown in ~~strikeout~~. DEIR text changes are presented in the order they would appear in the DEIR; page numbers and line numbers from the DEIR are provided to assist in identifying the location of the revisions.

Executive Summary

On page ES-11, beginning at line 1, the section titled "Responsible and Trustee Agencies" has been revised as follows:

> The following responsible agencies have been identified for the proposed project under CEQA:
>
> - State Water Resources Control Board
> - California Department of Fish and Wildlife
> - City of Ceres
> - City of Turlock
> - Modesto Irrigation District
> - Turlock Irrigation District

Chapter 2, *Project Description*

On page 2-52, beginning at line 9, Section 2.7, "Responsible and Trustee Agencies," has been revised as follows:

> The following responsible agencies have been identified for the proposed project under CEQA:
>
> - State Water Resources Control Board
> - California Department of Fish and Wildlife
> - City of Ceres
> - City of Turlock

- Modesto Irrigation District
- Turlock Irrigation District

Section 3.3, Air Quality

On page 3.3-6, beginning with line 22, the list under "SJVAPCD Rules" has been revised as follows:

- **Rule 2010 – Permits Required** requires an applicant to obtain an Authority to Construct and Permit to Operate for certain types of stationary air pollution sources.
- **Rule 2201 – New and Modified Stationary-Source Review Rule** applies to all new stationary sources and all modifications to existing stationary sources subject to SJVAPCD permit requirements that, after construction, emit or may emit one or more pollutants regulated by the rule.
- **Rule 2280 – Portable Equipment Registration** applies to portable emissions units that may operate in participating districts throughout California. The rule requires applicable portable equipment to be registered.
- **Rule 2550 – Federally Mandated Preconstruction Review for Major Sources of Air Toxics** provides an administrative mechanism for implementing the preconstruction review requirements of 40 CFR part 63.40 through 63.44 at major air toxics sources.
- **Rule 3135 – Dust Control Plan Fees** requires the applicant to submit a fee in addition to a dust control plan. The purpose of this rule is to recover SJVAPCD's cost for reviewing these plans and conducting compliance inspections.
- **Regulation IV – Prohibitions** is a series of rules (4001 to 4905) that detail requirements related to specific equipment, chemicals, industries, and/or processes, to limit emissions from these various sources.
- **Rule 4001 – New Source Performance Standards** applies to new or modified sources of air pollution that must comply with standards, criteria, and requirements for the applicable sources. This incorporates by reference the federal New Source Performance Standards.

The remainder of the list is unchanged.

On page 3.3-13, beginning with line 24, the discussion under "Toxic Air Contaminants" has been revised as follows:

> Additional sources of TACs commonly used at WTP facilities include chlorine and ozone. Chlorine is a commonly used disinfectant in water treatment processes that kills most of the serious disease-causing bacteria in the water (Washington University 1999). It is typically stored as chlorine pellets but may be stored in gaseous form. Potential health effects of chlorine include potent irritation of the eyes, upper respiratory tract, and lungs (USEPA 2016). For workers, chronic (long-term) exposure to chlorine gas has resulted in respiratory effects, including eye and throat irritation and airflow obstruction (USEPA 2016). Ozone (O_3) is a reactive gas used in

water treatment processes for disinfection; removal of water quality issues (color, taste, and odors); reduction of chlorine-related disinfection byproducts; and removal/oxidation of metals, sulfides, and/or organic compounds (Water Research Foundation 2016). In the stratosphere, O_3 exists naturally and shields the earth from harmful incoming ultraviolet radiation; however, at the earth's surface it causes numerous adverse health effects and is a pollutant regulated by state and federal air quality agencies. It is a major component of smog. High concentrations of ground-level O_3 can adversely affect the human respiratory system and aggravate cardiovascular disease and many respiratory ailments (USEPA 2018).

On page 3.3-21, beginning with line 7, the first paragraph has been revised as follows:

Due to the variable nature of construction activity, the generation of TAC emissions in most cases would be temporary, especially considering the short amount of time such equipment is typically operating within an influential distance that would result in the exposure of sensitive receptors to substantial concentrations. Chronic and cancer-related health effects estimated over short periods are uncertain. Cancer potency factors are based on animal lifetime studies or studies of workers with long-term exposure to the carcinogenic agent. <u>The California Office of Environmental Health Hazard Assessment (OEHHA) guidance indicates that an assessment of health risks from air quality emissions on sensitive receptors should be based on proximity of the receptors to the emission source and should be calculated over a 70-year life span.</u> There is considerable uncertainty in trying to evaluate the cancer risk from exposure that would last only a small fraction of a lifetime. Some studies indicate that the dose rate may change the potency of a given dose of a carcinogenic chemical. In others words, a dose delivered over a short period may have a different potency than the same dose delivered over a lifetime (OEHHA 2017). Given that the construction period for the proposed project, which is approximately 15 months for the most extensive single location (the WTP), would not involve the use of substantial quantities of construction equipment, a qualitative analysis was determined to be the appropriate level of detail required to determine the impact of potential TAC emissions.

