

**B. COMMENTS RECEIVED IN RESPONSES TO NOTICE OF
PREPARATION AND AT SCOPING MEETINGS**

Memorandum

To: Ms. Delores Brown
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Date: February 24, 2003

Place: Sacramento

Phone: (916) 654-0321

From: **Department of Food and Agriculture** Steve Shaffer, Director
Office of Agricultural and Environmental Stewardship

Subject: Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) on the Monterey Amendment to the State Water Project (SWP) – **SCH #2003011118**

The California Department of Food and Agriculture (CDFA) has reviewed the NOP for the proposed Monterey Amendments to the SWP. CDFA's mission is to protect and promote California agriculture and the natural resources upon which agriculture depends. Towards this end, we offer the following suggestions for the DEIR.

The Monterey Amendment to the SWP contracts reflects the principles agreed to by the Department of Water Resources (DWR) and SWP contractors in 1994. In 1995, the DEIR that was prepared for the Amendment was litigated, leading to the preparation of the DEIR at hand.

The subject DEIR will address the environmental effects of adopting the Monterey and other SWP contract amendments. Among other things, the Amendment would: (1) result in a new method for the allocation of SWP water supplies (i.e., allocation in proportion to each contractor's Table A contract amounts); (2) eliminate Article 18(b) that makes special provision for allocation reductions in the event of permanent shortages; (3) cause the permanent retirement and transfer of 45,000 acre-feet, and make available for permanent sale to urban contracts of 130,000 acre-feet, of agricultural Table A contract water; (4) enable voluntary water marketing and groundwater banking; and, (5) issue guidelines on permanent transfers of Table A water.

Overall, the Monterey Amendment has the potential for significant positive impacts on agricultural water users. With its well-defined rules of allocation, agricultural water users will benefit from a greater degree of water reliability from year to year. At the same time, the Amendment could have long-term adverse impacts on agriculture from water transfers away from agricultural and to urban users, both north and south of the Delta.

Indirect and Growth-Inducing Impacts

The Amendment will give conveyance priority at the Banks Pumping Plant to SWP contractors, including water transferred to SWP contractors from non-SWP sources. An example is the transfer of water from Northern California agricultural water districts by the Metropolitan Water District of Southern California to help offset the loss of Colorado River water. The same pumping priority rules could result in non-SWP urban water users resorting to water transfers from agricultural lands south of the Delta if Northern California water is unavailable due to lack of pumping capacity at the Banks Pumping Plant. Therefore, one indirect impact of the project could be the temporary or permanent loss of agricultural production capacity due to the greater opportunity (in one case), and necessity (in another), for water transfer away from agricultural water users, both north and south of the Delta. We recommend that this potential impact be addressed in the DEIR as both an indirect and growth-inducing environmental impact.

Cumulative Impacts

Currently there are no statewide policies or guidance on the temporary or permanent transfer of agricultural water to non-agricultural uses. The Monterey Amendment will enable greater flexibility for water transfers among agricultural water uses as well as from agricultural users to municipal and industrial users. The proposed settlement would require the issuance of guidelines on permanent transfers. However, transfers facilitated by the Monterey Agreement will be only one arena within which transfers are, or will be occurring. For example, the CALFED Bay-Delta Program's Environmental Water Account has as one of its purposes assisting in the transfer of water to help match water needs and supplies. The cumulative impact of water transfers being conducted throughout California's water landscape needs to be addressed to understand the full impact of this project on agricultural water and land resources. We recommend that the DEIR assess past permanent, current and foreseeable water transfers involving agricultural water users. The analysis should assess how, in aggregate, the transfers could affect production capacity and flexibility (range of crops that can be grown in response to market demands) of California agriculture. Also, among the cumulative impacts on agricultural land and water that are analyzed should be the potential concurrent loss of related habitat. For example, the idling of rice land in Northern California will not only result in the loss of production capacity, and the potential loss of jobs and local economic stimuli, but also of wildlife habitat, such as for migratory waterfowl and the Giant Garter Snake.

Alternatives

As noted, among of Monterey Amendment's agreements is the elimination of the permanent shortage provision (Article 18(b)). We understand that this provision may be reintroduced in some form or another as a project alternative or mitigation measure. If this occurs, we recommend that the impacts on agricultural land and water resources be thoroughly analyzed from the potential implementation of a phase down, over time, of agricultural water deliveries under likely shortage scenarios.

Mitigation Measures

The proposed settlement agreement calls for guidelines on permanent Table A Transfers. These guidelines may serve as an opportunity to partially mitigate some of the impacts mentioned above. For example, the guidelines could require that proposed transfers be contingent on the conduct of a cumulative environmental and economic impact analysis. The guidelines could also set forth transfer priorities based on the significance of affected agricultural lands, perhaps as indicated by USDA land capability classifications, the Department of Conservation's Important Farmland Series map designations and other factors. We recommend that these and other mitigation measures be considered in the DEIR.

Thank you for the opportunity to review and comment on the NOP. If you have questions on our comments, please feel free to contact me at (916) 657-4956. Also, please feel free to contact me during the preparation of the DEIR for assistance in responding to our concerns.



48 pages
Please call if
there is a problem
Carolee Krieger
(805) 969-0824

Carolee K. Krieger
president

Arve R. Sjøvold
vice president

Dorothy Green
secretary

Yvon Chouinard
director

Harrison C. (Hap) Dunning
director

Joan H. Wells
director

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

March 27, 2003

Re: Scoping comments for the new court mandated "Monterey Plus" EIR

Dear Ms. Brown:

We would like to take this opportunity to submit scoping comments on the new court mandated "Monterey Plus" EIR. We understand that the PCL v DWR Monterey case has reached a settlement and are aware of the terms of that settlement. It is very critical to us that DWR use accurate baseline information based on the "whole of the action" and that the results are clearly understood by and readily available to the public.

Environmental Baseline

As required by the settlement, the EIR must study both the pre-Monterey and present conditions. It is essential that a full analysis of Articles 18(a) and 18(b) be done. Article 21 dealing with surplus water needs to be considered in relation to the Article 18 analysis. As the settlement further provides, a full range of hydrologic conditions must be analyzed in regard to reliability, including the relevant historical period 1991-2002 and the last extended drought from 1987-1992.

No Project Alternative

CEQA requires that the no project alternative be analyzed. As the settlement points out, this requires DWR in its new EIR to fully study the consequences of enforcing the terms of pre-Monterey water supply contracts prior to eliminating them.

Assessment of SWP Reliability

The settlement requires DWR to publish bi-yearly SWP reliability reports. We are aware of the August 2002 Draft SWP Delivery Reliability Report and comments made about that report. We would like to incorporate the comments of Dennis O'Connor, Robert Wilkinson, Carolee Krieger and Arve Sjøvold on this draft reliability report here in our scoping comments and have attached them to this letter so that they will be included in the "Monterey Plus" EIR scoping record. We agree with and share the concerns of the above named commenters.

Kern Fan Element

The new EIR must fully address all of the consequences of the proposed transfer of the Kern Fan Element from DWR to the Kern County Water Agency and its subsequent transfer to the Kern Water Bank Authority. Included in these consequences must be the impact on the SWP from the loss of this facility to improve the reliability of the entire project for all of the contractors. There also must be an analysis of the legal consequences of turning over state property to a joint powers agency that is 48% owned by a private corporation.

Water Transfers

Water transfers are recognized as a constructive approach to water shortages but it is clear that no one benefits if the transfers are of the "paper water" type. Reliability and water transfers are intricately linked and must be analyzed as such. The original 1995 Monterey Amendments allowed any willing seller to sell to any willing buyer without DWR oversight. This must be analyzed for its legal implications in regards to the Burns Porter Act and financial implications to the rate payers as well as the full environmental and social consequences on transferring parties and all affected third parties.

Growth-Inducing Impacts

It is very important that the potential growth-inducing impacts of the new Monterey Plus amendments be analyzed. The court was very clear in recognizing that land-use decisions are dependent on water availability. Land-use planners and the public need to know the growth-inducing impacts of transfers by the contractors and the impacts of sales from the Kern Water Bank.

We would like to incorporate in our comments, the comments submitted by Roger Moore and Antonio Rossmann as well as those submitted by Robert Wilkinson.

Sincerely,


Joan Wells

Attachments: Comments on SWP Delivery Reliability Report, 2002 Draft by:
Dennis O'Connor
Robert Wilkinson
Carolee Krieger
Arve Sjovold

Sent by email to delores@water.ca.gov and by U.S. Mail

February 24, 2003

Delores Brown, Chief
Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Subject: Scoping Comments on the Monterey Amendment to the State Water Project Contracts et al Notice of Preparation of Environmental Impact Report (NOP)

Dear Ms. Brown:

Contra Costa Water District (CCWD or the District) has reviewed the Notice of Preparation for the Department of Water Resources' (DWR) Environmental Impact Report for the "Monterey Amendment to the State Water Project contracts (including Kern Water Bank Transfer) and Other contract Amendments and Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League v. Department of Water Resources" (Project), released on January 24, 2003. CCWD is hereby providing its scoping comments on the Project.

CCWD is a publicly owned water supply agency serving approximately 450,000 people in central and eastern Contra Costa County and has a vital interest in protecting the quality and reliability of its water supply. A description of CCWD's existing water system and new facilities is attached (Attachment A). CCWD currently diverts its drinking water supply from intakes at Rock Slough, Old River south of Highway 4, and Mallard Slough. CCWD's drinking water supplies are vulnerable to degradation in San Joaquin River water quality. CCWD is concerned about elevated contaminant concentrations such as salt, total organic carbon (TOC), and pathogens at its Delta drinking water intakes. CCWD's service area is within or conveniently served from the legal Delta, and is therefore interested in the Delta Protection Act in particular and other statutes generally known as "Area of Origin" statutes.

CCWD has three specific scoping comments it anticipates seeing discussed in the Environmental Impact Report for the Project (EIR).

Water Quality and Water Supply Impacts

The EIR should include analysis of water quality and water supply impacts on CCWD's three Delta intakes. CCWD recommends using a water quality significance criteria of 5 mg/L or 5% chlorides increase, whichever is greater, as an indicator of whether a change might be an impact (changes greater than those levels found in the analyses should be examined further).

Fairfield, Benicia and Vacaville Water Rights Settlement

The EIR analysis of water quality and water supply impacts should include the implementation of settlement agreements relating to "Area of Origin" claims, such as the recent Fairfield, Benicia and Vacaville Water Rights Settlement.

Delta Protection Act and Area of Origin Statutes

The EIR should disclose how the Project will address the rights afforded other entities under the Delta Protection Act and "Area of Origin" statutes. This interpretation should not result in redirected impacts to other parties.

CCWD looks forward to reviewing the EIR prepared for this Project. If you have any questions regarding these comments, please contact Lisa Holm at (925) 688-8106, lholtm@ccwater.com or myself at (925) 688-8187.

Sincerely,

Richard A. Denton
Water Resources Manager

LMH

Attachments

A. CCWD operations and facilities

SWP Contracts File

Attachment A CCWD Operations and Facilities

The Contra Costa Water District (“CCWD”) serves approximately 450,000 people throughout north, central and east Contra Costa County. Its clients also include 10 major industries, 36 smaller industries and businesses, and 50 agricultural users. CCWD operates raw water distribution facilities, water treatment plants, and treated water distribution facilities. CCWD supplies raw and treated water to Antioch, Concord, Diablo Water District (serving Oakley), Pittsburg, Southern California Water Company (serving Bay Point), Martinez, and parts of Pleasant Hill and Walnut Creek.

CCWD's treated water service area encompasses all or part of the cities of Concord, Clayton, Clyde, Pleasant Hill, Walnut Creek, Martinez, and Port Costa. Treated water for this service area is provided from the District's Bollman Water Treatment Plant in Concord. The 75 MGD Bollman facility uses chlorination for pre-oxidation, chlorination and intermediate ozonation for disinfection and chloramine for disinfection residuals. CCWD also supplies treated water to the Diablo Water District (“DWD”), which serves customers in Oakley from the Randall-Bold Water Treatment Plant, jointly owned by CCWD and DWD. This treatment plant is a 40 MGD direct/deep-bed filtration plant and utilizes both pre- and post-ozonation to provide a high quality drinking water to the customers in its service area.

CCWD is entirely dependent on the Delta for its water supply. The Contra Costa Canal and the recently completed Los Vaqueros Project make up CCWD's principal water supply and delivery system. CCWD diverts unregulated flows and regulated flows from storage releases from Shasta, Folsom, and Clair Engle reservoirs into the Sacramento River as a contractor of the United States Bureau of Reclamation's (“Reclamation”) Central Valley Project (“CVP”). Under Water Service Contract I75r-3401 (amended) with Reclamation, CCWD can divert and re-divert up to 195,000 acre-feet annually (“AFA”) of water from Rock Slough and the new Old River intake. Currently, CCWD uses between 125,000 and 140,000 AFA. Under CCWD's Water Rights Permit No. 20749, CCWD can divert up to 95,980 AFA of excess Delta flows to Los Vaqueros Reservoir for storage between November 1 of each year and June 30 of the succeeding year. CCWD can also divert up to 26,780 AFA of water from Mallard Slough under its own water rights (Water Rights License No.3167 and Permit No.19856). The City of Antioch and Gaylord Container, both customers of the District, also have water rights permits to divert water from the Delta.

CCWD has obtained its water supply from the Delta since 1940. Delta water is subject to large variations in salinity and mineral concentrations. CCWD and its customers' water supply from the Delta is also vulnerable to any man-made or natural sources that could degrade Delta water quality. Degradation in water quality is objectionable to many CCWD customers, costly to all residential and industrial users, and a health risk for some individuals. The most recent federal drinking water regulations promulgated in December 1998 impose stringent limits on

disinfection by-products in treated water. To ensure that the standards for the principle disinfection by-products that are currently regulated (maximum concentration limits for bromate, total trihalomethanes, and haloacetic acids) are met, low bromide and organic carbon levels in the source water are critical. Bromide level is directly proportional to the chloride concentration in Delta water.

Contra Costa Water District is committed to supplying its customers with the highest quality water practicable and providing all reasonable protection of the supply from any known or potential source of hazardous contamination. CCWD Resolution No. 88-45 states in part that:

"CCWD is committed to reducing the concentration of sodium and chloride in the District's water, thereby reducing household and landscape irrigation concerns and industrial and manufacturing costs caused by the fluctuating sodium and chloride level of CCWD's Delta source...."

In May 1987, CCWD's Board of Directors adopted water quality objectives for water distributed within its service area. The acceptable concentration levels for sodium and chloride were established at 50 milligrams per liter (mg/l) and 65 mg/l, respectively. In 1988, the voter-constituents of CCWD approved the issuance of bonds to finance a \$450 million water quality and reliability project known as the Los Vaqueros Project. The primary purposes of the Los Vaqueros Project are to improve the quality of water supplied to CCWD customers and minimize seasonal quality changes, and to improve the reliability of the emergency water supply available to CCWD. The Los Vaqueros Project consists of a reservoir with 100,000 acre-feet of storage, a new point of diversion (at Old River south of the State Highway 4 crossing) which operates in conjunction with the current Rock Slough diversion point, water conveyance and delivery facilities, pumping plants, and other facilities.

On June 2, 1994, the State Water Resources Control Board issued Decision 1629, which gives CCWD additional rights to divert and store water for beneficial uses. The State Board subsequently issued Water Rights Permits No. 20749 and 20750 for filling Los Vaqueros Reservoir from the new intake at Old River near Highway 4 and diversion and storage of the water of Kellogg Creek. These rights are in addition to the contractual rights to divert and store water furnished through the CVP. Construction of the reservoir began in September 1994 and was completed in January 1998. Diversion from the Old River intake for delivery to CCWD's service area began in the summer of 1997. Under Water Rights Permit No. 20749, CCWD can divert up to 95,980 AFA of excess Delta flows to Los Vaqueros Reservoir for storage between November 1 of each year and June 30 of the succeeding year. On January 28, 1999, the Los Vaqueros Reservoir was filled to 100,000 acre-feet for the first time. In February 1999, CCWD released water from the reservoir for use in the District's service area for the first time. Releases from the reservoir are also scheduled to provide net benefits to the Delta ecosystem by allowing CCWD to cease all diversions during fish-sensitive periods.

Mr. Jason Phillips, Project Manager
Comments on the San Luis Drainage Feature Re-evaluation and EIS
November 30, 2001
Page B-3 of 3

The key to successful performance of the Los Vaqueros Project is the District's ability to fill and continue to refill the reservoir from Old River with high quality water, and to use that water for blending when salinity at the District's Delta intakes exceed the 65 mg/L chloride goal. Any increase in Delta salinity caused by new Bay-Delta projects will increase the demand on blending water from the reservoir while at the same time reducing the availability of high quality water for refilling. The District and its 450,000 customers will be impacted through higher pumping costs to replace the extra blending water that is released, through additional treatment costs, and through increased corrosion and health effects of delivering higher salinity water.

Mr. Jason Phillips, Project Manager
Comments on the San Luis Drainage Feature Re-evaluation and EIS
November 30, 2001
Page A-1 of 2

March 28, 2003

Ms. Delores Brown, Chief
Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Re: Notice of Preparation of EIR for the Monterey Amendment to the SWP Contracts

Dear Ms. Brown:

The East Bay Municipal Utility District (EBMUD or District appreciates the opportunity to comment on the proposed Draft Environmental Impact Report (DEIR) for the proposed Amendments to the State Water Project contracts to implement the Settlement Agreement reached in the *Planning and Conservation League v Department of Water Resources* litigation). EBMUD is a large west coast retail water supplier, serving over 1.3 million customers in portions of Alameda and Contra Costa Counties. The District's primary source of water is from the Mokelumne River, and the District also has a contract with the U.S. Bureau of Reclamation for a supplemental supply of water from the Central Valley Project (CVP).

As a CVP contractor, EBMUD continues to have a keen interest in the inter-relationship between the CVP and the State Water Project. The District has also participated in several CALFED Bay-Delta stakeholder processes, and continues to closely monitor programs, projects and emerging rules that affect Bay-Delta operations. With this perspective, EBMUD offers the following comments.

The relationship between CALFED's 8500 cfs / South Delta Improvement Program DEIR and the Monterey Agreement DEIR should be clearly described in the pending EIRs. It is the District's understanding that the 8500 cfs project will result in firmer SWP deliveries, which appears relevant to the underlying Planning and Conservation League (PCL) lawsuit. Revised operating rules are also part of the 8500 cfs efforts, which again seems relevant to the "firmness" of deliveries. EBMUD's interest in the 8500 cfs project relates to the impacts such a project could have on Mokelumne River fisheries and the need for adequate mitigation for any impacts.

The DEIR must also clarify the terms and conditions that would be imposed for transporting non-SWP supplies through the Delta, and the potential fishery impacts and proposed mitigation measures to minimize or eliminate any impacts. This year, the Metropolitan Water District of Southern California may move up to 200,000 AF of non-SWP water through the Delta. The pending DEIR should clearly state that any such transfers require separate environmental documentation and are not covered by the Monterey Agreement DEIR.

Ms. Delores Brown

March 27, 2003

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Under CEQA, the DEIR must address a project as a whole. With respect to the Kern Water Bank, the DEIR needs to address the permit changes required for banking of DWR's surface water in groundwater basins, in accordance with the Water Transfer Workgroup's final report to the State Water Resources Control Board:

.... the SWRCB's practice has not been entirely consistent with respect to whether a change order is required for banking of water within the service area of large water wholesalers such as the State Water Project, Metropolitan Water District, or the Central Valley Project. Since their permits allow a wide variety of beneficial uses throughout their service territory, SWRCB practice has been to not require a change order. Still, unless groundwater banking is expressly authorized in the permit, it would be prudent to obtain a change order in order to assure that the project will be eligible for a permanent license. (p. 34, *Water Transfer Issues in California*, June 2002, emphasis added)

The SWRCB's permitting process is one of the ways legal users of water, such as the USBR, can access the impacts on the fishery resource and water supply availability and timing changes to their CVP contractors.

Specific to that last point, the DEIR must identify how operation of the Kern Water Bank would affect deliveries to Central Valley Project contractors. Storage of water in the Bank in wetter years may make less water available to SWP and CVP contractors in later years.

If you have any questions, please call Mr. Alan Thompson of my staff at 510/287-1185.

Very truly yours,

Gary W. Darling, Manager
Water Supply Improvements Division

GWD:ALT:alt

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Ms. Delores Brown

March 27, 2003

Page 3

Bc: Records Management

JBL Chono

Randy Kanouse

Lena Tam

Robert Helwick

WSID File U-CVP-05



ENVIRONMENTAL DEFENSE

finding the ways that work

March 27, 2003

Ms. Delores Brown, Chief
Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Subject: Scoping Comments for EIR for Monterey Amendment to the State Water Project Contracts (including Kern Water Bank Transfer) and Other Contract Amendments and Associated Actions, as Part of a Proposed Settlement¹

Dear Ms. Brown:

Environmental Defense appreciates the opportunity to provide comments on the Monterey Plus EIR. While the proposed contract amendments would provide significant benefit to urban and agricultural contractors through improved supply allocation and financing provisions of the State Water Project (SWP), there is no apparent benefit to the environment. Environmental Defense is extremely concerned about the existing tentative state of environmental assurances in place to protect and restore fishery populations in the San Francisco Bay-Delta and Central Valley Watershed and believes that the SWP has a responsibility to provide and guarantee such assurances. Therefore, Environmental Defense asks that the Monterey Plus EIR include one or more alternatives that would incorporate fishery protection measures, beyond those required in the 1995 Water Quality Control Plan.

Environmental Defense has been interested in the Monterey Agreement process from the beginning, but was precluded from participation in the discussions that led to the agreement. We did express, however, our views on SWP financing and the Monterey agreement twice before State legislative committees at the time of the agreement. In August 1994, John Krautkraemer presented *Options for Financing California's Water Projects*², and in 1995, David Yardas presented *The Monterey Agreement Principles: Issues, Concerns, and Opportunities*³ (both are attached).

¹ The Shorthand "Monterey Plus" will hereinafter be used in lieu of the lengthy title.

² Testimony of Environmental Defense Fund on the "Options for Financing California's Water Project", John Krautkraemer, Senate Committee on Agriculture and Water Resources, August 1, 1994.

³ Testimony of Environmental Defense Fund on "The Monterey Agreement Principals: Issues, Concerns, and Opportunities", David Yardas, Joint Hearing of Senate Committee on Agriculture and Water Resources and Assembly Committee on Water Parks and Wildlife, November 17, 1995.

The views we expressed in 1994-1995 have not changed. Environmental Defense still believes that a significant portion of the Monterey Agreement's financial benefits should be dedicated to the environment that has been greatly impacted by SWP development and operations. These funds could be used to buy water for fishery protection and restoration, either by augmenting streamflow in harmony with fishery needs or by reducing Delta exports, when entrainment reaches high levels. We also believe that it would be appropriate to dedicate some of the projects entitlement to the environment, which could also be used directly to increase streamflow or to reduce exports.

These two key mechanisms are, of course, presently used by CALFED's Environmental Water Account (EWA) to accommodate operational flexibility to protect fisheries. The key difference, of course, is that the EWA's current funding is an awkward combination of bond funding and legislative appropriations and its long-term funding is entirely uncertain. If this operational flexibility were instead built into the operations of the SWP, two problems would be solved. First, the certainty of long-term funding would no longer be an issue. And secondly, the contractors who benefit from the SWP would directly pay for their share of mitigation, rather than shifting that burden onto the taxpayer.

Environmental Defense firmly believes it is imperative to increase the operational flexibility of major water projects to protect and restore fisheries and ecosystem health in the San Francisco Bay-Delta estuary and Central Valley watershed. We are not convinced, however, that the EWA, as it exists today, is an appropriate long-term solution in this ongoing effort. In particular, the looming South Delta Improvements Program is expected to place an even greater burden on EWA assets. Instead, we believe that similar fisheries and ecosystem objectives can be met more appropriately through operational flexibility and user fees provided by the contractors who directly benefit from the SWP. To this end, we ask that the Monterey Plus EIR include alternatives that significantly increase project flexibility to accommodate environmental objectives.

Thank you for considering these views.

Sincerely,



Spreck Rosekrans
Senior Analyst



Friends of the Santa Clara River

660 Randy Drive Newbury Park, California 91320 (805) 498 - 4323

3-28-03

Ms. Dolores Brown
Chief, Mitigation and Restoration Branch
Dept. of Water Resources
3251 S Street
Sacramento, Ca. 95816

Re: Notice of Preparation for Monterey Agreement EIR

Dear Ms. Brown:

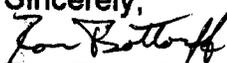
FSCR have been very concerned about the over-statement of state water supplies because of the impact of this mis-information on local surface flows. When SWP water is over-stated, there is no place to go during a drought except to the local ground water. In the case of the Santa Clara River, surface flows are already disappearing because the river is being severely over-drafted. This is causing a loss of habitat and degradation of the water quality (increased TDS, chloride and nitrate levels, see recent report from the Regional Water Quality Board. We are currently litigating the Santa Clarita Regional Urban Water Management Plan because it over-states SWP supplies.

Evaluating SWP supply should include thorough analysis of article 18(a), 18(b) and surplus water (article 21). We hope that this process will help put a stop to the mis-information disseminated locally in environmental documents on this issue.

We request that you also address the issue of the growth-inducing impacts and the conversely linked issue of loss of farm land seemingly promoted by water transfers as we are experiencing here with the huge 21,000 unit Newhall Ranch proposal.

Please also address the issue of potential water privatization and ensuing control, hoarding and manipulation of public water resources that may result from the Kern Fan water bank being 48% privately held. We are already seeing this occur in the Newhall Ranch Project where a private developer has purchased Kern River water and stored it in its private holding in the Semi-Tropic Storage Facility to serve *ONLY ITS OWN PROPOSED DEVELOPMENT*. This project also proposes SWP entitlement transfers directly from farmers. How will you provide oversight for this developing problem?

Thank-you for the opportunity to comment on this proposal. We request that we receive all environmental documents and notification.

Sincerely,

Ron Bottorff
Chair

Faxed 3-28-03 - Hard Copy to follow via regular mail

Board of Directors

Ron Bottorff
Chair
Barbara Wampole
Vice Chair
Ginnie Bottorff
Secretary
Lynne Plambeck
Treasurer

Affiliated Organizations

California Native Plant
Society

Santa Clarita
Organization for
Planning the
Environment (SCOPE)

Sierra Club,
Angeles Chapter

Sierra Club,
Los Padres Chapter

Surfrider Foundation

Ventura Audubon
Society



NATURAL RESOURCES DEFENSE COUNCIL

March 28, 2003

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

RE: Scoping Comments: Notice of Preparation for EIR on Monterey Amendment

Dear Ms. Brown:

On behalf of the Natural Resources Defense Council (NRDC) and our more than 500,000 members, we appreciate the opportunity to provide scoping comments in response to the NOP for the above referenced environmental impact report on the Monterey Amendments and related contract amendments and program features arising from the recent settlement agreement.

You are already receiving extensive scoping comments from the Planning and Conservation League (PCL) and other plaintiffs submitted by the Law Office of Antonio Rossmann, as well as scoping comments by Professor Robert Wilkinson and others. Rather than reiterate these important comments, we simply wish to highlight the following points:

1. It is essential that the EIR fully study both the pre-Monterey conditions and present conditions. For example, the contractual baseline condition must be the pre-Monterey SWP contracts and the EIR must include a complete analysis of the environmental consequences of enforcing the pre-Monterey permanent shortage provision, article 18(b).
2. The EIR must include a careful and complete assessment of the historical record of project deliveries. It must also include an integrated assessment of SWP and CVP exports, and consideration of changes in SWP and CVP operations since the signing of the COA. For example, the Bureau of Reclamation has asked DWR to support 25 year renewal contracts for the Cross Valley Canal Division of the CVP using SWP export pumps and facilities, yet neither the Bureau nor DWR has done an adequate analysis of the environmental consequences of this proposed long term contractual commitment.

3. The EIR must fully consider all environmental impacts of the transfer of the Kern Water Bank, including the sources of water for the Bank (including from the San Joaquin River) and competing environmental demands for that water. This analysis should also evaluate the comparative effects on San Joaquin River restoration of retaining State control of the Kern Water Bank vs. transferring control to local interests who may not share the State's public trust obligations. Without a full analysis of this critical element, any EIR on Monterey will be seriously flawed.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Hamilton Candee", written in a cursive style.

Hamilton Candee
Senior Attorney

Dolores Brown
Mitigation and Restoration Branch
California Department of Water Resources
3251 S. Street
Sacramento, CA 95816

March 28, 2003

☞ Hand Delivered ☜

Re: Porgans & Associates, Inc., Comments to Notice of Preparation of Environmental Impact Report for the Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and other Contract Amendments and Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League v. Department of Water Resources (DWR)

Attention: Ms. Dolores Brown

1 On behalf of its clients', Patrick Porgans & Associates (P&A), Inc., submit the following comments pertinent to the
2 *Notice of Preparation (NOP) of the Environmental Impact Report (EIR) for the Monterey Amendment to the State*
3 *Water Project (SWP) Contracts (Including Kern Water Bank Transfer) and other Contract Amendments and*
4 *Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League v. Department*
5 *of Water Resources.*

6 **Background Information**

7 *In 1994, DWR and certain representatives of the SWP contractors agreed to a set of principles known as the*
8 *Monterey Agreement, to settle long-term water allocations disputes, and to establish a new water management*
9 *strategy for the SWP. The dispute focused on the phrasing of Article 18 of the SWP contracts. Article 18*
10 *addresses the allocation of shortages to water supply, and particularly under what circumstances the initial*
11 *reductions to agricultural use should be imposed prior to reducing allocations to urban contractors. Article 18*
12 *(a) deals with temporary shortages that occur due to droughts and other temporary causes. Article 18(b) deals*
13 *with the possibility of specified types of permanent shortages of supply of project water. The Monterey Agreement*
14 *Statement of Principles, executed on December 1, 1994, resolved the allocation controversy by proposing*
15 *contract revisions to eliminate agricultural cutbacks and specifying that all project water was to be allocated in*
16 *proportion to contract amounts (as shown in Table A). The principles provided that the individual SWP contracts*
17 *would be amended to conform to the principles and CEQA compliance would begin to evaluate the potential*
18 *impacts of implementing the Monterey Agreement.*

19 *Ultimately, on September 15, 2000, the Third District Court of Appeal ruled that DWR had the statutory duty to*
20 *serve as Lead Agency in assessing environmental consequences of the Monterey Agreement. The appellate court*
21 *further held that the 1995 Monterey Agreement EIR failed to adequately analyze the impacts of deleting Article*
22 *18 (b) (the provisions for reallocation of water among contractors in the event of a define permanent shortage)*
23 *and directed that a new EIR be prepared. The court held the lack of an environmental analysis of eliminating*
24 *Article 18(b) deprived public agencies and the public of information essential to understanding the environmental*
25 *consequences of the provision's elimination, including the potential effect on land use planning decisions.¹*

¹DWR, *Notice of Preparation of Environmental Impact Report for the Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and other Contract Amendments and Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League v. Department of Water Resources*, Feb. 27, 2003, p. 2.

Re: Porgans & Associates, Inc., Comments to Notice of Preparation of Environmental Impact Report for the Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and other Contract Amendments and Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League v. Department of Water Resources

1 **Project Description:**

2 *Basic objective of the proposed project is to improve the management of the SWP supplies and operations*
3 *through the MA and other contract amendments associated activities as a part of a proposed settlement*
4 *agreement in PCL v. DWR. The EIR will evaluate: (1) in accordance with the court decision, the potential*
5 *environmental effects of implementing the MA to the SWP water contracts with respect to allocation of SWP*
6 *supplies among contractors, certain use of SWP facilities, and other SWP operational matters to include*
7 *financial matters as they may impact physical changes to the environment (Section 15131) of the CEQA*
8 *guidelines; and (2) the potential environmental affects of additional action which may be implemented*
9 *through the proposed settlement agreement referenced earlier.²*

10 Please be advised that P&A's clients, are within the Feather River watershed, upstream and downstream of the SWP's
11 Oroville Dam and Reservoir facilities, and have and continue to be adversely impacted by the ongoing operation of
12 the SWP, resulting from the project's inherent water shortages and over-committed water deliveries. The impacts
13 include but are not limited to socioeconomic, environmental, cultural and loss of prime agricultural land. The
14 Monterey Agreement amendments (MA), as proposed, unless mitigated, will continue to exacerbate the adverse
15 impacts sustained by P&A's clients. Therefore, it is essential that DWR's proposed EIR fully assess and mitigate
16 those impacts in a manner that is consistent with CEQA requirements and DWR trust responsibilities, to wit, P&A
17 provides a synopsis of the issues and submits the following comments and/or suggestions.

18 ***Probable Environmental Effects***

19 *The EIR will analyze resources that could be affected by the project, including but not limited to aesthetics,*
20 *agricultural resources, air quality, biological resources, cultural resources, cumulative impacts, geology and*
21 *soils, growth-inducement, hazards and hazardous materials, hydrology and water quality, land use and planning,*
22 *mineral resources, noise, population and housing, public services, recreation, transportation and traffic, utilities*
23 *and service systems.³*

24 **Elimination of Article 18b of the Water Supply Contracts is Problematic and Potentially Detrimental to P&A's**
25 **Clients Interests, Public Trust Resources, Sacred Burial Sites, Area of Origin Water Needs and Delta Water**
26 **Quality Protections:**

27 Based upon the DWR's past SWP operations track record, and its inherent conflict of interest as a water purveyor
28 and public trustee, there is the real potential for DWR to make future SWP operational decisions to maximize
29 project yield and water availability to meet contractors' demands, especially during dry years, that will cause
30 irreparable socioeconomic, environmental and cultural damages to both public trust resources and private
31 property. The impacts attributable to SWP shortages and DWR operational decisions are contained herein.

² *Ibid.*, p. 3.

³ *Ibid.*, p. 5.

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**1 Major Permanent Reductions in Total Entitlements Needs to Be Fully Considered and Assessed as an
2 Alternative:**

3 The historical operational of the SWP support the position that the inherent water shortage related impacts are
4 problematic; i.e, the less water that is in the system, and the greater the demand on the limited supplies create
5 proportional impacts. In essence, the proposed reduction in total annual entitlements, as provided for in the SWP
6 Water Supply Contracts, as stipulated in the MA are too small to make any significant difference on related
7 socioeconomic and environmental impacts.

8 The problems and impacts attributable to the over-committed SWP, considering the systems limitations, can
9 only be realistically be minimized by a significant permanent reduction in total annual entitlements, which is
10 provided for in Article 18(b) of the Water Supply Contracts.⁴ If it is DWR's intent to significantly reduce the
11 impacts associated with the SWP inherent water shortages, then any action to eliminate Article 18 (b) would be
12 extremely difficult, if not impossible to justify. In fact, it is the only legitimate way to resolve the shortages
13 associated with the over committed SWP; essentially, it was the original fail- safe mechanism to backstop shortages,
14 and the only sensible way to address the "paper water" conundrum. The paper water issue can only be resolved by
15 DWR taking a realistic approach to water reduction more in line with the existing systems capabilities. Albeit, if
16 DWR and its contractors eliminate 18 (b) for permanent water reduction, then they should also fully assess
17 the impacts to private and public resources, and provide the required mitigation throughout the entire Feather
18 River watershed and the Sacramento-San Joaquin Delta.

19 Recommendations and/or Potential Mitigation Measures:

20 DWR should consider the use of SWP "forth priority funds " as a means to finance the permanent reduction of total
21 SWP entitlements; providing that such an action is consistent with the California Water Resources Development Bond
22 Act, legislative mandates and related covenants. If such an action can be implemented, it would provide the
23 mechanism for a more realistic permanent water reduction, maintain the financial integrity of the SWP, and help to
24 minimize and/or mitigate the project's impacts on private property, sacred cultural sites and public trust resources.
25 In addition, if allowable, those same funds, which are predominately from the earned interest generated from the
26 California Water Fund, should also be explored for use in mitigating impacts attributable to the elimination of 18
27 (b) for watershed protection and enhancement and compensation for losses and/or damages to private and public
28 trust resources and indigenous people. Notwithstanding, to proceed with a token reduction in total entitlements
29 and/or elimination of 18 (b) needs to be fully assessed and all of the related impacts fully mitigated and compensated.

30 The SWP system deficiency (water shortages) appears to contribute to conflicting management decisions that are
31 advantageous to DWR and SWP contractors, but harmful and destructive to tribal, and public and private trust
32 resources. Specific examples of the adverse impacts associated with SWP water shortages and delivery needs,
33 include but are not limited to the following types of consequences:

⁴ DWR, *The California State Water Project, Water Supply Contracts*, Bulletin, No. 141, Vol. I, Nov. 1965, and as amended.

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- 1 ❶ Mismanagement of SWP water storage facilities, which conflict with federal rules and regulations;
- 2 ❷ Unauthorized use of flood storage space during critical periods to enhance water supplies;
- 3 ❸ Endangerment of public property and lives downstream from Oroville Reservoir;
- 4 ❹ Accelerated exposure of tribal ancestral burial grounds and other sacred objects, which DWR left
5 buried in the Oroville Reservoir fluctuation zone;
- 6 ❺ Violation of water right/water quality standards imposed on DWR's water right permits for the SWP;
- 7 ❻ Destruction of public trust resources (fish and wildlife), and/or
- 8 ❼ Illegal export of water from the Area of Origin and Delta.

9 **Historical Documentation That DWR Acknowledged Inherent SWP Water Shortages 40 Years Ago:**

10 The inherent SWP water shortages were recognized as early as 1963, as referenced in DWR's Bulletin 132-63, which
11 states:

12 *In the operation of the State Water Project, Oroville and San Luis Reservoir will be operated in conjunction*
13 *with surplus flows in the Delta to develop an initial firm annual yield for delivery of 4,000,000 acre-feet. The*
14 *present surplus flows in the Delta will be diminished in the future, because of further development of water*
15 *in the area tributary to the Delta, particularly in the Sacramento River Basin. Therefore, additional water*
16 *supplies must be made available in the Delta, both to offset the effects of depletions resulting from increased*
17 *upstream development, and to meet export demands.*⁵

18 *Detailed operation studies of the Central Valley incorporating the foregoing estimates of future water uses*
19 *indicate that the yield of the initial conservation facilities will satisfy project water demands until about the*
20 *mid-1980's. At that time, an additional conservation facility, herein considered to be a project on the Middle*
21 *Fork Fel River, will be needed. This facility will develop about 800,000 acre-feet annually to meet*
22 *increasing water requirements up to the project yield of 4,000,000 acre-feet annually and to offset the effects*
23 *of depletions in the yield of the project expected to result from increased use of water in and above the Delta.*⁶

24 **SWP Inherent Water Shortages Compounded by Internal Conflicts Between Agricultural and Urban Contractors**
25 **Contributing to Impacts to Public Trust Resources, Sacred Cultural Sites, Area of Origin Needs and Private**
26 **Property Destruction and/or Losses:**

27 The inherent SWP water shortages were compounded by the internal conflicts between the project's urban and
28 agricultural water contractors pertinent to Delta protections and ability to pay for new water development. The

⁵California Department of Water Resources, *The California State Water Project in 1963*, April 1963, p. 96.

⁶*Ibid.*, p. 127.

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1 project's inherent shortcomings and internal conflicts have and continue to adversely impact public trust resources,
2 sacred cultural/burial sites, area of origin needs and private property losses and/or damages that have yet to be
3 fully assessed and/or mitigated.

4 *The measure of the SWP's delivery capability is founded on the concept of "firm yield" operation.*
5 *Defined in the water supply contracts as "minimum project yield," firm yield is the dependable annual*
6 *water supply that can be made available without exceeding specified allowable reductions in*
7 *agricultural deliveries during extended dry periods.*

8 *"The firm yield of existing SWP facilities is approximately 2.4 million acre-feet per year. Since 1987,*
9 *contractor requests for entitlement water have exceeded that amount (see Table 14.)"*⁴

10 **Examples:** During the 1970s, three major SWP contractors filed lawsuits against DWR for releasing water
11 to protect Sacramento-San Joaquin Delta - impeding the development of additional water facilities to meet
12 anticipated SWP shortages, especially during drought periods.