On page 3.3-22, on line 40, the following typographical error has been corrected:

[…] and, should an ~~SJVPACD~~ <u>SJVAPCD</u> significance threshold be exceeded, […]

On page 3.3-23, on line 24, the following typographical error has been corrected:

[…] and, should an ~~SJVPACD~~ <u>SJVAPCD</u> significance threshold be exceeded, […]

On page 3.3-25, Mitigation Measure AQ-2 has been revised as follows:

Mitigation Measure AQ-2. Prepare Quantitative Analysis of Operation-related Air Quality and Greenhouse Gas Emissions, and Implement Measures to Cap Emissions.

As future project design details are further defined to a level that operational emissions can be estimated and evaluated, and prior to construction, SRWA and the Cities shall prepare a quantitative air quality and GHG analysis for the proposed project**.**

The quantitative operational air quality and GHG analysis shall be based on the types, locations, numbers, and operations of equipment to be used; the amount and distance of material to be transported; and worker trips required. In addition, the analysis shall be based on the projected quantity and frequency of vehicle and truck trips and other activities that generate emissions, including estimates of water treatment plant operations of permitted and unpermitted sources including GHG emissions, fugitive emissions of VOCs, emissions of TACs, and particulate matter. The analysis shall determine whether the quantified emissions of the project's operational activities exceed the SJVAPCD's permitted and unpermitted air quality thresholds (see the SJVAPCD thresholds presented in Table 3.3-3) or the 10,000 MT CO_2e per year threshold for industrial sources.

If the analysis determines that operational emissions would exceed the air quality or GHG significance thresholds, then SRWA shall identify and implement appropriate mitigation to the extent feasible. As a performance standard, the mitigation measures shall demonstrate that off-road equipment (greater than 50 hp) and material hauling vehicles used during project operation (i.e., owned, leased, and subcontracted vehicles) achieve emission reductions to the extent feasible. Any on-road equipment and material hauling vehicles shall achieve at least a project-wide fleet average equivalent to a Tier III engine for both NO_X and PM. Any off-road e~~E~~quipment and material hauling vehicles shall achieve at least a project-wide fleet average of 20 percent NO_X reduction, 45 percent DPM reduction, and equal the GHG emissions compared to the most recent CARB fleet average up to a Tier IV–equivalent engine. This can also be achieved by replacing existing equipment with more efficient and lower emitting equipment (e.g., new emergency generators). Examples of appropriate mitigation may include, but not be limited to, alternative fueled equipment, phasing of material hauling trips, use of chemical additives or after-market devices to reduce emissions on existing equipment, use of electrically powered equipment, reduction in total equipment hours, use of newer equipment models, use of alternative fuels, engine retrofit technology, adopting a vehicle idling policy requiring all vehicles to adhere to a 5-minute idling policy, and sourcing of material from local sources. For unpermitted sources in particular, fugitive VOC and particulate matter potential emission reduction options include use of vegetative filtration (i.e., through tree planting) around areas of fugitive emissions, and any other measures deemed appropriate. For permitted sources, appropriate pollution control devices and/or limitations on process design and throughput will be enacted, as determined during the new source review permitting process with SJVAPCD. This will include appropriate mitigation for both criteria and TAC emissions.

In addition, for GHG emissions the following measures will be considered and implemented to the extent feasible: implement energy efficiency improvements of pumps through design, construction, and refurbishment methods; investigate and implement opportunities for renewable energy development at the facilities subject to safety, emergency, and environmental considerations; and implement a construction worker commute strategy to minimize GHG emissions from workers commuting to the site. This may include encouraging use of carpools, vanpools, and public transportation.

On page 3.3-26, beginning with line 28, Impact AQ-4 has been revised as follows:

As described in Impact AQ-2, construction ~~and operations~~ associated with the proposed project would potentially generate PM10 and PM2.5 contained in fugitive dust, and both construction and operations would potentially generate DPM from heavy equipment that would affect sensitive receptors. Furthermore, operational activities would include the use of fossil-fuel–powered engines for emergency generators and the use of chemicals for water treatment processes, including chlorine and O_3, that may generate (or be considered) TACs at the proposed WTP location. Maintenance-related activities may generate PM_{10} and $PM_{2.5}$ from fossil-fueled vehicles or equipment. The proximity measurements of sensitive receptors to the proposed project's locations are provided in Section 3.3.4, "Sensitive Receptors," and were considered in this qualitative evaluation of the project's potential to expose sensitive receptors to substantial pollutant concentrations during construction, operation, or maintenance activities.