13 For decades the agriculturalists (Boswell, Salyer et al), opposed water quality protection for the Delta, and
14 North Coast rivers, despite the fact that they agreed to Delta protections as SWP contractors. They
15 became involved in extended and protracted litigation against the DWR for releasing SWP water to meet
16 Delta water quality standards, during the late 1970s, and lost on all counts.

17 *Three cases challenge DWR's authority to make releases from stored water for Delta water quality control*
18 *that are larger than those needed for exporting water of suitable quality.*

19 *1. Berrenda Mesa Water Storage District v. Department of Water Resources, filed 9/10/76, Sacramento*
20 *Superior Court No. 262976, Injunction, declaratory judgment.*

21 *The complaint seeks to enjoin releases of water to the Delta above those that are required for operation*
22 *the SWP.*

23 *2. Tulare Lake Basin Water Storage District v. State of California, et al, filed October 19, 1976, Sacramento*
24 *County Superior Court No. 263582, Declaratory Relief, preliminary and Permanent Injunctions, undetermined*
25 *amount of damages.*

26 *On October 19, 1976, Tulare Lake Basin Water Storage District and Dudley Ridge Water District both*
27 *SWP water supply contractors, filed suit against DWR.*

28 *The complaint alleged that DWR had acted illegally in releasing water into the Delta that should have*
29 *been sold as surplus water.*

30 *3. Salyer Land Co. v. State of California, Department of Water Resources, filed 5/9/77, Sacramento County*
31 *Superior Court, No. 267012, \$3.7 million.*

32 *The suit was filed by Salyer Land Company against DWR on May 9, 1977; an amended complaint was*
33 *filed on July, 1977. The plaintiff company farms land in the service area of the Tulare Lake Basin Water Storage*
34 *District, a SWP contractor. The plaintiff alleges that it is a third party beneficiary of the water supply contract*
35 *between DWR and the Tulare Lake Basin Water Storage District, and that DWR's action allowing water to flow*

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1 *out of the Delta in 1976 until present violated the terms of that contract.*⁷

2 *In operating the SWP, DWR is required to comply with the Delta water quality standards established*
3 *under the provisions of State land and the Federal Clean Water Act.*⁸ (Section 13247 of the Water Code.)

4 **DWR Won Lawsuit Against SWP Contractors - Court Rules DWR Obligated to Release Water to Protect Delta:**

5 *The most important State Water Project (Project) Court decision in nearly 20 years was handed down by the*
6 *Sacramento Superior Court in Tulare Lake Basin Water Storage District v. State of California. The action*
7 *was brought by Tulare and other Project contractors. The decision, which was in favor of the Department*
8 *of Water Resources on all counts, held that the Department did not breach its water supply contracts in 1976-*
9 *77, when it released stored water for salinity control in the Delta in compliance with the State Water*
10 *Resources Control Board (SWRCB) Basin Plans. In further finding that the Department acted under its*
11 *broad powers in its management of the Project, the Court has completely vindicated our past operational*
12 *actions in compliance with SWRCB orders. The Court further found that (1) the Delta Protection Act*
13 *requires the Department to provide an adequate water supply for the Delta that is not conditioned on*
14 *advance payment by Delta users; (2) the Porter-Cologne Act requires the Department to comply with water*
15 *quality control (basin) plans; and (3) the Burns-Porter Act did not create an exception for the Project. The*
16 *decision will make future Project operations considerably easier and should rest forever attempts by some*
17 *water contractors to deny Project obligations to protect the Delta.*⁹

18 **DWR ILLEGALLY EXPORTED AND/OR IMPOUNDED \$29 MILLION OF WATER FROM DELTA TO PROVIDE WATER TO SWP**
19 **CONTRACTORS AND TO KEEP WATER CONTRACTORS SOLVENT - IN VIOLATION OF THE LAWSUIT IT SUCCESSFULLY**
20 **DEFENDED TO PROTECT DELTA WATER QUALITY:**

21 Ironically, subsequent to the lawsuit, DWR, under its succeeding director, David Kennedy, began to violate these
22 standards, by illegally impounding or diverting water designated to protect the Delta, as a means to make more water
23 available to SWP contractors. It is because of the intrinsic shortcomings of the project, the department resorted
24 to desperate, drastic, and illegal actions in an attempt to keep its agricultural contractors solvent. During 1991-92,
25 the department and the U.S. Bureau of Reclamation (USBR) unilaterally violated state and federal water quality
26 standards, and the terms and conditions of their respective water rights permits, by illegally diverting \$29 million
27 of water from the Bay/Delta Estuary. Their irresponsible actions have and continue to be at the expense and to the
28 demise to both private property and public trusts resources in the Delta, Suisun Marsh, and along the Feather River.

29 According to State Water Resource Control Board (SWRCB) data, DWR and the USBR committed hundreds of
30 violations of Delta and Suisun Marsh water quality standards, in 1991 and 1992, more than in all of the previous years

⁷ Department of Water Resources, *Delta Water Facilities*, Programs for: Delta Protection and Water Transfer, Water Conservation, Water Recycling, Surface and Ground Water Storage, July 1978, pp. 37, 38, and 39.

⁸ *Ibid.*, p. 36.

⁹ Department of Water Resources, *Bulletin 132-81, The California State Water Project - Current Activities and Future Management Plans*, November 1981, p. iii.

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1 combined, since the enactment of the Board's Water Right Decision 1486 (D-1485).¹⁰ In the process it illegally
2 stored and/or diverted approximately 300,000 acre-feet of water designated for Delta/Marsh water quality
3 protection, and made that water available to its SWP contractors, at the expense and to the demise of private
4 business and public trust resources.¹¹ The water was worth approximately \$29 million. During the drought years
5 record-breaking water exports occurred.

6 **Porgans, et al, Compelled State Water Resources Control Board to Hold Hearings on DWR's Delta Water
7 Quality Violations - Although Board Acknowledged the Violations, It Did Not Fine DWR for the Violations:**

8 In 1991, P&A formally notified the State Water Resources Control Board (SWRCB) of the excessive Delta water
9 quality violations committed by DWR and the USBR. In the ensuing year, P&A sent additional letters to the SWRCB
10 requesting that it take an enforcement action against its sister agency and the USBR for violating Water Right
11 Decision D-1485 water quality standards.¹²

12 On November 20, 1992, the SWRCB held a public hearing to discuss the D-1485 violations. Porgans presented
13 testimony before the Board at that time. (Refer to Appendix 30.) DWR and the USBR both admitted that they
14 violated the D-1485 standards, which the Board's staff documented; however, despite the facts presented at the
15 hearing, the SWRCB advised DWR and the USBR that it would not take an enforcement action against them for the
16 1991 and 1992 D-1485.¹³

17 **Group of Legislators Send Letter to SWRCB Expressing Their Deep Distress Over the Board's Failure to
18 Enforce D-1485 Water Quality Standards:**

19 *We are deeply distressed by the Board's recent failure to enforce water quality standards for the Sacramento-
20 San Joaquin Delta as required by Water Right Decision 1485. Salinity standards in D-1485 were violated
21 by the State Water Project and the Central Valley Project on 289 separate occasions in 1991 and 1992.*

22 *The basis for the Board's failure to enforce standards that protect public trust resources in the estuary was
23 not explained to the public. The California Department of Water Resources and the U.S. Bureau of
24 Reclamation were simply informed by your executive director, Mr. Walt Pettit, in a July 11, 1993 letter that
25 the Board would not take any enforcement action.*

¹⁰ SWRCB, Exhibit 19, Presented at the Board's Public Hearing: *Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh*, November 20, 1992.

¹¹ SWRCB, Exhibit 20, Presented at the Board's Public Hearing: *Consideration of Compliance with Water Right Requirements for the Sacramento-San Joaquin Delta and Suisun Marsh*, November 20, 1992.

¹² Porgans' letter to Don Maughan. Chairman, SWRCB, Re: *Status of the Board's Progress to Take Enforcement Action Against the Department of Water Resources and the U.S. Bureau of Reclamation for Violations of D-1485 Standards in Water-Year 1991*, June 15, 1992.

¹³ Walt Pettit, Executive Director, letter to David Kennedy, Director, DWR, and Roger Patterson, Regional Director, USBR, Re: *Compliance During 1991 and 1992 With Water Right Decision 1485*, June 11, 1993.

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1 *Mr. Pettit's letter concluded that 'this matter is closed.' On the contrary, the question concerning*
2 *enforcement of water quality standards, which strikes to the heart of the Board's function as a regulatory*
3 *agency, is far from settled, and there are a number of troubling issues which need to be fully addressed by*
4 *the Board.*

5 *1. What findings of fact were made by the Board as to the impacts on beneficial uses caused by the 1991-2*
6 *violations? Did the Board's findings, if any, take into account the existing degraded condition of the*
7 *Bay/Delta environment?¹⁴*

8 **Porgans, et al, v Babbitt, et al, Litigation to Stop Government From Violating Delta Water Quality Standards**
9 **and Illegal Diversion:**

10 On December 7, 1993, subsequent to the Walt Pettit's letter of July 11, 1993, P&A et al, filed a lawsuit against both
11 the DWR and the federal government for illegally diverting water from the Bay/Delta Estuary.¹⁵

12 **UNAUTHORIZED STORAGE OF WATER IN THE DESIGNATED FLOOD STORAGE AREA CAN DEFEAT ITS PURPOSE:**

13 Utilizing the flood storage space for water conservation and simultaneously restricting flood water releases, on
14 certain occasions, can prove to be of benefit to DWR and its water contractors; however, when weather patterns
15 change, and runoff increases into the reservoir, DWR records prove that in the past it had to compensate for its
16 unauthorized encroachment by significantly increasing the overall amounts of flood water released from the
17 reservoir, and in so doing, extended the duration that these high flood flows were sustained, which exacerbates
18 property and crop damages downstream from the reservoir. P&A provided the USACE personnel with numerous
19 government documents to support this assertion. In fact, P&A provided the USACE's Environmental Resources
20 Branch with a copy of its *Preliminary Performance Report, Oroville Dam and Reservoir, California State Water*
21 *Project, Flood Control Laws, Flood Water Releases, Erosion and Channel Scouring*. DWR's operational records for
22 the SWP's Oroville facilities also indicate that on numerous occasions it failed to make the proper flood water
23 releases from the reservoir while encroached, primarily by restricting outflow when inflow where high and conversely
24 increasing flood releases at higher rates than inflow. That and other information were contained in the
25 aforementioned report, which also included a voluminous appendix report that provides all of the government data
26 to support the findings in that report. (A bibliography listing P&A's SWP and related reports are attached.)

27 **DWR ADMITS USE OF FLOOD STORAGE NEGATES FLOOD PROTECTION BENEFITS:**

28 *The use of flood storage space for other purposes, such as power generation or conservation storage, negates*
29 *the benefits derived from flood protection. When heavy storm runoff fills the reservoir's flood storage space, it*
30 *is tempting to release water slowly through the turbines than to quickly evacuate the space by additional*
31 *controlled releases which may be called for by the standard operating procedures. This practice could defeat the*

¹⁴ Senator Marks', et al, letter to John Caffrey, Chairman, SWRCB, July 12, 1993.

¹⁵ *Porgans, et al v. Babbitt, et al.*

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1 *flood protection operation.*¹⁶

2 DWR sold more water to its SWP contractors than the project is capable of delivering, especially in dry years.
3 The DWR's decision to illegally store more water in the designated flood storage space is highly profitable for
4 its contractors; it keeps water costs down and increases the contractors ability to repay their respective annual
5 repayment obligations, and in the past made large volumes of cheap surplus water available to contractors.
6 However, this practice has proven to be extremely deleterious to downstream property owners and public trust
7 (fish and wildlife) resources.

8 **Ongoing Desecration of Sacred Tribal Burial Sites:**

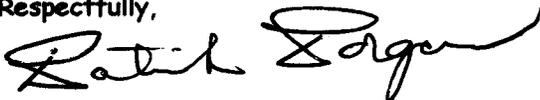
9 SWP demands continue to desecrate tribal burial sites and other sacred areas, which result from water demands
10 and fluctuating reservoir levels that expose tribal ancestral remains to vandalism, destruction and accelerated
11 rate of decomposition. Currently, Governor Davis has established a committee to assess the impacts on sacred
12 burial sites throughout the State of California, and ways to mitigate the impacts.

13 **Watershed Protection Funds:**

14 The proposed "Settlement Agreement" establishes a "Trust Account" for "watershed restoration projects," in
15 Plumas County, P&A respectfully suggest that the concept of funding for watershed restoration projects also
16 include areas within Butte County.

17 Time does not permit me to go into all of P&A's clients concerns, and/or to provide the level of detail pertinent
18 to the clients' related losses and/or damages. Nevertheless, P&A would appreciate DWR's considerations of the
19 comments, concerns and/or recommendations contained herein, and respectfully request that they be included
20 as a part of the EIR where appropriate. Thank you for your time and interest.

Respectfully,



Patrick Porgans

fnl:2/montagree/comments

cc: Interested Parties

Attachments

¹⁶California Department of Water Resources, Bulletin 199, *California Flood Management: An Evaluation of Flood Prevention Program*, September 1980, p. 33.

Porgans & Associates

P.O. Box 1713, W. Sacramento, CA 95691

Tele: (916) 374-8197 Fax: 372-7073

Bibliography

**Representative list of Porgans & Associates (P&A's) studies/reports/projects since 1978.
Additional listings dating from 1970 to present are available.**

- P&A, 2001. *Summary Report, Examination of the Record: Mustards Grill and Cosentino Winery Wastewater Treatment and Disposal System, Summary of Findings/Fact. Request for Napa County to Exercise Its Regulatory and/or Prosecutorial Discretion to Compel Compliance and Abate the 13-Year-Old Permit Conflicts and/or Violations Resulting from the Wastewater Treatment and Disposal System.*
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- 1998. Final Report, *Santa Cruz County, Timber Harvest Assessment, Cost-Benefits-Impacts.*
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- 1994. Draft: Status Report Plan of Action, *Feather River Enhancement Project, Plan to Protect Private Property and Public Trust Resources Downstream from the State Water Project Facilities*
- 1993. Preliminary Assessment: *Water Quality and Water Quantity Factors Impacting Suisun Marsh.*
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- 1993. Status Report Plan of Action: *State Water Project, Los Banos Grandes Facilities, Kern County Growers Say Protecting the Delta's Ecosystem Will Cost Them Water, and Without Water They Can't Pay for the Project.*

- ___ 1992. Status Report Plan of Action, *State Water Project, Proposed Los Banos Grandes Facilities.*
- ___ 1991. Vol. I - *Independent Review and Assessment, State Water Project, Proposed Los Banos Grandes Facilities. Summary, Findings, and Recommendations.*
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March 28, 2003

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Via Fax at (916) 227-7554

RE: Comments in Response to DWR's Notice of Preparation for Environmental Impact Report for "Monterey Plus"

Dear Ms. Brown:

Thank you for providing an opportunity for public comment and input on scoping for the Environmental Impact Report (EIR) for "Monterey Plus". These comments are Public Citizen's perspectives upon the matter. Public Citizen is currently engaged in a national campaign to protect water as a human right and maintain water in the public trust through democratic means.

The State Water Project represents a vital component of water distribution in this state, leaving many people dependent on the effective management of their water resources by the state. The design and implementation of the EIR for "Monterey Plus" will have numerous, long lasting effects upon the quality of environmental conditions for both native species and the citizens of California. Public Citizen feels that "Monterey Plus" has taken steps in the wrong direction towards protecting the rights of these users. The importance of a quality EIR in this case is essential. The following comments are submitted in the interest of improved public policy with regard to water resources management.

Specific Elements to be Included in the Scope of the EIR

The scope of the EIR should include the following elements:

DWR Water Rights and "Surplus" Water

The state has legal rights to certain waters from the Feather River watershed, and it pumps "surplus" water out of the delta. Most of the water DWR extracts water from the

delta is in fact unclaimed “surplus” water, not Feather River water. Because DWR is a “junior” appropriator relative to most of the other entities with claims to water within the watershed, this surplus water may not exist under a number of circumstances. The impacts of extracting both surplus water and water to which DWR holds rights should be examined in the EIR.

DWR’s Assertion of SWP Reliability

DWR released a draft report in 2002 asserting that the SWP can *reliably* extract and deliver – *on average over time* – about 1 million acre feet *more water* than it delivered in the 1980s or the 1990s. The EIR will need to examine the impacts of changes in extractions under both pre-Monterey and proposed project conditions.

Integrated Assessment of the SWP and CVP

The State Water Project and the Central Valley Project extract water from the delta in a coordinated management program – including pumping, storage, and conveyance. Both systems must therefore be examined in an integrated way. Given that neither system can deliver the full volumes of water they “promised” to users back in the mid-1900s, the EIR will need to analyze both the limits of the systems and the tradeoffs between them.

The No Project Alternative

The no project alternative in this EIR needs to include a careful examination of the impacts of managing the limited water supplies in the SWP system under provisions and terms included in the pre-Monterey contracts. The law also requires that the EIR examine “what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.”

Implications of Limits and the Requirement for Restoration

In response to environmental damage, Congress, the legislature, administrative agencies, and the courts have established requirements for *restoration* of environmental systems and species. The new EIR will need to take a broad view of the potential impacts of the proposed project and it must proceed under the logic of watershed management developed in the Racanelli decisions and since.

Land-Use Planning and Water for Smart Growth

The California legislature has addressed the issue of water scarcity and management and promulgated new laws since DWR’s first ill-fated EIR effort. In 2001, California finally legislated a meaningful link between water supplies and development. As of January 1, 2002, projects of 500 units or more must show that adequate water supplies are available for the project.

The claims of DWR regarding reliability, and the impacts associated with extraction, diversion, and use of those amounts, must be examined in the new EIR. Land-use decisions are being made based on DWR's assertions of reliability.

Minimizing the Need for Inter-Basin Transfers

In 2001, a little-noticed provision in SB 672 regarding urban water management plans requires that the state of California in the state water plan (Bulletin 160-03), examine ways to "*minimize the need to import water from other hydrologic regions*".

The EIR will need to take this new legal requirement into consideration as it examines alternatives to the proposed project. Specifically, the EIR needs to consider alternatives to both existing and proposed levels of extraction of water from the delta.

In Conclusion

DWR's task and responsibilities with regard to this EIR are considerable. The "Monterey Plus" project, and the no project alternative, along with other appropriate project alternatives that may be identified, will require careful analysis. CEQA requires, as noted above, a level of analysis that provides the public and decision-makers with sufficient understanding of the issues and potential impacts to make informed decisions. These decisions will include both water management and land-use decisions, as well as ecosystem restoration decisions.

I look forward to seeing the new and improved EIR process address these issues in the spirit worthy of the public trust.

Sincerely,

Juliette Beck
Senior Organizer, Water for All Campaign

LAW OFFICE OF ANTONIO ROSSMANN

Attorneys at Law

380 HAYES STREET, SUITE ONE
SAN FRANCISCO, CALIFORNIA 94102 USA
TEL (01)(415) 861-1401 FAX (01)(415) 861-1822
www.landwater.com

ANTONIO ROSSMANN
ADMITTED IN CALIFORNIA
NEW YORK AND
THE DISTRICT OF COLUMBIA
ar@landwater.com

ROGER B. MOORE
ADMITTED IN CALIFORNIA
rbm@landwater.com

March 28, 2003

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Re: Scoping comments in response to Notice of Preparation for Environmental Impact Report for the "Monterey Plus" EIR

Dear Ms. Brown:

We appreciate the opportunity to provide scoping comments in response to the Notice of Preparation (NOP) for the above-referenced EIR on behalf of the Planning and Conservation League (PCL) and the Citizens Planning Association of Santa Barbara County (CPA). PCL, CPA, and the Plumas County Flood Control and Water Conservation District challenged the environmental review and validity of the original 1995 Monterey Amendments to the State Water Project contracts, and participated in two years of settlement negotiations that followed the Third District Court of Appeal's decision in that case. The court set aside the 1995 Monterey Agreement EIR ("1995 CCWA EIR") prepared by a local joint powers agency, the Central Coast Water Authority (CCWA) and required DWR to prepare a new EIR. (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892 (*PCL v. DWR*).

All three plaintiffs have executed the resulting settlement agreement, which is awaiting final ratification by the Department of Water Resources and the local water districts and agencies that participated in the negotiations. Although the text of the settlement agreement had not yet been released to the public at the time the NOP issued, it is now available on DWR's website (<http://www.montereyamendments.water.ca.gov/>). DWR is to be commended for encouraging public participation, by extending the scoping comment period for another month following the public release of this agreement.

The new project described in the settlement agreement includes both the Monterey Amendments and additional contract amendments and other program features described in the agreement. The NOP's reference to the new project as "Monterey Plus" is therefore accurate. We believe that the new project offers important benefits that will bring greater public accountability and environmental responsibility to the State Water Project (SWP) in comparison to the original version of the Monterey Amendments reviewed in the invalidated 1995 CCWA EIR.

Equally important as its substantive provisions, the settlement agreement also anticipates that DWR will now prepare an EIR that provides other decision-makers and the public the responsible environmental review denied to them in the 1995 CCWA EIR. In *PCL v. DWR*, the court referred to "the...contractors and the members of the public who were not invited to the table" in the negotiations that led to the Monterey Agreement. (83 Cal.App.4th at 905.) Section III of the settlement agreement provides a detailed overview of elements that DWR has committed to include in its new EIR, while recognizing that the proposed project to be assessed will be specifically defined during the scoping process.

DWR as lead agency retains the ultimate responsibility to ensure that its environmental review and new project decision properly inform decision-makers and the public. We provide specific scoping comments below to encourage DWR to prepare an EIR that is fully consistent with the court's ruling in *PCL v. DWR*, the terms of the settlement agreement, and the requirements of law. If DWR is to overcome the "aura of unreality" identified by the court of appeal in its assessment of the 1995 CCWA EIR (83 Cal.App.4th at 913), the department must prepare a new EIR that is solidly grounded in both legal and hydrologic reality.

PCL v. DWR

The EIR must, as a starting point, analyze the substance of the court of appeal's decision in *PCL v. DWR* and ensure that its new project assessment is consistent with the Third District's analysis in that case. The key components of the ruling are as follows:

- **Lead agency requirement**

Holding that CCWA erroneously acted as lead agency, the court ruled that CEQA required DWR, the only entity with the requisite statewide authority and expertise, to assume its proper role as lead agency in preparing a new EIR.

- **"No project" alternative**

The court also held that the CCWA EIR was fatally defective under CEQA for failing to analyze implementation of pre-Monterey state water contract terms, and particularly the permanent shortage provisions of article 18(b), as part of the EIR's no-project alternative. In the event of a permanent shortage (i.e., inability to reliably deliver the full 4.23 million annual acre-feet (MAF) of previously-labeled "entitlements" listed in Table A of the project contracts), pre-Monterey article 18(b) required the proportional reduction of each contractor's amount listed in Table A to match the available supply.

- **“Paper water” problem**

The relationship between so-called “entitlements” and land-use planning was central to the court’s holding that the EIR failed to address the “no project” alternative. The court connected this error to the risk of statewide land-use decisions made on the basis of “paper” water entitlements not grounded in real, deliverable water. The court openly criticized the false expectation that the State Water Project will deliver on its full “entitlement” level of 4.23 MAF when the project’s historic capability, evidenced in DWR’s own data, has only been roughly half this level. The ruling therefore noted the “huge gap between what is promised and what can be delivered.” (83 Cal.App.4th at 908.) With respect to the “humbler, leaner reality” of project capability, the Court also noted the implicit assumption in the Monterey Amendments’ rebate provisions (article 51) that certain facilities originally envisioned for the SWP will not be built. (*Id.* at 914.)

- **Validation procedure**

In addition to ruling for the plaintiffs on these CEQA claims, the court of appeal found that the plaintiffs had properly initiated a proceeding to question the substantive validity of the Monterey Amendments, including DWR’s transfer of a 20,000-acre conservation and storage facility, the Kern Fan Element, to Kern County Water Agency. The court rejected a procedural challenge based on the theory that nonparty state water contractors were indispensable to the validation challenge.

In sum, as a consequence of the appellate ruling in *PCL v. DWR*, DWR must prepare its own EIR as lead agency. That EIR must fully address the “no project” alternative, and therefore must confront the “paper water” concerns the court of appeal identified in its assessment of that issue. As an integral part of the Monterey Amendments, the Kern Fan Element transfer must also be fully addressed in the new EIR.

Settlement Agreement

The EIR must also accurately describe the project based upon the settlement agreement in sufficient detail to inform decision-makers and the public of its potential impacts. Both the “Monterey” and “plus” components must be fully described. Among the provisions of the agreement are these (all references, except as noted, are to the Settlement Agreement):

- Specified provisions of the SWP contracts shall be amended to delete the term “entitlement,” to be replaced with the “Table A amounts” as referenced in Table A of the contracts. (Attach. A.)
- New Article 58 of the SWP contracts will require DWR to issue biennial reports starting in 2003 to city, county and regional planning agencies, providing information on SWP delivery capabilities under a range of hydrologic conditions, as well as historic delivery figures. DWR will also produce guidelines by January 2004 to municipal and industrial contractors to provide accurate information for land use planning, with plaintiffs’ input. (Attach. A, B.)

- DWR will issue guidelines on permanent transfers of Table A amounts. The negotiations will take place in public, CEQA compliance will be required, and the place and purpose of use must be specified. (Attach. C.)
- Future project-wide contract amendments and amendments to transfer Table A amounts will be in public with opportunities for public participation (Attach. D.)
- The agreement specifies in detail DWR’s commitment to assess certain specified elements in the new EIR, which will analyze the Monterey Amendments, “attachment A” amendments, and other settlement provisions. (Section III.)
- Funding will be provided to Plumas in an amount totaling \$8 million, principally to improve and restore the Feather River watershed, including the establishment of a locally run watershed forum. The goals of the program are water retention and quality, vegetative management, and groundwater storage. (Section IV.)
- The Kern Water Bank will become subject to new land use restrictions that protect 490 acres of additional land from development, beyond the restrictions currently in place in the applicable Habitat Conservation Plan. Transfer, development and operation of the bank will be addressed in the EIR. (Sections V, III.F.)
- Funding to plaintiffs (\$5.5 million total) will support a variety of purposes, including watershed restoration projects, technical studies, and follow-up actions arising from the settlement. (Section VII.)

Non-reliance on CCWA’s 1995 EIR

The appellate ruling required DWR to prepare a new EIR, finding that CCWA’s 1995 EIR “failed to meet the most important purpose of CEQA, to fully inform the decision makers and the public of the environmental impacts of the choices before them.” (*PCL v. DWR*, 83 Cal.App.4th at 920.) The court found it unnecessary to adjudicate the other CEQA deficiencies identified by the plaintiffs after analyzing the defects in the lead agency selection and no project assessment, observing that “DWR, with its expertise on the statewide impacts of water transfers, may choose to address those issues in a completely different and more comprehensive manner.” (*Id.*) The court also noted that the deficiencies in the 1995 EIR might be related to the “provincial experience” of CCWA. (*Id.*)

The settlement agreement likewise requires DWR to prepare a stand-alone EIR (section III), and disclaims further reliance on the 1995 EIR to support any new project approved after March 26, 2001 (section VII.A). To ensure consistency with the appellate ruling and the settlement agreement, the new EIR must fully reflect DWR’s independent judgment and assessment as lead agency, and must not incorporate or otherwise rely on CCWA’s assessments in the invalidated 1995 EIR.

Project Definition

Leading CEQA decisions have long since recognized that “an accurate, stable and finite project definition is the *sine qua non* of the of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles (III)* (1977) 71 Cal.App.3d 185, 199.) The CEQA process cannot “freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights might emerge during the investigation, evoking revision of the original proposal.” (*Id.*)

Precision and consistency in a lead agency’s characterization of the project under review also reinforces related principles of CEQA: that the project must embrace the “whole of the action” (14 Cal. Code Regs., § 15378(a)); and that assessments in an EIR may not be used to justify a decision already made. In sum, CEQA “compels an interactive process of assessment of environmental impacts and responsive modification which must be genuine.” (*County of Inyo v. City of Los Angeles (VI)* (1984) 160 Cal.App.3d 1178, 1185.)

As appropriately noted in the NOP, both the Monterey Amendments and the additional program components specified in the settlement agreement are integral parts of the new project to be reviewed in the EIR. That understanding is also consistent with the settlement agreement (section III.C). The EIR must describe each component of the project in sufficient detail to adequately inform decision-makers and the public about the nature of the project under review.

Environmental Baseline

Without the development of an adequate baseline condition, “analysis of impacts, mitigation measures and project alternatives becomes impossible.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 953.) The baseline for these assessments must be based on an analysis of “real conditions on the ground,” rather than mere opinion or narrative. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App. 4th 99, 121.)

The NOP correctly observes that although the environmental baseline is “normally” existing conditions at the time the notice is published (14 Cal. Code Regs. § 15125), the baseline for this EIR must be augmented to address DWR’s operation under the Monterey Amendment, and partial implementation of those amendments, since completion of the 1995 EIR. This augmentation (producing two baselines) is necessary to ensure that the EIR fully addresses the “whole of the action,” including the Monterey Amendments.

This observation requires clarification in two respects. First, the SWP contracts of two contractors that have not signed the Monterey Amendments (Plumas and Empire Westside) are still governed by the pre-Monterey terms. Second, notwithstanding project approvals in 1995, none of the Monterey Amendments went into effect until August 1996. At that time, following the superior court’s announcement of its intended decision but before any review by the court of appeal, DWR and the state water contractors who had signed the Monterey Amendments agreed to waive a provision in the original Monterey Amendments which otherwise required all litigation to be resolved before the Monterey Amendments took effect.

Instead of arbitrarily selecting a single point in time (such as 1995 or 2003) to define the environmental baseline, the EIR will need to fully study *both* pre-Monterey and present conditions. In developing the baseline, it will be useful to consider the different senses of “conditions” that together form the basis for studying project impacts. For example:

- The *contractual* baseline condition must be the pre-Monterey SWP contracts. Any effort to define the baseline as incorporating the Monterey Amendments, or even partial implementation of some of its elements, would make it impossible for the EIR to properly assess the “whole of the action.”
- The *hydrologic* baseline condition should not be confined to a single calendar year. Rather, the impacts of water management changes are best addressed under a range of hydrologic circumstances. Constraints on SWP system performance must also be addressed. Anticipating that need, the settlement agreement provides that the new EIR’s “environmental setting” section shall analyze “information on water deliveries of the SWP over the relevant historical period (at least 1991-2002), as well as data regarding the deliveries in the last extended drought (at least 1987-1992).” (Section III.C.1.)
- The *regulatory* baseline condition should examine the range of legal and environmental constraints, other than the contracts and hydrologic conditions, that could impact water deliveries to SWP contractors and the environmental impacts of these deliveries. These constraints might include such matters as Delta water quality standards, endangered species requirements, the SWP’s coordinated operations agreement with the Central Valley Project (CVP), competing water rights, and elements of the CALFED program. Such constraints should be studied both as they existed before any elements of Monterey were implemented and as they have evolved since that time.

No Project Alternative

CEQA requires that the no project alternative address “existing conditions” as well as “what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” (14 Cal. Code Regs. §15126(e)(2).) That requirement compels DWR in its new EIR to fully study the consequences of enforcing the terms of pre-Monterey water supply contracts prior to eliminating them.

To overcome the prejudicial error noted in the appellate ruling, DWR must “fulfill its mandate” in the new EIR “to present a complete analysis of the environmental consequences” of enforcing the pre-Monterey permanent shortage provision, article 18(b). (*PCL v. DWR*, 83 Cal.App.4th at 915.) The EIR must directly evaluate reduced Table A allocations resulting from application of that article. As a useful starting point, DWR should carefully review and perform the analysis requested in public comments referenced in the Third District’s opinion. (*Id.* at 908, 915.) In addition to confirming the SWP’s historic inability to deliver anywhere close to full Table A amounts, these comments “corroborate the common sense notion that land use decisions are appropriately predicated in some large part on assumptions about the available water supply.” (*Id.* at 915.)

Section III.C.2 of the settlement agreement provides that the new EIR shall include “[a]s part of the CEQA-mandated ‘no-project’ alternative analysis, an analysis of the effect of pre-Monterey Amendment SWP contracts, including implementation of Article 18 therein. This analysis shall address, at a minimum, (a) the impacts that might result from application of the provisions of Article 18(b) of the SWP Contracts, as such provision existed prior to the Monterey Amendments, and (b) the related water delivery effects that might follow from any other provisions of the SWP Contracts.” Two of the “other” contract provisions inevitably related to this assessment are articles 18(a) and 21, which prior to Monterey required, respectively, that agricultural contractors endure the first cutbacks in water allocations in times of temporary shortage and receive the first allocations in times of surplus.

The environmental effects of proportional reductions in Table A amounts, as calculated in the no project assessment, must be directly compared to those of the proposed project. As the court of appeal made clear in *PCL v. DWR*, neither claims of “infeasibility” nor purported legal disagreements can serve as an excuse for avoiding comparison of the environmental consequences of the no project alternative and the project. (*PCL v. DWR*, 83 Cal.App.4th at 918.)

Project Alternatives

The NOP accurately summarizes the lead agency’s requirement under CEQA to examine a range of reasonable alternatives that would feasibly obtain most of the project objectives, but avoid or substantially lessen any significant adverse effects of the project. (14 Cal. Code Regs. §15126.6.) In its screening and review of alternatives, the EIR must provide more than “ cursory” analysis. (*PCL v. DWR*, 83 Cal. App. 4th at 919.) It should not construe project objectives so tautologically that only the proposed project could conceivably be capable of achieving them. Nor should the EIR allow the mere “threat of litigation” under a proposed alternative to prevent its environmental review. (*Id.* at 914.)

Assessment of SWP Reliability

DWR’s record of deliveries to contractors under the SWP figured centrally in the Third District’s conclusion that the 1995 EIR must be set aside. (See *PCL v. DWR*, 83 Cal. App. 4th at 908 (noting the “huge gap between what is promised and what can be delivered” and that “actual, reliable water supply” is “in the vicinity of 2 to 2.5 MAF of water annually” rather than the 4.23 MAF of Table A “entitlements”); 83 Cal. App. 4th at 913 (average actual deliveries under the SWP from 1980-1993 “were around 2.0 MAF”).

Similarly frank assessment of DWR’s record of deliveries will be essential to a wide variety of issues to be addressed in the new EIR, including the no project alternative as well as the assessment of hydrologic impacts, land use and planning impacts, growth-inducing impacts, and cumulative impacts. As mentioned above, the settlement agreement anticipates this need by calling for assessment of historic deliveries at least from 1987-1992 and 1991-2002. DWR should also coordinate its information about SWP capability with related discussions of the same subject in other contexts, such as hearings in the California Legislature and the pending efforts to revise DWR’s Bulletin 160.

Conversely, although computer models can be useful when applied for their intended objectives, no single computer modeling approach, such as the CALSIM II model referenced in DWR's draft State Water Project Delivery Reliability Report (See <http://swpdelivery.water.ca.gov/> "draft reliability report")), should substitute for careful assessment of the historical record of project deliveries. Any model must be assessed and calibrated in terms of actual SWP deliveries. Although the draft reliability report is important in its recognition that the SWP cannot reliably deliver the full 4.23 MAF of table A amounts, we do not recommend that DWR's EIR rely on the model-driven conclusions in this version of the report, which have been the subject of significant criticism and calls for redrafting. The report must be read in light of substantial criticisms made in public comments. (See <http://swpdelivery.water.ca.gov/commentletters.htm>.)

Relying on the CALSIM II model, the draft reliability report constructs delivery probability charts for the SWP for two years, 2001 and 2021. As noted by several commenters, the median delivery identified in the report (3.297 MAF) is on the order of 50% greater than the actual record of historic deliveries to the SWP as reported by DWR. A detailed analysis by Dennis O'Connor for the California Research Bureau, referenced in the comment letter of Senator Machado, indicates that the draft reliability report provides no credible explanation for this disparity. O'Connor's analysis concludes that among other problems, the results are inconsistent with previous estimates and models, recent deliveries were lower than the modeled 2001 conditions, and 2021 does not reflect any growth in upstream consumptive use. His assessment also observes that CALSIM II is not calibrated or otherwise verified, and that the draft reliability report does not use the CALSIM II model as designed. Because the draft reliability report appears to overstate the supply reliability of the SWP, O'Connor's analysis warns that DWR's assessments of reliability should not replace the "paper water" problem with a new, simulation-based "cyber water" problem. Other comment letters, notably those of Robert C. Wilkinson, Peter Gleick, and Arve Sjøvold, reach similar conclusions.

Several other points deserve emphasis as they relate to the EIR's references to SWP reliability:

- Any references to SWP delivery reliability in the EIR should be based upon the portion of full Table A amounts that the project can reliably deliver, not the percentage of contractor "requests" that can be met in any given year. The SWP contractual provisions governing allocations in the event of shortages are based upon Table A amounts, not requests. In *PCL v. DWR*, the court of appeal considered and rejected CCWA's attempt to shift the reliability discussion away from Table A-percentages to the request-percentages. (83 Cal. App. 4th at 913.)
- Any assessment of the reliability of SWP Delta exports in the EIR must be integrated with an assessment of CVP exports. Both projects extract water from the Delta in a coordinated management program that includes pumping, storage, and conveyance. Without integrated study of these projects, it would be impossible to discern whether reliability attributed to the SWP was based on water from the CVP.
- The need for integrated assessment of SWP and CVP exports is corroborated in the Bureau of Reclamation's February 21, 2003 scoping comments, which recognize that many changes have

taken place since the 1986 signing of the coordinated operations agreement (COA). Reclamation observes that the operation of the Kern Water Bank and of Metropolitan Water District's Eastside Storage Reservoir "are two prominent influences on SWP operations that were facilitated by the Monterey Amendment" and not considered in the development of the COA. Reclamation also expresses concern about "current and future CVP access to SWP Delta pumping capacity," noting that Monterey Amendment implementation may have influenced these. Reclamation appropriately requests that the EIR "examine in detail how the proposed action would affect CVP access to SWP Delta export capacity both from a historical and future condition perspective. In addition, should the proposed action affect CVP use of SWP Delta export capacity, the EIR should address the environmental and socio-economic effects of these changes."

- Any assessment of the reliability of SWP Delta exports must also consider other potential regulatory and environmental constraints on deliveries. In addition to the COA, these might include Delta water quality standards, endangered species requirements, competing water rights, and elements of the CALFED program.

Changes in SWP Operations and Deliveries

The settlement agreement states that DWR's new EIR shall include "analysis of the potential environmental impacts of changes in SWP operations and deliveries resulting from implementation of the proposed project. If the proposed project results in modifications to the water sources relied upon for the SWP, those sources will be identified and the resulting environmental effects will be assessed." (Section III.C.3.) The EIR must provide this analysis to ensure compliance with the agreement and the requirements of CEQA.

Kern Fan Element Transfer

The EIR must fully address the environmental consequences of transferring the Kern Fan Element from DWR to Kern County Water Agency under article 52 of the Monterey Amendments, as well as its subsequent transfer from KCWA to the Kern Water Bank Authority. As provided in the settlement agreement, "the new EIR shall include an independent study by DWR, as the lead agency, and the exercise of its judgment regarding the impacts related to the transfer, development and operation of the Kern Water Bank" in light of existing environmental permits. (Section III.F.) That study "shall identify SWP and any non-SWP sources of deliveries to the Kern Water Bank." (*Id.*) The EIR must provide this analysis to ensure compliance with the agreement and the requirements of CEQA.

State ownership of the Kern Fan Element must be addressed as the "no project" condition. For the EIR to provide an assessment that can support transfer of the bank to local control, it must provide a sufficient explanation as to whether it would have been feasible to maintain the water bank as a state resource, and under what conditions it could remain a state resource.

The EIR should also analyze an alternative that would allow the Kern Water Bank to remain in local control, subject to operational and financial criteria designed to maximize environmental benefits.

One such alternative would require the bank to store environmental water in time of surplus and make it available at no cost to the state in time of drought, as part of the consideration for allowing the asset to operate the rest of the time for local purposes. In sum, a variety of operating and financial arrangements must be explored to maximize the bank's contributions to the State's environment.