The control of particulates and fugitive dust is discussed in Impact AQ-2, and SJVAPCD Regulation VIII would be implemented during construction to minimize exposure to fugitive dust. As identified in Impact AQ-2, potential construction-related TAC emissions would be reduced to the extent feasible through implementation of Mitigation Measure AQ-1, which would require construction emission reductions through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. In addition, potential construction-related TAC emissions at any given location of the proposed project would be temporary in nature—for pipeline installation, construction equipment would progress at approximately 200-400 feet per day, or 1-2 days adjacent to a particular receptor—and even the nearest sensitive receptors would not be substantially affected during that brief period. Furthermore, given that (1) the construction period for the proposed project, which is approximately 15 months for the most extensive single location (the WTP), would not involve the use of substantial quantities of construction equipment, and (2) the distance between the WTP site and sensitive receptors would be at least 100-140 feet from the edge of the WTP site and 740-1,800 feet from the center of the WTP site, the potential for the project to expose sensitive receptors to substantial pollutant concentrations during construction activities would be less than significant.

Permanent (i.e., long-term, stationary) sources of emissions would occur at four project locations: the WTP, the infiltration gallery/wet well/raw water pump station site, and the Ceres and Turlock terminal tank sites. At the WTP, permanent sources would be pumps, emergency generators, and chemicals involved in the treatment process, which may include chlorine (either pellets or gas) and ozone. The Ceres and Turlock terminal tank facilities, and the infiltration gallery/wet well/raw water pump station site would have pumps and emergency generators. Maintenance-related vehicle emissions of TACs that occur at these locations would be short term and infrequent. Based on the information in Section 3.3.4, the nearest sensitive receptors would be 100-140 feet from the edge of the WTP site, at least 500 feet from the Ceres and Turlock terminal tank sites, and approximately 500-1,200 feet from the infiltration gallery/wet well/raw water pump station site.

Implementation of Mitigation Measures~~ AQ-1 and~~ AQ-2 would reduce the amount of ~~construction and~~ operational emissions to the extent feasible through the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available. The proposed project would be designed and operated in compliance with all SJVAPCD rules and regulations, including those that are specifically targeted to permitted sources and/or TACs, such as Rules 2010, 2201, 2280, 2550, and those from Regulation IV, as summarized in "SJVAPCD Rules" in Section 3.3.2, "Regulatory Setting" above. Compliance with these rules and regulations would include obtaining appropriate permits, such as an Authority to Construct permit. During the SJVAPCD new source review permitting process for the project, operational sources of TACs would be quantitatively evaluated to ensure that they ~~will~~ would not result in health impacts above the applicable thresholds listed in the risk management policy of 20 in a million cancer risk and an acute and/or chronic hazard index of 1.0. As described in Mitigation Measure AQ-2, the project's permitted sources would be mitigated, if necessary, by implementation of appropriate pollution control devices and/or limitations on process design and throughput as determined during the new source review permitting process with SJVAPCD. This would include appropriate mitigation for both criteria pollutant and TAC emissions.

In conclusion, t~~T~~hese construction and operational practices described above, along with the SJVAPCD permitting process, would ensure that health effects from the proposed project are minimized for nearby sensitive receptors. In addition, the distances between sensitive receptors and these sources would further minimize any impacts. Thus, the proposed project would not pose long-term or substantial health risks to nearby residents and workers in the vicinity of the project sites. The impact on sensitive receptors from fugitive dust and other pollutants would be less than significant with mitigation.

Section 3.4, Biological Resources

On page 3.4-11, beginning with line 23, the final paragraph under "Salmonid Habitat" has been revised as follows:

Water temperature is an important factor controlling egg incubation rates, as well as juvenile and adult growth rates. Egg incubation requires temperatures less than 55 degrees Fahrenheit (°F) (13 degrees Celsius [°C]), temperatures suitable for early juvenile rearing need to remain below 61°F, and the smoltification process is inhibited for Chinook at temperatures above 59°F and for steelhead above 57°F (California Department of Fish and Game [CDFG] 2010 ~~Stillwater Sciences 2013b~~). Spawning salmon are assumed to avoid locations with a water temperature above 60°F (16°C). Warm water temperatures can decrease dissolved oxygen in the water, can act as a barrier to migration, decrease egg hatchability, decrease the survival of fry once they emerge from the eggs, and impair or reverse the physiological function of smoltification (~~California Department of Fish and Game [~~CDFG~~]~~ 2010).