Transfers of Table A Amounts Under the Monterey Amendments

The settling parties recognize the finality of certain transfers of table A amounts from agricultural to urban contractors, listed in attachment E of the agreement. (Section III.D) That list does not include as "final" a single transfer of 41,000 acre-feet of table A amount from Kern County Water Agency to Castaic Lake Water Agency, since that transfer remains the subject of active litigation. (Section III.E; see *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2000) 95 Cal. App. 4th 1373 (ordering the EIR for that transfer set aside due to unlawful "tiering" from the invalidated 1995 Monterey EIR)). Nonetheless, since each of these transfers directly relies on the Monterey Amendments, the settlement agreement provides that DWR's new EIR shall study the potential environmental effects of both the attachment E transfers and the Kern- Castaic transfer. (Section III.C.4.)

Growth-Inducing Impacts

In light of the court of appeal's recognition in *PCL v. DWR* of the close connection between water planning and land-use decision-making, it is crucial that the new EIR fully address any potential growth-inducing impacts of the Monterey Amendments, including those arising from changes in project management and operation, failure to reduce Table A amounts to existing and reasonably foreseeable SWP capability, financial restructuring of the project contracts, water transfers facilitated by Monterey, and water sales from the locally administered Kern Water Bank. The cumulative impacts of these changes also require careful analysis. The growth-inducing effects of "completed" attachment E transfers and the Kern-Castaic transfer must be studied, since they were made pursuant to the Monterey Amendments. (Section III.C.4.)

Conclusion

We hope that these scoping comments assist DWR in preparing an exemplary EIR that will succeed in informing decision-makers and the public of the environmental consequences of the proposed action, continuing the spirit of cooperation and inclusion that the settlement agreement has made possible. Do not hesitate to contact us if you have further questions.

Respectfully,

Roger B. Moore

Antonio Rossmann

Robert Shulman
Plumas County Counsel
520 W. Main St., Rm 302
Quincy, CA 95971
530-283-6240

March 28, 2003

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Dept. of Water Resources
3251 S Street
Sacramento, CA 95816

RE: SCOPING COMMENTS BY PLUMAS COUNTY – “Monterey Plus” Project -
Plumas Watershed

Dear Ms. Brown:

Thank you for the opportunity to comment on the EIR Preparation. The proposed project includes a Plumas component in recognition of the importance of the northernmost state water contractor. The environmental review of that component should be programmatic, because site-specific environmental review will occur later as required as part of specific project approvals.

The Plumas watershed is the primary watershed of the Feather River. The watershed catches rain and snow, which enter streams through surface and groundwater. The streams that are tributaries of the Feather River supply Lake Oroville, the major northern reservoir of the State Water Project (SWP). There are three Upper Feather River reservoirs, Antelope, Davis, and Frenchman, which add 162,000 AF of artificial storage to the immense natural storage of the watershed.

The Plumas watershed, similar in area to the State of Rhode Island, is a hydrologic region funneling water to Lake Oroville. In general, if the watershed is degraded, the water is released more quickly than if the watershed is properly maintained in good condition, or restored, so as to release water during the late spring and summer when demand on Lake Oroville is highest. A properly managed watershed also contributes to flood protection.

Therefore, the EIR should depict the Plumas watershed as a strategic natural asset in the northern water supply system of the SWP. Specific benefits accrue from investments in the watershed, as follows:

- a) Streamflow augmentation – the base flows of the streams are raised by managing the watershed in various ways to increase groundwater storage and aquifer recharge.

- b) Water Storage in Meadows – wide mountain meadows provide storage for significant acre-feet of water late into the summer if downcutting of streams is reversed, and the meadow is managed to prevent bank erosion and compaction by cattle.
- c) Floodplain Protection – the protection of floodplains also contributes to reduced flooding downstream and a more gradual release of water from the system.
- d) Water Quality – is improved by sedimentation (nonpoint pollution) reduction. Stream bank stabilization by various means leads to a reduction in sediments.
- e) Water Quality and Quantity Protection: Proper forestry and vegetative management lead to a more fire-resistant forest, with a semi-open canopy that facilitates percolation of surface water within semi-shade conditions. Thinning is needed to reduce the risk of catastrophic fire.
- f) Watershed Protection Adds Value Through Recreation and Tourism – the Plumas watershed is known as a quality destination for recreation and tourism. The three Upper Feather River reservoirs attract many visitors. It is therefore important that the reservoir drainages, or sub-watersheds, be maintained in A-1 condition, through investments derived from the SWP. “Fourth priority funding” could be used.

Many of the benefits of watershed restoration have already been demonstrated on a small scale by the Coordinated Resources Management (CRM) program, which the Dept. of Water Resources has assisted in the past 10 years. “Monterey Plus” and its Plumas component will accelerate the pace of watershed work for the next 10 years. The program establishes a new relationship between the northernmost state water contractor and the SWP, including more collaboration on management of the Upper Feather River reservoirs.

The Plumas watershed emphasis is in some ways parallel to the Monterey Amendment’s emphasis on the Kern Fan Element (Kern Water Bank). In both cases, added water storage potential can augment supply capability in the SWP system, yet be subject to local control to ensure local benefits. Both are symbolic of the need for the SWP to evolve new programs and management practices to help meet the needs of the system and local service areas.

Sincerely,

Robert Shulman
Plumas County Counsel

Cc: Members, Board of Supervisors



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825-1898

IN REPLY
REFER TO:

MP-150
ENV-2.00

FEB 21 2003

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

Subject: Response to Notice of Preparation (NOP) for an Environmental Impact Report (EIR) for the Monterey Amendment

Dear Ms. Brown:

We have reviewed the subject NOP and provide comments below. At this time we are only generally aware of the provisions of the Amendment, therefore, our comments are general in nature. Once a draft EIR is circulated we may provide more substantive and detailed comments.

Reclamation's concerns relate to the issue of how the Amendment and other provisions may affect the Central Valley Project (CVP) and State Water Project (SWP) responsibilities and accomplishments under the Coordinated Operations Agreement (COA). Rather than revising the COA, DWR and Reclamation have continued to implement the COA by extending its original terms to cover all the many changes in standards and other regulatory requirements that have occurred since 1986 when COA was signed. Since that time, we have seen a buildup in SWP water demands and the advent of water marketing as a major part of California water resource management. Water allocation procedures, re-allocation of water supplies, and water management enhancement strategies may affect the SWP, and thus the CVP. The current operation of the Kern Water Bank and the addition and current operation of MWD's eastside storage reservoir are two prominent influences on SWP operations that were facilitated by the Monterey Agreement. Neither of these facilities were considered in the development of the COA. Reclamation also continues to be concerned about current and future CVP access to SWP Delta pumping capacity. It seems likely that implementation of the Monterey Amendment has influenced that, as well.

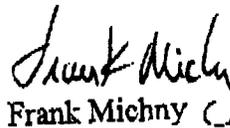
It may be that the actions the SWP takes in "Monterey Plus" are entirely consistent with the COA. However, the issues raised with respect to the sufficiency of the current COA in addressing Reclamation's interests, in addition to the potential changes in SWP operations, may require an evaluation of the existing COA terms.

2

In essence we are requesting that the EIR examine in detail how the proposed action would affect CVP access to SWP Delta export capacity both from a historical and future condition perspective. In addition, should the proposed action affect CVP use of SWP Delta export capacity, the EIR should address the environmental and socio-economic effects of those changes.

We look forward to reviewing your Draft EIR when available and request that we be included on any mailing lists for that document. Please contact me if you have any questions relative to this matter at 916-978-50

Sincerely,



Frank Michny
Regional Environmental Officer

SCOPE

Santa Clarita Organization for Planning the Environment

TO PROMOTE, PROTECT AND PRESERVE THE ENVIRONMENT, ECOLOGY
AND QUALITY OF LIFE IN THE SANTA CLARITA VALLEY

POST OFFICE BOX 1182, CANYON COUNTRY, CA 91386



3-28-03

Ms. Dolores Brown
Chief, Mitigation and Restoration Branch
Dept. of Water Resources
3251 S Street
Sacramento, Ca. 95816

Re: *Notice of Preparation for New Monterey Agreement EIR*

Dear Ms. Brown:

SCOPE was founded in 1987 by a group of residents that wanted to ensure adequate infrastructure accompanied development approvals. In the early 90s we addressed school over-crowding and library facilities. By the late 90s our concern had turned to the adequacy of water to supply required by the inordinate amount of new growth approved in our valley. We hope that this process will help put a stop to the mis-information disseminated locally in environmental documents. We request that we receive all environmental documents and notification.

We have been very concerned about the over-statement of state water supplies and hope you will address this issue through an analysis of article 18(a) and 18(b) and surplus water (article 21). We have litigated on this issue of properly reporting water supplies in Environmental Impact Reports, recently winning a strong opinion from the 2nd Appellate Court (*SCOPE v. Los Angeles County*).

We request that you also address the issue of the growth-inducing impacts and the conversely linked issue of loss of farm land seemingly promoted by water transfers.

Lastly, we would like to express a grave concern over the potential privatization and ensuing control, hoarding and manipulation of public water resources that may result from the Kern Fan water bank being 48% privately held. We are already seeing this occur in the Newhall Ranch Project where a private developer has purchased Kern River water and stored it in its private holding in the Semi-Tropic Storage Facility to serve ONLY ITS OWN PROPOSED DEVELOPMENT. This water is being channeled to new development in spite of a spreading ammonium perchlorate pollution plume in the local ground water aquifer that serves current residents. Such water hoarding must not be permitted. Please address these issues in the EIR.

Thank-you for your time.

Sincerely,

A handwritten signature in cursive script that reads "Pat Salefore".

Pat Salefore

Meeting

Environmental Impact Report for Monterey
Amendment to the State Water Project Contracts
(including Kern Water Bank Transfer) and Other
Contract Amendments and Associated Actions as
Part of a Proposed Settlement Agreement in
Planning and Conservation League v. Department
of Water Resources (SCH No. 200301118)

Thursday, February 6, 2003

Bakersfield, California

Reported by: Tya Hudspeth, CSR No. 7565

APPEARANCES

For URS
Corporation:

URS Corporation
MR. JOHN A. DAVIS
Senior Consultant
111 SW Columbia
Suite 900
Portland, Oregon 97201

For Department
of Water Resources:

MS. BARBARA McDONNELL, Chief
Division of Environmental
Services
Department of Water Resources
3251 S Street
Sacramento, California 95816

Bakersfield, California

Thursday, February 6, 2003; 7:25 p.m.

JOHN DAVIS: Good evening. I'd like to welcome you all to the scoping meeting for the Monterey Amendment. What we'd like to do this evening is make a presentation for about 20 minutes, and then we'll have a question session, if there's anyone who has a question about the topic of the materials that have been presented.

Because as what many of you know, Monterey Agreement is not a simple topic. So we would try to answer any questions you had. And then finally, we'll come to the part of the meeting that's most important to us, which is to hear your comments. Because we need those in order to shape the Environmental Impact Report or the Monterey Agreement.

So I'd like to hand over the mic to Barbara McDonnell, who's the Chief of environmental services for Department of Water Resources, and she'll make the presentation. And then later, I'll return and run the questions and the comments session.

BARBARA McDONNELL: Good evening. And if you didn't pick them up in the back are a handout of the slides that we're gonna go over, if you'd like to have those.

These board rooms are not really set up for these kind of presentations. They are set up to talk to the board. So this is a little difficult to kind of orchestrate. So I need to sit over here so I can work the -- the little eye thing here to move the slides. So I apologize for having to sit and be in the corner, but it's the only thing I could figure out on how to do this tonight.

Welcome. We're pleased that you are here tonight and happy that there's an interest in this project. And this is our scoping meeting to develop some comments, hopefully, from all of you. So it will be very helpful to us in preparing this document if you can give us your ideas, your interest areas for -- for our scoping process.

Why are we doing an EIR?

As required by the California Environmental Quality Act, the Department of Water Resources will prepare an Environmental Impact Report to the Monterey Amendment to the state water project contracts, including the Kern Water Bank transfer --

(Reporter interruption.)

BARBARA McDONNELL: -- and other contract amendments and associated actions as part of a proposed settlement agreement in Planning and Conservation League versus Department of Water Resources.

Okay. The purpose of our meeting is to obtain the views of agencies and interested parties. The department will conduct five scoping meetings throughout the state to obtain the views of agencies and other interested parties about the scope and content of the environmental information and analysis relevant to agency statutory responsibilities and stakeholder interests in the project.

By way of background. The State Water Project contracts date from the early 1960s. Each contract has been amended many times over the intervening years. As water management in California has changed over the years, there were issues between the department and the contractors that the contracts had some provisions that ran counter to good financial and

water management practices.

The Monterey Agreement is a set of 14 principles agreed to by DWR and representatives of the water contractors in 1994 to remedy some of these problems. The Monterey Amendment is the amendment made to the contracts as a result of the Monterey principles. The amendment resolved the long-term water allocation issues and established a new water management strategy for the State Water Project.

The water allocation issue focused on Article 18 of the State Water Project contracts. Article 18 addresses the allocation of shortage in water supply and under what circumstances the initial reductions to agricultural use should be imposed before reducing allocations to urban contractors.

The contentious portion of the water shortage contract provision dealt with Article 18(b), which dealt with specified types of permanent shortages of supply of project water and stated that DWR would reduce entitlements in the event of a permanent shortage.

This Article 18(b) has never been invoked to date.

Article 18(a), which deals with cuts to agricultural contractors first during droughts and other types of temporary shortages has been invoked.

The Monterey Statement of Principles arrived at in December of 1994 resolved this allocation issue by proposing contract revisions that eliminated the initial agricultural use cutbacks and specifying that all project water would be allocated based on contractors' annual Table A amounts thereby eliminating the need for different shortage provisions.

In May of 1994, Central Coast Water Authority, serving as

lead agency, prepared a draft EIR to address the effects of implementing the Monterey Agreement Statement of Principles.

The final EIR was completed in October of 1995 and subsequently used by DWR to support the decision to amend certain State Water Project water supply contract provisions.

Since 1995, 27 of the 29 contractors have executed the Monterey Amendment. The few that have not are the Empire Westside Irrigation District and Plumas County Flood Control and Water Conservation District.

Then in December of 1995, the Planning and Conservation League sued the Department of Water Resources on the basis that DWR should have been the lead agency preparing the EIR, and that the lack of an analysis with respect to deleting Article 18(b) was a fatal flaw.

The lower court ruled in the department's favor, but the decision was overturned by the Third District Court of Appeal. The Court ruled that DWR had the statutory responsibility to serve as lead agency and the EIR failed to adequately analyze the effects of deleting Article 18(b).

The department and most of the State Water Project contractors have been in a settlement process with the Plaintiff since 2000. This process is nearing completion and will be included in the -- as the basis for the proposed project.

We should mention that PCL was joined in this lawsuit by the Plumas County Flood Control & Water Conservation District, which I'm gonna refer to as Plumas, and the Citizens Planning Association of Santa Barbara. So we term all three of these the Plaintiffs.

So that brings us to today and the reason for the scoping

meeting.

We are now starting a brand-new CEQA process with DWR as lead agency. The proposed project includes the original Monterey Amendment provisions as well as other contract amendments and actions to be carried out by DWR as a result of the proposed settlement agreement.

The objective of this project is to improve the operation and management of the State Water Project water supply through the Monterey Amendment and other contract amendments and to carry out associated actions of PCL versus DWR proposed settlement agreement.

The new EIR will evaluate potential environmental effects of the following five elements from the Monterey Amendment and additional actions.

Now, you'll recall that I said there were 14 principles, so what we've done is we've grouped those 14 principles into these first four bulleted elements.

The allocation changes for State Water Project water supplies, transfer of Table A amounts and land. Water management provisions, and financial restructuring.

Additionally, we're going to be talking about the potential additional actions from the proposed settlement.

Now, I'll go over each of these five bullets in a little bit greater detail.

Okay. First, the allocation changes for State Water Project water supplies.

What we are were included in these elements are the -- to allocate all water supplies in proportion to each contractor's Table A amounts, to eliminate the initial supply reduction to agricultural

contractors in years of shortage, to replace certain categories of water with a single category called (Interruptible Water) allocated on the basis of annual Table A amounts, and to eliminate the permanent shortage provision.

Now, for a definition of Interruptible Water. The department may make Interruptible Water available to contractors when it is not needed for fulfilling contractors' annual Table A water deliveries or for meeting project operational requirements, including reservoir storage goals. Interruptible Water has been made available during excess stealth (phonetic) conditions.

Okay. The second element is the transfer of Table A amounts and land. And this was to permanently retire 45,000 acre-feet of agricultural Table A amounts annually, to make 130,000 acre-feet per year of agricultural Table A amounts available for permanent sale to urban contractors, and to transfer the Kern Fan Element properties to local control.

And the Kern Fan Element of the Kern Water Bank was initially described in an EIR written in December of 1996.

DWR owned the Kern Water Bank lands but transferred the property to local control as part of the Monterey Amendment.

And the Kern Water Bank is located southwest of Bakersfield in Kern County.

Now, the transfers that we're talking about in terms of permanent transfers are listed here. And I think they are also on one of our displays.

So far, 111,781 acre-feet have been transferred. 18,219 acre-feet remain to be transferred.

And the agencies who have received the water from Kern

County water agency are the Mojave Water Agency, Castaic Lake Water Agency, Palmdale Water Agency, Alameda County Flood Control & Water Conservation District, Solano County Water Agency, and the Napa County Flood Control & Water Conservation District.

And we should mention that the Castaic Lake Water Agency transfer, while it has been essentially accomplished, they are going through a new EIR process on that. Their notice of preparation was published just recently, and that is available from the state clearinghouse. I haven't looked on their web site to see if it's available through there. But it is available. And that is an active EIR project that's just getting underway as well.

Okay. The next element is on the water management provisions.

These are to enable voluntary water marketing, groundwater banking, and improved use of existing State Water Project supplies, to allow groundwater or surface water storage of State Water Project water outside of the contractor's service area for later use within its service area, and to expand contractor's ability to store in San Luis Reservoir when space is available.

Other water management provisions are to permit contractors to withdraw and later restore water from the State Water Project terminal reservoirs, clarify terms for transport of contractors' non-project water, and to create a Turnback Pool for the annual sale of contractors' unneeded State Water Project water supplies to other interested contractors.

And the terminal reservoirs that we speak of here are Castaic and Perris. And these programs provide greater coordination in management of local and State Water Project supplies.

The financial restructuring element included establishing a State Water Project operating reserve and establishing a water rate management program when cash flow permits.

Now for some potential additional actions from the proposed settlement agreement.

First is to establish a Plumas watershed forum for watershed restoration, amend Plumas' State Water Project contract regarding shortages, impose additional restrictions on use of the Kern Water Bank lands or the Kern Fan Element lands, amend the State Water Project contracts to substitute the term "Table A amounts" for the term "entitlement."

Other additional actions are to disclose new procedures for State Water Project delivery capabilities, issue permanent Table A transferred guidelines, establish public participation procedures for certain contract amendment negotiations.

I will note here that the first bullet on here deals with the State Water Project delivery capability procedures. There is a draft report that -- there may be still some copies left on the table in the back. That draft report has been out for public comment for several months. I understand a final report is scheduled to be released later in February. Look on the DWR home page. You'll find the draft report. You'll find the comments that have been received. And later on, they will respond to the comments and issue the final report.

Okay. For the project location, it includes the State Water Project facilities, including the conveyance facilities and the Delta, the State Water Project service areas, including the Kern Fan Element lands and the Kern Water Bank, and the State Water

Project contractors' service area.

Now, depending upon the actions that we'll be evaluating under the proposed project, the area of influence could extend beyond these boundaries and the service areas, et cetera. So we just want to note that here, that while we have a project location, our analysis may lead us to extend the project area into some other slightly wider area. We don't know what that might be right now.

Okay. The environmental baseline.

As required by CEQA, an EIR must include a description of the physical environmental conditions in the vicinity of the project as they exist at the time of the Notice of Preparation.

The environmental setting normally constitutes the baseline physical conditions by which a lead agency determines whether impact is significant. Normally, the environmental baseline is the same as existing conditions. However, in the case of the Monterey amount amendment, the two are different. And this deals with the fact that actions have been completed under the Monterey Amendment.

So the baseline is going to be one of our issues that we have to deal with.

We have not yet identified the reasonable range of alternatives to be evaluated. However, to comply with the Court's instructions, we do know we will be evaluating a No Project Alternative with and without invoking Article 18(b) of the permanent short -- or the permanent shortage provision.

Okay. The EIR will analyze all resource categories that could be impacted by the proposed project. The proposed project's physical changes include re-operation of water deliveries with and without Article 18(b), reservoir operation changes, water storage in

the service areas, and the watershed actions in Plumas County, as well as other actions that we have previously described.

Okay. And at this time, I'm gonna turn it back over to John for the questions and public comments and to go over our schedule.

JOHN DAVIS: The slide here -- oh.

The slide -- previous slide showed you where to send your comments. I think there's some of the cards and the other information at the back has the same address on it.

This last slide shows the CEQA process. And I realize it's probably not to visible from where you are sitting. But it is in the back of the handout. And there really is a -- simply a flow chart showing the various steps that we have to go through in the CEQA process. We're right at the beginning right now. The first box was filing the Notice of Preparation and issuing it. That's one of the items on the table here today. And that was sent out in January. After that's sent out, there's a 30-day period in which we accept comments that we can then use to shape the scope of work for the Environmental Impact Report itself.

And, in fact, probably if comments came in a little later, we would still likely -- likely be able to accept them.

The main part of the work is preparing the draft EIR, doing the technical analyses that are necessary to analyze all of the components of the project that Barbara just explained to you. And we're expecting that that will take about a year. And we'll be working with an EIR committee which has representatives of the state water contractors, DWR, and the Plaintiffs in the lawsuit.

Our expectation is that the draft EIR will be published in

the Spring of 2004. And, at that point, they'll be another comment period, another opportunity for you and others who are interested to comment on what's in the draft EIR.

In the summer of 2004, we expect to be spending our time preparing -- considering the comments that we got and preparing responses to them, and then the Department of Water Resources expects to certify the EIR in the fall of 2004.

Findings then have to be adopted, and the project could be approved by the winter of 2004.

So that's the basic schedule. And as Barbara described to you -- I think she covered all the key points, many of which we're going to need to address in the EIR.

What I wanted to do first is simply ask if you have any questions or any needs -- need for clarification before we take your comments.

Clearly, you all fully understand that I may take your phone numbers and call you at some time for your clarification.

AUDIENCE MEMBER: We'd be happy to help you.

BARBARA McDONNELL: Can I have a show of hands for who in here are responsible agencies?

Pretty much. Yeah.

JOHN DAVIS: Okay. I'd like to move on to the comment period. And I'll take the cards in the order that I think they were handed in.

First speaker is Gary Bucher.

JOHN STOVALL: Actually, it might be better if Jim Beck went first.

JOHN DAVIS: Okay.

JIM BECK: I want to thank you for the opportunity to present testimony today. My name's Jim Beck. I'm the Assistant General Manager of the Kern County Water Agency.

The Kern County Water Agency is the largest agricultural contractor on the State Water Project, and we're the third largest urban contractor.

Overall, the agency is second only to Metropolitan Water District of Southern California in terms of Table A entitlement.

Our Table A entitlement is about one million acre-feet annually. Eighty-five percent of that water is used for agricultural production. The remaining 15 percent is used for residential and industrial purposes.

The State Water Project is very important to Kern County. It generates over a billion dollars a year in farm value in our county's economy. And when you add linkages to the entire local economy, the value of the State Water Project to Kern County nearly doubles.

The project provides irrigation water to nearly 600,000 acres of productive farmland in Kern County. About 35 percent of this acreage is planted in high-value trees and vines. And this farmland provides employment for over 32,000 people or about ten percent of our local work force.

Besides the direct and indirect economic values generated by the 600,000 acres, the state project provides water to help deal with Kern County's groundwater overdraft.

Since 1970, state project water supplies delivered over the groundwater basin have reduced pumping lifts for pumpers. Studies have shown that the value of the reduced pumping lifts is about 16

million dollars annually.

There are many benefits of the Monterey Amendment to Kern County. Prior to the amendment, agricultural contractors on the state project took the brunt of the shortages. Under the original state project master contract, the state was supposed to develop sufficient facilities to meet the needs of all of its contractors under a repeat of the 1928 through '34 drought hydrology. The Ag First Shortages were not to exceed about 175,000 acre-feet per year on average.

Because the state didn't develop capacity to meet the demands of its contractors, due partially to reductions in available water supplies because of increasing environmental regulations, the impacts of the ag-first shortages were borne disproportionately by the agricultural contractors, and in particular by districts on the west side of our county such as Belridge Water Storage District that -- these districts don't have alternative water supplies.

In 1990, the agricultural contractors suffered through a 50 percent shortage. This caused the loss of 12,000 acres of crops in Kern, and a corresponding 27 million dollars lost in crop revenues.

In 1991, the agricultural contractors suffered a one hundred percent shortage, with a hundred and ten thousand acres idled and the loss of 385 million dollars in crop values. Nearly 7,000 jobs were lost. In 1992, agricultural contractors suffered another 55 percent shortage, resulting in 50,000 acres out of production, 130 million dollars in lost farm revenues and 2,000 jobs lost.

These consecutive shortages caused devastation on the west side of Kern County, where there were no alternative supplies other than the State Water Project. Because of the fact that our SWP

fixed costs must be repaid regardless of how much water we receive, we were saddled with paying 100 percent of the fixed costs, even though we received 50 percent, zero percent and 45 percent of our supplies in 1990 through '92. The debt burden caused a number of farm operators on the west side to go out of business. The effect of this was that the state project fixed costs had to be spread over a smaller number of farmers.

I've got about six more pages.

No. I only have one.

Economists that studied the effects of the drought for the agency concluded that an economic death spiral was imminent, unless something was done to increase the amount of water delivered by the project, or something was done to restructure financing. In addition to the impacts on our groundwater overdraft, the forced fallowing of tens of thousands of acres of agricultural land on our west side resulted in increased airborne dust.

On a more personal level, Fred Starrh, director of our agency and a family farmer who has been unable to be here tonight, tells of the anguish of turning away workers who had worked for him for years and years. He had to turn these workers away because he simply had no work for them because of the drastic shortages under the old contract.

The Monterey Agreement restructured the shortages suffered and payments made by agricultural contractors. A trust fund was established to stabilize payments when shortages occurred. Mechanisms were established to smooth the drastic variations in supply which threatened agricultural bankruptcy and loss of permanent crops. These were important improvements to the contract

that were achieved by the Monterey Amendment. Without it, we were in danger of entire water districts on the west side becoming insolvent. This would have impacted the long-term financial stability of the entire State Water Project.

I want to emphasize to you the importance of the State Water Project to Kern County's economy and its employment base, and the role the Monterey Amendment has played in helping to achieve a healthy agricultural economy in Kern County thereby improving the health of the entire Kern County economy which relies on agriculture as a mainstay.

Thank you.

JOHN DAVIS: The next card I have is Gary Bucher. But I wasn't -- is that the right order?

Would you prefer --

JOHN STOVALL: I'll jump ahead of him too. We pick on him all the time.

JOHN DAVIS: Okay.

JOHN STOVALL: Just for the record. John Stovall. I'm the general counsel of the Kern County Water Agency.

I wanted to tell you Barbara and John, and your staffs -- and before you get out of here that we really do appreciate your coming to Kern County. We know you've been running around the state doing this kind of thing, and I think the number of people here probably emphasizes to you the importance of the project to Kern County. Even though we have this huge room. We thought we were gonna be upstairs in the small conference room. We are very appreciative of your being here. And it's that -- I'm not gonna -- we submitted this statement that I'm gonna make, and I'm not gonna

read it word-for-word, but it's -- I'd like to emphasize a couple of things.

Because it's difficult for us to understand here -- and I think it's really important that -- that you and John understand the situation that existed back at the time the Monterey Amendments were entered.

As we sit here today, the agency, the other state contractors, and the department have a very constructive and creative relationship together. And we've worked out many -- I hate to use a trite phrase -- but win-win solutions. And we think that in large part, the constructive atmosphere created by Monterey allowed those solutions to occur and allowed even the CALFED process to occur. And so it's -- it's important for you to realize that that was not the situation back in 1994. In fact, the two points I'd like to raise is that we were very near litigation in 1994, and we were having extreme, very tough negotiations on the Kern Water -- Kern Fan properties at that time.

Regarding the first one -- and the reason I say this is because, as you analyze the alternatives, I think you have to consider the fact that a continuation of the status quo of the existing contract, as it was administered at that time, it truly wasn't feasible. Our agency having experienced the catastrophic losses in 1990, nineteen ninety -- particularly 1991 and '92 had come to the conclusion that we were, in fact, in danger of a death spiral. And, frankly, we -- if we were going down, we were gonna take a lot of folks with us.

We had come to the conclusion that we were going to go to court. We had spent many, many tens of thousands -- hundreds of thousands of dollars in preparation of a comprehensive lawsuit that we had prepared and were ready to file had Monterey not been entered. And we, of course, feel we would not have spent that money if we did not feel that we would have been successful in that lawsuit.

And it was, in fact, the Monterey Amendments that cut that litigation short and allowed the kind of constructive environment that we have today. So I think it's very important to consider that.

The other point I would like to make is that -- regarding the -- what we call Water Code Section 11258 contract, which is the contract required by the water code for the department to develop water banking facilities in a county, the department's required to enter into an agreement with the county water agency, our agency in this instance. And those negotiations had been underway for many years. And they are very tough negotiations.

And the point I'd like to make is that when you consider the environmental impact of this transfer, I think you have to consider that in those negotiations, we would have insisted on the same kind of local rights -- very significant local rights in the use of any water bank created in order for that contract to be signed. So the true environmental impact of the transfer is significantly diminished, because those -- the things that occurred, many of them we would have

insisted on occurring even if the department had retained the property and been able to turn it into a water bank, which was -- you know, we doubt that they could have done it as efficiently as we could. And you probably feel differently. But that I think is a consideration. But as far as this environmental review goes, the point we want to make is that the actual environmental difference from that transfer really is probably not that significant, and if there has been some, it's been beneficial. So --

That's my portion of the statement.

And I think if you want to -- Bill Talby I think was our next planned speaker. But there may be other folks, so --

JOHN DAVIS: Bill Talby.

BILL TALBY: My name's Bill Talby. I'm the Engineer/Manager at Wheeler Ridge Maricopa Water Storage District. I'm also a director and vice-chair of the Kern Water Bank authority. I am a registered civil engineer in the state of California and have 31 years' experience.

I'd like to direct my comments today toward the -- the Kern Water Bank, and in light of the -- the baseline issue note that the Kern Water Bank as we see it today is quite a substantially different facility from that which existed back in 1994 and 1995, the year in which the facility was transferred to Kern County Water Agency and subsequently to the Kern Water Bank Authority and the districts that make up that authority.

As John had just mentioned, the Water Code Section 11258 provides DWR with authorization to develop groundwater storage projects south of the Delta. But that -- that section has two conditions. I think John mentioned one. That a -- that the DWR

had to negotiate a -- an agreement with the entity within which the bank was to be located. The other condition found in 11258 is that the director of DWR has to determine that it was feasible to pursue a project within that -- as identified.

The land known as the Kern Fan Element of the Kern Water Bank consists of about approximately 20,000 acres located on the Kern Fan and is bisected by the Kern River originally offered to the department by Tenneco, who was in the process of selling all of their landholdings in Kern County, and as a result of the -- of the pressure at the time, DWR bought the property prior to completing any detailed feasibility studies with the agreement among DWR and the state contractors that it would be disposed of if it was not feasible to develop that property.

DWR faced significant physical and institutional legal challenges in attempting to develop the water bank. And DWR encountered difficulties in convincing the agency -- Kern County Water Agency and the districts surrounding the 20,000-acre property that its operation would not adversely affect them.

Consequently, a Section 11258 agreement was never entered into with the Kern County Water Agency.

The Department of Water Resources discovered they would encounter significant environmental problems, including the problem encountered as a result of the 1991 drought when farming operations were terminated on the property. The land thereafter left fallow, and various species of endangered species moved in, prevented the development of the property without substantial permits and restrictions on its use from wildlife agencies.

DWR never determined that it was feasible to develop a

water bank on the property. And, in fact, in 1994, prior to the Monterey Agreement DWR reported, quote, "design and planning activities for the Kern Water Bank facilities had been discontinued," end quote. Thereafter, leading up to the Monterey Agreement, the 20,000 acres was really surplus land which DWR wasn't sure what to with, and in consideration of the other elements of the Monterey Agreement, including retirement of the 45,000 acre-feet of water of the state project entitlement, was willing to transfer this property as part of the overall settlement.

From our perspective, acquiring the 20,000 acres and developing it into a water bank was a key consideration in going along with the Monterey Agreement. My district, for example, gave up Table A amounts for my district that amounted to approximately 25 percent of the 45,000 acre-feet or about 11,000 acre-feet. And we acquired through participation in the Kern Water Bank the ability to make up Table A amounts in exchange for supplies available in dry years at a local water bank.

It is noted that the transfer of the 20,000 acres was consistent with state policy of encouraging local control of groundwater banking projects, including the 2000 CALFED Record of Decision stating "CALFED agencies will facilitate and support locally supported, managed and controlled groundwater and conjunctive use projects."

As you are aware, following the trial court's decision in the PCL litigation, in accordance with the Monterey Amendments, the 20,000 acres was transferred to Kern County Water Agency, and then to the Kern Water Bank Authority, a joint powers authority made up of water agencies in Kern and Kings counties which wanted to

participate in the project.

Kern Water Bank Authority prepared an Addendum EIR and Environmental Assessment under NEPA for construction, development and operation of the Kern Water Bank, which was not challenged, and based on these documents, permits were issued by the wildlife agencies as part of a comprehensive habitat conservation plan and construction proceeded.

In developing the Kern Water Bank, we had to employ a different approach than DWR was originally contemplating in order to accommodate the needs of wildlife and satisfy the wildlife agencies that any take of endangered species would be minimized. As a general matter, spreading ponds were less formal than originally contemplated and as used in other local banking programs, with most areas left in their natural state.

The development of the Kern Water Bank under the Habitat Conservation Plan has allowed for conjunctive use of the property for water management facilities, reestablishment of historical riparian habitat and preservation of exceptional upland habitat.

To date, 77 new species have been identified on the property, including an increase from ten to 26 sensitive species observed since 1996.

We also had to develop an agreement with the surrounding water districts to insure that they would not challenge development and operation of the project, but to provide mechanisms to insure that there would not be significant adverse impacts on groundwater levels of neighboring wells as a result of operation of the project.

This agreement was the 1995 Memorandum of Understanding with the surrounding districts.

We were able to develop this agreement while DWR had previously encountered difficulties in part because it was a prerequisite for the Monterey Agreement being implemented locally.

The Kern Water Bank Authority members have invested over 30 million dollars to develop the Kern Water Bank since acquiring the 20,000 acres from DWR.

Our members and their landowners and residents have become reliant on the Kern Water Bank. For example, in my district, in part because the Kern Water Bank is available as a dry year "insurance policy" providing approximately 50,000 acre-feet in a dry year, lands previously in row crops have been developed to permanent crops. If for any reason this supply is not available, significant economic and environmental impacts would occur.

Thank you.

GARY BUCHER: My name is Gary butcher. I'm the Water Resources Manager with the Kern County Water Agency. I'm gonna outline some of the major benefits to our agency and our districts as a result of the Monterey Amendment.

Of course, as was mentioned earlier, the amendment eliminated the Ag First Shortage provisions. And since the amendment, we've had two significant shortages, one in 2001 and one in 2002. Under the amendment in 2001, our ag entitlement allocation was 39 percent, which is about 342,000 acre-feet, and in 2002, our allocation was 70 percent, and for the ag portion, that was about 613,000, and together, those years -- those two numbers added up to 955,000.

If we had not had the Monterey Amendment during that time, the Ag First Shortage provision would have been applied, and our

2001 supply would have been about four percent or about 40,000 acre-feet, and our 2002 supply would have been 35 percent or about 352. The sum of those two years under the old contract would have been 392,000, and the difference between that and under Monterey, the total's 563,000 acre-feet for those two years. And of that number, 70 percent of it would have been lost to the non-groundwater areas of the county, and -- which would have probably resulted in something over a hundred and thirty thousand acre-feet -- or acres going out of production unless alternative supplies could have been found. Those kinds of shortages would have severely impaired or eliminated our ability to enter into some of these flexible water management agreements with other contractors that we've entered into, which we'll talk about a little later, banking for urban areas as an example.

The next item that was of major benefit was the reduced risk of bankruptcies.

Prior to the Monterey Amendment, because the fixed costs had to be paid independent of water supply, a shortage of 50 percent would double the unit rate for agricultural water from say \$50 to a hundred dollars. And that created that kind of a variation in the unit cost of -- for agricultural was non-sustainable.

Under the Monterey Amendment, we have made available the ag and M&I Rate Management Funds. And these funds are used to pay for the fixed costs for water that's not delivered. And, of course, this has worked out very well. In 2000 and 2001, the unit rate that the farmer paid was the same unit rate he would have paid with a hundred percent supply. And the monies that they would have had to pay for water they couldn't get is money they have available to

enter into these banking programs and use that as an alternative source of water.

Another huge benefit to the -- our agency was the turnback pool. That was a way of -- of better allocating the water on a more timely manner. And what had happened prior to Monterey is the department had taken the position that allocate -- shortages should be allocated on request not on entitlement. And so that caused some contractors to request full entitlement even though their demands were less. And that was to avoid being cut or allocated more of a shortage. And in some cases, some contractors would get allocated water that they couldn't use, and they wouldn't return it in a timely way, and so it created additional shortages for us contractors that could take all of our entitlement.

So the Monterey Amendment solved that problem, one, by all of us agreeing to allocate shortages based on entitlement, but also by creating a turnback pool. And this is where contractors could identify their excess entitlement early, offer it back for purchase, and do that early in the year so that we can plant crops with it and put it to beneficial use. Since '96, our districts have purchased over 305,000 acre-feet of that kind of water. That simply wasn't available prior to Monterey.

We also expanded the carryover program under Monterey. There was an existing carryover program that allowed pre-irrigation water to be delayed and groundwater recharge to be delayed and carry over the following year. Monterey added to that what we call extended carryover, which allows particularly urban areas that need to insure their following year supply is firm will take some of their excess entitlement and request it a year in advance to carry

it over. And that has been a very successful program, particularly for Metropolitan, the largest contractor. Our member units since '96 have carried over about a hundred and forty-five thousand acre-feet.

The recent EWA program under CALFED, which came after Monterey, has been in operation since 2000 -2001, and that program, of course, protects the state entitlement from being reduced under ESA actions and that protects all the contractors' entitlement. Well, that program has been at the -- the water for that program -- a good portion of it has come from Kern County, and it's largely because of the local development of the Kern Water Bank. Without that facility, the EWA program would not have been as successful as it is.

In addition, we've had urban contractors, such as MWD, Metropolitan Water District, Santa Clara, Alameda, Zone 7, Castaic -- have all entered into banking arrangements with Semitropic and Arvin-Edison, and to date, they have stored collectively over 930,000 acre-feet in those two facilities, and that provides those urban areas with additional dry protection that was not possible prior to Monterey.

In addition, the expanded storage and recovery facilities in these two districts, Arvin and Semitropic, are also used by the districts for their own landowners when the urban agencies aren't using them. So we're able to use those facilities to further reduce the overdraft and to recover water when the facilities aren't needed by the urban contractors.

Lastly, as earlier pointed out, there have been permanent transfers of water from Kern under the Monterey Amendment. And at

the time of the negotiations, there were certain urban contractors who had demands that were increasing, so they were interested in purchasing additional entitlement. We were not willing to allow some of our contractors or our member units to sell entitlement because we knew the county was water short, and it didn't make a whole lot of sense. However, because of Monterey and the management tools that it provided, we were able to increase our water supplies from where it was, one, by eliminating the Ag First Shortages, and, two, by ability to bank wet year waters, being the water bank and other facilities. And those two positives were far greater than the negative of -- of allowing the hundred and thirty thousand to be sold. And because of the pieces of those benefits of Monterey, we were willing to do that.

The benefit of selling that hundred and thirty thousand allowed our -- our districts to downsize their -- or reduce their entitlement down to their new demand level, because they had permanently lost acreage and landowners. Most of the money from those sales went to cover the cost of the landowners that had gone bankrupt, and that helped stabilize and reduce the cost of the remaining landowners to stop the death spiral, as we called it.