On page 3.4-36, beginning with line 25, the second full paragraph has been revised as follows to correct a mathematical error:

During infiltration gallery operation in Phase 1, TID would release 24 cfs in addition to the releases required by the 1996 FSA to meet FERC-mandated minimum flows. The result would be a year-round release (and corresponding downstream diversion) of up to 24 cfs from La Grange Dam for domestic drinking water purposes that could increase baseline flows during the migration and spawning season (from October to May) from the existing 150-300 cfs to ~~150~~ 174-324 cfs (Table 3.4-1). From June through September, existing flows of 50-250 cfs could increase to ~~50~~ 74-274 cfs.

On page 3.4-42, beginning with line 9, Mitigation Measure BIO-6 has been revised as follows:

Mitigation Measure BIO-6. Conduct Nesting Raptor Surveys and Establish Buffers to Avoid or Minimize Impacts on Swainson's Hawk and White-tailed Kite.

If construction occurs between February 1 and August 31, SRWA or its contractor(s) shall require that a qualified biologist conduct surveys no more than 10 days before the start of construction for Swainson's Hawk and White-tailed Kite in accordance with the recommended timing and methodology developed by the Swainson's Hawk Technical Advisory Committee (2000 or most recent). Surveys will cover a minimum ~~500-foot~~ ½-mile radius around the construction area. If nesting Swainson's Hawk or White-tailed Kite are detected, buffers shall be established around active nests that are sufficient to ensure that breeding is not likely to be disrupted or adversely affected by construction. Buffers around active nests will be ~~500-foot~~ ½ mile unless a qualified biologist determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on nesting raptors. Factors to be considered when determining buffer size include the presence of natural buffers provided by vegetation or topography, nest height, locations of foraging territory, and baseline levels of noise and human activity. Buffers shall be maintained until a qualified biologist has determined that the young have fledged and are no longer reliant on the nest or parental care for survival.

On page 3.4-43, beginning with line 1, Mitigation Measure BIO-7 has been revised as follows:

Mitigation Measure BIO-7. Conduct Preconstruction Surveys for Burrowing Owls, and Avoid or Minimize Impacts

SRWA or its contractor(s) shall require that a qualified biologist conduct a preconstruction survey in all accessible areas of suitable Burrowing Owl habitat within 500 feet of construction activity. Surveys shall be conducted within 14 days before the start of construction activity in accordance with protocols established in the Staff Report on Burrowing Owl Mitigation (CDFG 2012 or current version). If no Burrowing Owls or signs of Burrowing Owls are detected during the survey, no further mitigation shall be required.

If a preconstruction survey detects occupied burrows, a buffer shall be established, within which no ground-disturbing or vegetation removal activity is permissible. In accordance with guidance provided by CDFW, buffers around occupied burrows shall be a minimum of 656 feet (200 meters) during the breeding season (February 1 through August 31), and 160 feet (100 meters) during the non-breeding season, unless a qualified biologist determines, based on a site-specific evaluation, that a smaller buffer is sufficient to avoid impacts on the Burrowing Owl burrow.

This protected area will remain in effect until the end of the Burrowing Owl nesting season (February 1 through August 31) or until CDFW approves a passive relocation plan. Burrowing Owls will be relocated from burrows only during the ~~Burrowing Owl nesting~~ non-breeding season.

If occupied burrows are to be relocated, a passive relocation plan shall be developed by a qualified biologist and approved by CDFW prior to implementation. SRWA shall enhance or create burrows in appropriate habitat at a 1:1 ratio (burrows destroyed to burrows enhanced or created) one week prior to implementation of passive relocation techniques. If burrowing owl habitat enhancement or creation takes place, SRWA shall develop and implement a monitoring and management plan to assess the effectiveness of the mitigation. The plan shall be subject to the approval of CDFW.

On page 3.4-45, beginning with line 35, Mitigation Measure BIO-10 has been revised as follows:

Mitigation Measure BIO-10. Implement Revegetation in Riparian Habitat and Sensitive Natural Communities Disturbed during Construction.

SRWA or its contractor(s) shall require that, upon completion of construction, disturbed soils within areas of native vegetation shall be revegetated with site-appropriate native species to limit subsequent encroachment of non-native weeds. Any plants of native woody species of 4 inches dbh or greater that are damaged or removed as a result of construction activity shall be replaced at a 1:1 ratio; this ratio will increase to 3:1 for nesting trees and native trees of 24 inches dbh and greater. Replaced woody plant species shall be maintained and monitored to ensure a minimum of 65 percent survival of woody plantings after 3 years.

Section 3.17, Utilities and Service Systems

On page 3.17-9, beginning with line 15, Impact UTL-3 has been revised as follows:

While no new entitlements are needed, TID's existing water right (License ~~11085~~ 11058) would 15 need to be amended to accommodate the changes contemplated under the proposed project.

Chapter 7, *References*

The following references cited in the revisions to Section 3.3, *Air Quality*, have been added to Chapter 7:

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Chapter 4
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Chapter 5
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None cited.

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