And, again, without the Monterey Amendments, our agency was not -- was not in the position of being able to approve any of those transfers.

Thank you.

BARBARA McDONNELL: Can we have copies of your statements, please?

GARY BUCHER: Here you go.

BARBARA McDONNELL: That was easy.

JOHN DAVIS: The last card I have is Robert Kunde. I hope I pronounced your name correctly.

ROBERT KUNDE: That's very close. Much better than what I hear often on the phone in my office.

Is this on? Oh, good.

My name is Robert Kunde. I am a Registered Agricultural Engineer. I have practiced that profession since 1987. And I've worked in Kern County directly in agriculture for -- since 1983. My specialty is irrigation water supply and non-farm water management. I also serve as -- on the board of directors of the Kern County Farm Bureau, although I'm here tonight speaking on my own behalf.

I would like to emphasize the importance of the Monterey Amendments and their implementation to farmers and agriculture in Kern County. Many of the points have been made by other speakers. For instance, in 1991, Kern County Water Agency received no water from the State Water Project under the pre-Monterey Amendment condition and, also, directly as a result of the Ag First Shortage provisions under the old contracts.

In, addition, shortages were also suffered in other years, which had direct effects on agriculture, both -- not only through a reduced water supply but through increased costs, because as one of the speakers noted earlier, the fixed costs of the State Water Project remain the same in water-short years thereby driving up the unit cost of water received to very high levels in shortage periods.

The beneficial effect of the Monterey Amendment has been in three primary areas for the farmers for whom I work; providing an adequate supply of water, making sure that it is reliable and that

it is also affordable.

As an example, Gary Bucher referred to the Ag Trust Fund, which is a mechanism for ensuring stability of water rates during periods of shortage. This is a critical component for agricultural production in this county because wildly fluctuating rates, particularly in the Kern farm economy, and even in times when the economy is better, are very difficult to budget and obtain financing for in order to maintain operations.

Another point is that local conjunctive use, which has greatly expanded as a direct result of the implementation of the Monterey Amendments, Kern Water Bank and other local projects mentioned by the agency speakers, have resulted in an increasing reliability of supplies. That has come at the expense of transfer of some water supplies out of Kern County to other sources, but that is -- both of those are actually a benefit to farmers. The transfer of excess supplies which could not be utilized by farmers has -- had the effect of reducing their costs, and participation in local conjunctive-use banking projects as part of the Monterey Amendment package has improved the reliability of supplies for agricultural purposes.

The elimination of the Ag First Shortage clearly has been a benefit to agriculture in improving reliability of supplies necessary for agricultural production. The -- one of the items mentioned in the initial presentation was Article 18(a) and 18(b) under the contracts.

It is worth pointing out that if Article 18(b) were invoked, which would declare a permanent shortage on the State Water Project, that would have negative effects on the water supply, its

adequacy, reliability and affordability for farmers and agriculture in Kern County, because the supply would be reduced under that provision if the adequacy of the supply would be detrimentally affected. The reliability of the supply because of the reduced Table A amounts would be reduced, and because there may or may not be -- but I am assuming pre-Monterey without an Ag Trust Fund -- the affordability of the supply would become less as the fixed costs of the State Water Project would have to be spread across fewer acre-feet.

The environmental baseline was mentioned in the initial presentation. And I'd like to comment that I believe it is entirely appropriate for that environmental baseline to be based on conditions that are post Monterey Amendment. Farmers in Kern County have been relying on the implementation of those amendments for over six years, and those, therefore, represent the appropriate baseline of conditions from which to measure impacts.

Finally, I would urge the department not to reinvent the wheel where it's already been invented. There is an EIR, as you are well aware, already developed. Many of the points were not disputed in the PCL litigation. And I would urge you to take advantage of those and not -- and devote the resources to the incremental requirements of the PCL settlement rather than trying to reinvent the wheel and reevaluate impacts that have already been adequately evaluated.

Thank you for the opportunity to comment.

JOHN DAVIS: That was the last of the cards that I had, and I wondered if there's anyone else who has any comments tonight.

We appreciate the ones that you've made. It's very helpful

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SCOPING MEETING
THURSDAY, FEBRUARY 13, 2002
520 MAIN STREET
QUINCY, CALIFORNIA

Environmental Impact Report for Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and Other Contract Amendments and Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League v. Department of Water Resources (Sch No. 20030118)

Reported by: Deirdre Hernandez, CSR No. 11737

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THURSDAY, FEBRUARY 13, 2003

CATHERINE MCEFEE: I would like to welcome you all. This is the scoping meeting. And I'm going to read this because it's such a long title, for the Monterey Amendment to the State Water Project Contracts, (including Kern Water Bank Transfer) and Other Contract Amendments and Associated Actions as Part of a Proposed Settlement Agreement in Planning and Conservation League versus Department of Water Resources Environmental Impact Report.

Today's meeting is to allow the public to provide input on what issues they would be interested in seeing evaluated in the EIR.

If you have not done so already, I would like to ask you before you leave to sign in on our sign in form.

Also, I want to make sure everyone has a handout because we're having a little audio/video difficulty. So we're going to ask you to follow along with the presentation in the handout.

I think the gentleman -- did you just arrive? Did you get -- do we need another? One more?

Before we begin with opening up the meeting for public comment we're going to have a presentation. But I also want to ask that if you are interested in speaking

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at today's meeting, that we do have cards we want you to fill out. If you've got one, please hand it to me.

And, now, I would like to go ahead and introduce Delores Brown, who is the chief of the

5 Mitigation and Restoration Branch, Division of
6 Environmental Services for the Department of Water
7 Resources, who will go through the formal presentation on
8 the project and the process.

9 And with that, Delores.

10 DELORES BROWN: Thank you, Cathy. And thanks again
11 for all of you for attending our scoping meeting. This
12 is one of our larger crowds, so we certainly appreciate
13 your coming.

14 Do I need to use a mic? Okay, great.

15 If you turn to your second slide, it asks the
16 question: Why an EIR?

17 As required by the California Environmental
18 Quality Act, the Department of Water Resources will
19 prepare an environmental impact report for the Monterey
20 Amendment to the State Water Project Contract, including
21 the Kern Water Bank Transfer and other contract
22 amendments and associated actions as a part of a proposed
23 settlement agreement in the planning and conservation
24 league versus the Department of Water Resources.

25 The Department will conduct five scoping

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1 meetings throughout the state -- and this is the fifth
2 scoping meeting -- to obtain the views of agencies and
3 other interested parties about the scoping content of the
4 environmental information and analysis relevant to the
5 agency's statutory responsibilities and stakeholder
6 interest in the project.

7 I would like to review some of the background
8 information that lead up to the Monterey Amendment EIR.
9 And this would be the first EIR.

10 The state water project contract dates from the
11 early 1960's. Each contract has been amended many times
12 over the intervening years. As water management in
13 California has changed over the years, issues arose
14 between the department and the contractors, that the
15 contracts had some provisions that ran counter to good
16 financial and water management practice.

17 The Monterey Amendment is a set of 14
18 principles agreed to by the Department and
19 representatives of the State Water Project contractors in
20 1994 to remedy some of these problems. The Monterey
21 Amendment is the amendment made to the contract as a
22 result of the Monterey principles.

23 The amendment resolved long term water
24 allocation issues and established a new water management
25 strategy for the SWP. The water allocation issues

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1 focused on Article 18 of the state water contracts.

2 Article 18 addresses the allocation and
3 shortages in water supply and under what circumstances
4 the initial reductions to agricultural use should be
5 imposed before reducing allocations to urban contractors.

6 The contentious portion of the water shortage
7 contract provision dealt with Article 18(b), which dealt
8 specified types of permanent shortages of the supply of
9 project water and stated that the Department would reduce

10 entitlement in the event of a permanent shortage, but
11 Article 18 has never been invoked.

12 Article 18(b), which deals with cuts to
13 agricultural contractors first during droughts and other
14 types of temporary shortages has been invoked.

15 The Monterey agreement's statement of
16 principles arrived at in December of 1994 resolved the
17 allocation issues by proposing contract provisions that
18 eliminated the initial agricultural use cutbacks and
19 specified that all project water would be allocated based
20 on contractor's annual Table A amounts. Thereby,
21 eliminating the need for different shortage provisions.

22 In May, 1994, the Central Coast Water
23 Authority, serving as the lead agency, prepared a draft
24 EIR to address the effects of implementing the Monterey
25 Agreement statement of principles.

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1 The final EIR was completed in October, 1995,
2 and subsequently used by the Department to support its
3 decision to amend certain state water contract water
4 supply provisions.

5 Since 1995, 27 of the 29 contractors had
6 executed the Monterey Amendment. The only contractors
7 who did not execute the amendment were Empire Westside
8 Irrigation District and Plumas Flood Control and Water
9 Conservation District.

10 In December of 1995, Planning and Conservation
11 League sued the Department on the basis that the
12 Department should have been the lead agency preparing the
13 EIR, and that the lack of an analysis with respect to the
14 leading Article 18(b) was a fatal flaw.

15 The lower courts ruled in the Department's
16 favor, but the decision was overturned by the Third Court
17 of Appeal. This court ruled that the Department had the
18 statutory duty to serve as a lead agency and the EIR
19 failed to adequately analyze the effects of the leading
20 Article 18(b).

21 The Department and most of the State Water
22 Project contractors have been in a settlement process
23 with the plaintiffs since 2000. This process is nearing
24 completion and will be included in the basis for the
25 proposed project.

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1 I should mention that the Planning and
2 Conservation League was joined in the lawsuit by Plumas
3 County Flood Control and Water Conservation District and
4 the Citizen's Planning Association of Santa Barbara,
5 collectively called the plaintiffs.

6 So that brings us to today and the reason for
7 the scoping meeting. We are now starting a brand new
8 CEQA process. DWR will be the lead agency.

9 The proposed project includes the original
10 Monterey Amendment provisions, as well as other contract
11 amendments and actions to be carried out by the
12 Department as a result of the proposed settlement
13 agreement.

14 The objective of this project is to improve the

15 operation and management of the State Water Project's
16 supply through the Monterey Amendment and other contract
17 amendments and to carry out other associated PCL versus
18 DWR proposed settlement agreement.

19 The new EIR will evaluate potential
20 environmental effects of the following five elements.
21 The allocation changes for the State Water Project water
22 supplies, transfer of Table A amounts and land, water
23 management provisions, financial restructuring, and
24 potential additional actions.

25 The first four elements represent a compilation
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1 of the first 14 principles. The last element will
2 address the additional actions required to implement the
3 proposed settlement agreement. I will review these
4 elements individually.

5 The allocation changes for the State Water
6 Project water supplies include allocate all water
7 supplies in proportion to each contractor's annual
8 Table A amount, eliminate initial supply reduction to
9 agricultural contractors in years of shortage, replace
10 certain categories of water with a single category called
11 interruptible water that is allocated on the basis of
12 annual Table A amounts. The final one is to eliminate
13 the current permanent shortage provision.

14 The second element, transfer of Table A amounts
15 and land would permanently retire 45,000 acre feet of
16 agricultural Table A amounts annually, make 130,000 acre
17 feet per year of agricultural Table A amounts available
18 for permanent sale to urban contractors, transfer Kern
19 Fan Element properties to local control.

20 The Kern Fan Element of the Kern Water Bank was
21 initially described in an EIR written in December of
22 1996. DWR owned the Kern Fan Bank, but transferred the
23 property to local control as part of the Monterey
24 Amendment.

25 For those of you who are not familiar with this
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1 program, the Kern Water Bank is located southwest of
2 Bakersfield in Kern County.

3 The next slide shows the Table A permanent
4 water transfer buyers under the Monterey Agreement.
5 Those purchasers include Mojave Water Agency, Castaic
6 Lake Water Agency, Palmdale Water Agency, Alameda County
7 Flood Control and Water Conservation District Zone 7,
8 Solano County Water Agency and Napa County Flood Control
9 and Water Conservation District.

10 So far 111,781 acre feet have been transferred
11 and another 18,219 acre feet remains to be transferred.

12 Now the water management provisions as an
13 element would enable voluntary water marketing, ground
14 water banking and improved use of existing State Water
15 Project facilities. It would allow ground water or
16 surface water storage of SWP water outside contractor's
17 service area for later use within a service area. It
18 would also expand the contractor's ability to store water
19 in San Luis Reservoir when space is available.

20 Additionally, the water management provisions
21 would permit contractors to withdraw and later restore
22 water from the SWP terminal reservoirs. The terminal
23 reservoirs are Castaic Lake and Lake Perris. This
24 program provides greater coordination and management of
25 local and SWP supplies.

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1 Additionally, it would clarify terms for
2 transport of contractor's non-project water and create a
3 Turnback Pool for the annual sale of unneeded SWP water
4 supplies to other contractors.

5 The financial restructuring element would use
6 SWP funds to establish an SWP operating reserve. It
7 would also establish a water rate managed program when
8 SWP cash flow permitted.

9 The potential additional actions included
10 establishing a Plumas Watershed Forum for watershed
11 restoration, amending the Plumas State Water Project
12 contract regarding shortages, imposing additional
13 restrictions on use of the Kern Water Bank lands and
14 amending the State Water contracts to substitute Table A
15 amounts for entitlement. The last element would address
16 provisions from the proposed settlement agreement.

17 Other actions under the potential additional
18 actions includes developing new procedures for disclosure
19 of SWP delivery capabilities. This process has begun and
20 a draft report on the SWP delivery capabilities has been
21 under public review for months.

22 A final report is scheduled to be released
23 later this month. This report will be updated every two
24 years and we would hope that you would look at the DWR
25 home page for any updates.

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1 The location of the proposed project includes
2 the State Water Project facilities (including conveyance
3 facilities in the Sacramento-San Joaquin Delta), the
4 State Water Project service area (including the Kern
5 Water Bank) and the State Water Project contracted
6 service areas.

7 Depending on the SWP contract actions under the
8 proposed project location, the area of influence could
9 extend beyond the SWP contractor's service areas.

10 As required by CEQA an EIR must include a
11 description of the physical environmental conditions in
12 the vicinity of the project as they exist at the time the
13 notice of preparation is published.

14 The environmental setting normally constitutes
15 the baseline physical conditions by which a lead agency
16 determines whether an impact is significant. Normally,
17 the environmental baseline is the same as the existing
18 conditions. In the case of the Monterey Amendment the
19 two are different.

20 We have not yet identified the reasonable range
21 of alternatives to be evaluated. However, to comply with
22 the court's instructions we do know we will be evaluating
23 the No Project Alternative with and without invoking
24 Article 18(b), the permanent shortage provision.

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This EIR will analyze all resource categories

1 that could be impacted by the proposed project. The
2 proposed project's physical changes include re-operation
3 of water deliveries (with and without Article 18(b), and
4 reservoir operations, water storage in service areas,
5 watershed actions in Plumas County, and other actions.

6 At this time, I would like to turn the meeting
7 back over to Cathy McEfee who will discuss our CEQA
8 schedule and the format for the rest of the meeting.

9 CATHERINE MCEFEE: Thank you, Delores.

10 This is just the beginning of the public input
11 portion of the CEQA process. And as noted earlier, and
12 as Delores talked about, this is when we are asking for
13 input on to the scope of the environmental impact report
14 both from the public and both from agencies.

15 There are a couple ways that that can be
16 achieved. If at today's meeting if you wish to speak, we
17 are recording all comments that will be provided. We
18 also have cards, if you don't want to speak, you can fill
19 out. Or as noted in your handout, you can mail your
20 comments to Delores, and the address is provided for you,
21 or you can e-mail them to her.

22 We want to make sure if you have any comments,
23 any input you want on the scope of the EIR we give you
24 many opportunities to do that.

25 If you turn to the next page, it outlines the

0013

1 actual CEQA process. And as you can see we're up here.
2 We're at the very beginning of the process where we
3 issued the notice of preparation and we're taking
4 comments on the scope.

5 The goal is to have a draft environmental
6 impact report published in the Spring of 2004. And at
7 that time, there will be another time when the public can
8 provide input on the content and the adequacy of the
9 analysis in the draft EIR. And we will have some
10 hearings during that time, similar to these, where you
11 can come and provide your comments. And you will be able
12 to mail them or e-mail them in.

13 When we're done with the draft EIR, we've
14 collected the comments that everyone provides us, we will
15 provide written responses to all of the comments and
16 publish what's call a final EIR. That document will
17 provide the responses, and also identify if there are any
18 changes to the text in the draft EIR. Then it will go to
19 the Department for their consideration for certification.

20 At this time, I would like to just ask if there
21 are any questions on Delores' presentation or on the CEQA
22 process before I open it up for public comment.

23 Yes, sir.

24 TOM HUNTER: One of the items was amend Plumas
25 County's regarding shortages. Could you enunciate a

0014

1 little bit on that?

2 DELORES BROWN: We have several people here from
3 SWPAO that can speak to that better than I.

4 NANCY QUAN: That's part of the proposed settlement
5 agreement. And right now because it's still
6 confidential, we're not saying anything about it yet
7 until it is settled.

8 TOM HUNTER: Okay. So in a month or so you can
9 talk about it?

10 NANCY QUAN: Yes.

11 MICHAEL JACKSON: But the scoping is over.

12 TOM HUNTER: What's that?

13 MICHAEL JACKSON: But the scoping is over.

14 NANCY QUAN: Even if the scoping process has ended,
15 we still welcome comments if you want to send them to
16 us -- or to Delores, actually, when the process has
17 ended.

18 CATHERINE McEFEE: Okay. I've received one speaker
19 card. Is there anyone else who would like to fill one
20 out?

21 Michael, would you like to go ahead and start?
22 I've got your card first. If you could -- I don't know
23 if you want to go and use this microphone here or --

24 And if I could ask you to go ahead and give
25 your name and spell it for our reporter, that would be

0015

1 great.

2 MICHAEL JACKSON: My name is Michael Jackson,
3 spelled J-A-C-K-S-O-N.

4 And I thank you for the opportunity to testify
5 in the scoping meeting. I understand from the
6 presentation that these oral comments will be turned into
7 a written form and will be part of the transcript of the
8 record of this hearing.

9 CATHERINE McEFEE: Correct.

10 MICHAEL JACKSON: Thank you. This particular
11 document, first of all, needs to take into account the
12 timed period that has passed since the original EIR was
13 written. Most of the data in the original EIR is out of
14 date and I think would be completely inapplicable as you
15 begin to scope your way through a 2003-2004 time frame
16 instead of the original decade ago.

17 Much has changed in the delta, and much has
18 changed -- that is, which makes the State Water Project
19 and its operation under its contracts critical. As
20 your background information says, in 1994, DWR and the
21 representatives of the State Water Project contractors
22 agreed to a set of principles known as the Monterey
23 Agreement.

24 Those principles in the context of 2004 are
25 capable of causing much more environmental damage than

0016

1 they were originally believed to cause.

2 First, there's many more people in California
3 at the present time. And there's many more competitions
4 for water supplies. And the State Water Project is key
5 to regional water supplies around the State of California
6 because it presently has the only existing available
7 capacity to pump more water from the
8 Sacramento-San Joaquin Delta, that is likely to be

9 available for the next decade or two.

10 That capacity has been allocated a number of
11 times. It's been allocated to the environmental water
12 account of the Cal Fed program. Approximately 380,000
13 acre feet of additional capacity promised by Cal Fed and
14 DWR to the Cal Fed program. That capacity narrows the
15 windows that are available for the transfer of State
16 Water Project water, whether it be entitlement water or
17 whether it be interruptible water.

18 And so it seems critical that the Monterey
19 Agreement EIR take a look at the physical capacity of the
20 State Water Project system to deliver additional water
21 anywhere south of Clifton Court Forebay, anywhere on the
22 California Aqueduct system.

23 As the court made clear, it is very important
24 that we not be transferring paper water to land use
25 agencies throughout the urban areas of California that

0017

1 would use that paper entitlement to build houses for
2 which water might be unavailable given both the natural
3 drought system, the expanding population, and the limited
4 capacity at the state pumps.

5 I'm very happy to see that you've identified
6 Article 18(a) and Article 18(b) as important parts of the
7 existing state contract which are to be dealt with in
8 this environmental impact report.

9 The question of the Monterey Agreement
10 principle that deletes the agriculture first use cutback
11 in the face of the drought is even more important in 2003
12 and four than it was in 1993 and four when this
13 particular -- when the first EIR was being drafted.

14 It makes no sense, logically, to talk about the
15 substantial amounts of ag water that is going to be
16 transferred to urban uses for growth in California.

17 An example being the Colorado River transfer,
18 the Sacramento Valley transfer, the substantial number of
19 ag to urban transfers at the same time the state project
20 and the State of California are going in completely
21 opposite directions. Which is that in a drought, under
22 the existing rules before the Monterey Agreement,
23 agriculture would be cut back first so that cities would
24 have water for industrial and urban uses, municipal uses.

25 This EIR needs to look carefully at 18(a)

0018

1 because it seems on its face to be consistent with where
2 California is going in the year 2003. It requires that
3 ag suffer first and that urban and industrial uses have a
4 preference. And that seems to be consistent with Water
5 Code Section 109 and with a long process of California
6 law.

7 In regard to 18(b) -- thank you very much for
8 agreeing to take a good hard look at that as the court
9 ordered. 18(b), as it existed pre-Monterey Agreement,
10 was a preference for northern California water users,
11 both the ones that are present today and the ones that
12 have a right under the area of origin law to apply to the
13 state project for water rights in the future.

14 Those water rights are secured to the people of
15 the Sacramento and San Joaquin drainage, but in
16 particular the Sacramento drainage, by Water Code Section
17 11460 through 11464, by Water Code Section 10505 and
18 10505.5, by Water Code Section 1215 through 1220. All of
19 which give a preference to in-basin users, and yet the
20 Monterey Agreement removes the contract preference for
21 the people of northern California.

22 So as that is analyzed, it would be very
23 important to take a look at what the growth expectations
24 are in the area above the Clifton Court Forebay pumps.
25 What's going to be needed for the environment, what's

0019

1 going to be needed for the water quality. There are new
2 water quality standards in the delta since the Monterey
3 Agreement was drafted the first time and those standards
4 ought to be looked at closely.

5 There are a number of endangered species which
6 have been listed in all of the streams in the Sacramento
7 and San Joaquin drainage and those critters need water.

8 And so the question of entitlement or
9 interruptible water should be looked at with today's
10 standards, not the standards from the original 1994
11 agreement.

12 Since that time, there have been laws passed at
13 both the federal and state level that give guidance as to
14 how much water is needed in terms of biological opinions
15 for these critters. There is the Vernalis Adaptive
16 Management Plan which has dedicated a certain amount of
17 water to the fisheries as part of a program required by
18 the State Water Board in Draft 1641.

19 There are substantial arrangements by State
20 Water Project users to purchase non-State Water Project
21 water. The Sacramento Valley Water Agreement is one
22 source of that water. An approximate 200,000 acre feet
23 that one of the State Water Project contractors is
24 expecting to transfer this year.

25 And even though it is only a temporary one-year

0020

1 transfer, because of the problems in the Colorado River
2 and the way they relate to the operations of the State
3 Water Project facilities it would be important to take a
4 look at all State Water Project contractors water sources
5 whether they be from the state project or from
6 alternative projects.

7 It's also important that in an examination of
8 articles 18(a) and 18(b), that the document pays
9 particular attention to the elimination of the permanent
10 shortage provision.

11 It was a very wise provision originally in that
12 Governor Edmond Brown and Adolph Moschcowitz and the
13 others who designed the State Water Project placed in the
14 contracts. And to simply remove it when water is more
15 and more short, simply seems to go against state policy.

16 In terms of the transfer of Table A amounts and
17 land, the document will, I understand, look at the
18 transfer of Kern Fan Element to Kern County Water Agency

19 and to the -- what is now the Tulare Basin Ground Water
20 Management Group.

21 That group is 47 percent owned by private
22 parties and is using state public water and reselling it.

23 The question of whether or not that's legal is
24 something that needs to be looked at. The state project
25 bonds have not been retired. The vote on the State Water

0021

1 Project was secured by the bond -- by the placing of the
2 master contract into the record before the voters.

3 The real question in the transfer of the 45,000
4 acre feet of agricultural Table A amounts, the 130,000
5 acre feet of agricultural Table A amount for permanent
6 sale to urban contractors, and the transfer of the Kern
7 Fan Element properties to local control is whether or not
8 a gift of public funds is taking place from the State of
9 California to a group of contractors.

10 And so this document ought to take a look at
11 the history, and at the legislative history in
12 particular, at a case called Goodman versus Riverside in
13 which the question of the import of the master contract
14 and the bonding would have on any ability to move land
15 and water around.

16 In regard to the water management provisions,
17 it's very good that the presentation today,
18 straightforwardly pointed out that this is -- this
19 project, this amendment -- Monterey Amendment, will
20 enable voluntary water marketing, ground water banking,
21 and improved -- it says on this thing -- use of existing
22 State Water Project facilities.

23 Again, I've talked about the fact that State
24 Water facilities are overburdened at the present time,
25 but this document is going to mock some of that to find

0022

1 out whether or not there's water available.

2 I would like the document to take into account
3 the recent report done for Senator Machado's committee by
4 the California Research Bureau that points out that the
5 present CALSIM monitoring is not consistent with reality.

6 In other words, the present CALSIM monitoring
7 generally overstates the amount of water available for
8 transfer, the amount of water available for ground water
9 banking, and the amount of water available for any use of
10 the capacity of the State Water Project facilities as
11 about a million acre feet per year overstated.

12 This is a new form of paper water, not the form
13 that the judge -- that the judges were talking about in
14 the Third District Court of Appeals.

15 And the recent report to Senator Machado's
16 Agriculture and Water Committee would provide a good
17 place to start in your analysis for the Draft
18 Environmental Impact Report.

19 The question of allowing ground water or
20 surface water storage of State Water Project water
21 outside of a contractor's area for later use within its
22 service area should be examined completely.

23 You should look at the potential directions

24 where that water goes. At how often it would be used in
25 a place. How often it would be used for a purpose that

0023

1 is different than the original State Water Project place
2 of use and purpose of use.

3 The use of State Water Project contractor's
4 service water was one of the topics that caused the Third
5 District Court of Appeals to talk about paper water,
6 because water gets moved in California temporarily. This
7 year you sell it in Zone 7 in Alameda County. Next year
8 you sell it in the Mojave Water District.

9 What we want to make sure doesn't happen and
10 what the EIS/EIR should take a hard look at is whether or
11 not when the water gets used in one year in Zone 7, they
12 build houses in Alameda County. And then the next year
13 the water is moved to the Mojave, where they build
14 houses. And then the next year it's moved to Santa
15 Barbara, where they build houses.

16 So the idea of floating water, whether it be
17 paper or actual, is very apt to cause growth that will be
18 damaging to the environment of California because it
19 cannot be permanently sustained with the existing water
20 supply.

21 In terms of the financial restructuring, I
22 don't have a lot of comment yet, because I understand
23 from the presentation that this is a new part of the
24 Monterey Agreement. Basically, I would like to see the
25 draft environmental document discuss the question of the

0024

1 relationship between -- about who owns the project.

2 Do the people of the State of California own
3 the water and the project? Or do the contractors own the
4 water and the project?

5 And as you can see, it would make a big
6 difference. Because if there is extra water available in
7 the system the State of California could sell it directly
8 to new users or could sell it directly to users outside
9 of the state water system but who are still citizens of
10 the State of California and who have the same rights as
11 anyone else.

12 So this document should take a look at the
13 resale of the State's water that is received through
14 their state water contracts, perhaps in years in which
15 they don't need that water.

16 In other words, our contractors taking
17 interruptible water over and above what they need in any
18 given year for later resale and depriving the People of
19 the State of California of the profit.

20 I believe that you should look very closely at
21 doing much more than a Plumas County Watershed Forum for
22 Watershed Restoration. The watersheds above the state
23 project reservoir at Oroville are degrading
24 substantially. The amount of holding capacity of the
25 area above the watershed is being lost mainly for two

0025

1 reasons. Reason number one is that forest growth and
2 overstocking from fire suppression are causing a

3 tremendous decrease in the amount of runoff.

4 Those of us who live here can see it as streams
5 that used to be perennial become more and more
6 intermittent. The intermittent streams become almost
7 ephemeral in dry years. The cause is the lack of
8 watershed management. And the cause of the lack of
9 watershed management as recounted by the State of
10 California, Mr. William Stewart from the California
11 Forestry Department in the Sierra Nevada Ecosystem
12 Project Report made it very clear that contrary to the
13 timber economy, or what's left of it, the water economy
14 which is 60 percent of the value of the Sierra ecosystem,
15 in terms of goods and services, returns nothing to
16 watershed maintenance.

17 Millions and millions of dollars are spent in
18 the Monterey Agreement on shuffling water around and
19 making infrastructure improvements so that urban and
20 agricultural water users can use the water more
21 efficiently and more economically. And what they are
22 doing is putting the environmental costs of the
23 deteriorating systems that provide the water off account.

24 In other words, they are not costs of the
25 project. If you put concrete in and transfer water, it's

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1 a cost of the project. If you use a river system in a
2 way totally unlike nature, it's not a cost of the
3 project. And so this environmental document should look
4 very closely on a re-re-investment mechanism to keep the
5 natural parts of the State Water Project infrastructure
6 producing the water that everybody wants to argue about
7 when it gets to the pumps.

8 Thank you for allowing me to --

9 Oh, one other thing. In regard to the existing
10 condition. The existing condition should be pre-Monterey
11 Agreement. The existing condition should be updated only
12 in the sense -- not with the Monterey Agreement
13 principles, but only to add D-1641, the Bay Delta Water
14 Quality Hearing, and the findings and principles of that
15 decision and the increased flows required by the
16 ecosystem restoration plan and the environmental water
17 account that are part of the Cal Fed project.

18 Thank you, very much.

19 CATHERINE McEFEE: Thank you.

20 MICHAEL JACKSON: And I have a little outline of
21 the ten points.

22 CATHERINE McEFEE: Thank you, very much.

23 Mr. Shulman.

24 ROBERT SHULMAN: Hello, I'm Rob Shulman, Plumas
25 County Counsel, and my remarks are made on behalf of the

0027

1 County Board of Supervisors and the Directors of the
2 Flood Control and Water Conservation District.

3 The County and district welcome this new EIR
4 because it will be a much more public and thorough review
5 of the State Water Project. We're the northern terminus
6 of the State Water Project and, of course, we know Perris
7 and Castaic are the terminal reservoirs.

8 Very few people in the state can describe the
9 State Water Project. It's a tribute to many of you at
10 DWR that you can keep it running and keep track of it.
11 But we feel there's a need for the public, generally, to
12 understand better how California's water is allocated --
13 not only allocated, but collected.

14 The collection is up here in the landscape that
15 we live in. And we have a few small project reservoirs
16 Lake Davis, Frenchman Lake, and Antelope Lake that are
17 increasingly important both in our future and in the
18 state's future.

19 So the Flood Control District of Plumas County,
20 as a contractor, has an increasing stake in the State
21 Water Project and feels that the -- the new contract
22 amendments, which we call Monterey Plus, will be a very
23 great benefit to the county and the flood district.

24 The Monterey Plus details are still
25 confidential as was explained at the beginning of the

0028

1 scoping meeting. Although, it is planned for the Board
2 of Supervisors to take action to approve that settlement
3 next Tuesday.

4 Unfortunately, it will probably still remain
5 confidential for several more weeks until we have an okay
6 that all settling parties have signed.

7 So those details cannot be brought out at this
8 time, and I want to talk a little more generally about
9 water supply reliability because that is really what this
10 State Water Project is about.

11 It's about making a water supply available
12 throughout the service areas of the state and making it
13 reliable. But that's not exactly in accordance with
14 nature's plans because nature naturally causes
15 variability to be the rule of the day. We have wet
16 years. We have dry years. We never know what any
17 particular year is going to be. And none of us know
18 what's going to happen in the next three months.

19 But even though we have a context of
20 unreliability in nature and a context of overall scarcity
21 of water in this arid state with the growing population,
22 we must all support efforts to provide water where needed
23 in this state.

24 And to that extent, Plumas County supports
25 efforts to wisely allocate water where needed, to do it

0029

1 efficiently -- if that involves market practices or other
2 practices.

3 And we have confidence that this new Monterey
4 Amendment Project will be explained and be found to be a
5 rational and appropriate move that's in the interest of
6 all people in the state. But, of course, the proof of
7 that will be in the EIR that's completed.

8 So we, we in Plumas County wish you well and
9 hope that we can make a contribution to this new EIR so
10 that it becomes a foundational document in the water
11 history of the state.

12 I would like to focus on the time frame of

13 the -- that the EIR uses. These are the first major
14 amendments, perhaps, since the incipience of the project
15 since the 1960's, and it will probably be the most
16 important modification of the contracts for 20 or 30
17 years.

18 I would suggest taking a long time frame when
19 you do your analysis in the EIR. Because of the
20 population growth in California, because of the prospect
21 of global warming which may reduce the Sierra snow pack,
22 and, in general, this is a very significant document
23 which will define the limits within which California has
24 to live in the future.

25 Now, Plumas County has learned through this --
0030

1 the years since Monterey was unveiled that it has a lot
2 in common with its contractor to the south known as Kern
3 County.

4 Kern County water agency and the Kern County
5 Water Bank have wisely utilized their geographical
6 position and unique geological features to highlight
7 their role as -- I guess I would call it a water
8 switchyard.

9 Water is coming from the aqueduct, water is
10 coming from the Kern River, and there's the Kern Water
11 Bank and the Cross Valley Canal, it's all right there.
12 And Kern said, look, we locals know maybe how to manage
13 that a little better than the state, and with less threat
14 to private neighbors and ranchers in the area.

15 So the state deeded fee title to the Kern Fan
16 Element, which is a large flood plain, basically, at the
17 mouth of the Kern River which soaks up water during flood
18 events and it lends itself to replenishment and pumping
19 out of water as needed. So it's an underground -- it's
20 basically like a Lake Almanor under ground, probably a
21 million acre feet capacity.

22 It is now under local control, and we assume
23 it's being wisely managed. We hope that the EIR details
24 somewhat how it is being managed so that everyone can be
25 reassured that in fact it was an appropriate public

0031
1 policy decision to deed the Kern Fan Element from the
2 state to local control.

3 But the parallel with Plumas is that we are the
4 natural watershed and a natural storage area north of the
5 aqueduct. When rain and runoff occurs, if it goes right
6 out the Feather River into the delta it can be lost
7 unless it's taken up as interruptible water. But it's
8 really to everyone's benefit for as much precipitation as
9 possible to remain stored in the meadows, the aquifers,
10 and the base flow of our streams for timely release over
11 the hot summer into Lake Oroville and then the Feather
12 River.

13 It's a concept which has, in the past, received
14 relatively little attention and now this EIR is a chance
15 to highlight the potential for that. Even a small
16 percentage of augmentation of supply increases
17 reliability in the State Water Project.

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Certified Shorthand Reporter in and for the
County of San Joaquin, State of California

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IN RE)
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ENVIRONMENTAL IMPACT REPORT)
SCOPING MEETING)
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_____)

Transcript of Proceedings taken at
4080 Lemon Street, Riverside, California,
commencing at 7:00 p.m., Tuesday, February 4,
2003, before Brooke Silvas, Certified Shorthand
Reporter No. 10988.

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APPEARANCES :

JOHN DAVIS
NANCY QUAN
DELORES BROWN
CLAIRE LEFLORE
BARBARA MCDOWELL
JERRY RIPPERDA

1 RIVERSIDE, CALIFORNIA; TUESDAY, FEBRUARY 4, 2003

2 7:00 P.M.

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4
5 (The meeting was called to order. However,
6 no members of the public appeared. Therefore,
7 the meeting was adjourned at 8:05 p.m.)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I, Brooke Silvas, Certified Shorthand Reporter,
Certificate No. 10988, for the State of California,
hereby certify:

I am the person that stenographically recorded
the transcript of proceeding held on Tuesday,
February 4, 2003.

The foregoing transcript is a true record of
said proceedings.

Dated February 17, 2003

Brooke Silvas

SCOPING MEETING

Environmental Impact Report for Monterey Amendment to
the State Water Project Contracts (including Kern
Water Bank Transfer) and Other Contract Amendments and
Associated Action as Part of a Proposed Settlement
Agreement in Planning and Conservation League v.
Department of Water Resources (SCH No. 200301118)

Lead Agency: Department of Water Resources

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Held at:

Resources Building Auditorium
1416 Ninth Street, First Floor
Sacramento, California

Monday, February 3, 2003

10:32 a.m. to 10:53 a.m.

Reported by:
CARRIE STOTTLEMEYER, RMR, CRR
CSR No. 4373
Job No. 36329

1 APPEARANCES

2

3 CATHERINE C. McEFEE

4 BARBARA McDONNELL

5 DELORES BROWN

6 NANCY QUAN

7 PEGGY BERNARDY

8 KATHERINE SPANOS

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10 AUDIENCE MEMBERS

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1 SACRAMENTO, CALIFORNIA

2 Monday, February 3, 2003

3 10:32 a.m.

4 --oOo--

5
6 MS. McAFEE: I want to first thank all of you
7 who are joining us this morning and just remind you,
8 if you haven't done so, so please go ahead and sign in
9 in the back and, if you were planning on speaking
10 today, to fill out the speaker card, and the purpose
11 of today's meeting is to take comments on the Monterey
12 Amendment -- it's a very long title, so bear with
13 me -- Monterey Amendment to the State Water Project
14 Contracts Including the Kern Wear Bank Transfer and
15 Other Contract Amendments and Associated Actions as
16 Part of the Proposed Settlement Agreement in PCL
17 Versus the Department of Water Resources, and I'd like
18 to now go ahead and introduce Barbara McDonnell, she's
19 the chief of the Environmental Services Branch, and
20 Barbara's going to spend a few minutes telling you a
21 little bit about the project, and then we will open up
22 the meeting for public comment.

23 MS. McDONNELL: Thank you. And we're trying
24 out our new auditorium setup here with a television
25 monitor, so I'd like to hear some feedback on how that

1 works from the audience sitting there. Is that good
2 or not? Because obviously we don't have to use those
3 if we don't want to in the future.

4 Again, thank you for coming. This is our
5 first scoping meeting for this particular project, so
6 you're getting kind of the first run-through on the
7 presentation, and why are we doing EIR? Well, as
8 required by the California Environmental Quality Act,
9 Department of Water Resources will prepare an
10 Environmental Impact Report for the Monterey Amendment
11 to the State Water Project contracts, which includes
12 the Kern Water Bank Transfer and other contract
13 amendments and associated actions, as part of a
14 proposed settlement agreement in the Planning and
15 Conservation League versus Department of Water
16 Resources, and this is a very long title, and what I'm
17 hoping to do this morning is explain that title and,
18 in doing so, actually define the proposed project.

19 Again, the purpose of the meeting is to
20 obtain your views, both agencies and stakeholders.

21 We are conducting five scoping meetings
22 throughout the state to obtain the views of agencies
23 and other interested parties about the scope and
24 content of the environmental information and analysis
25 relevant to agency statutory responsibilities and

1 stakeholder interest in the project.

2 The State Water Project contracts originally
3 date from as early as the 1960's. Each contract has
4 been amended many times over the intervening years.
5 As water management in California has changed over the
6 years, there were issues between the department and
7 the water contractors that the contracts had some
8 provisions that actually ran counter to good financial
9 and water management practices.

10 The Monterey agreement is a set of 14
11 principles agreed to by DWR and representatives of the
12 State Water Project contractors in 1994 to remedy some
13 of these problems.

14 The Monterey Amendment is the amendment made
15 to the contracts as a result of the Monterey
16 principles. The amendment resolved long-term water
17 allocation issues and established a new water
18 management and financial strategy for the State Water
19 Project.

20 Okay. As a way of further background
21 information, the water allocation issue focused on
22 Article 18 of the state water contracts.

23 Article 18 addresses the allocation of
24 shortage in water supply and under what circumstances
25 the initial reductions to agricultural use should be

1 imposed before reducing allocations to urban
2 contractors.

3 The contentious portion of Article 18 was
4 Article 18(b) which dealt with specified types of
5 permanent shortages of supply of project water, so the
6 contracts originally had Article 18(a) and 18(b), and
7 so kind of remember that point for the future.

8 Okay. The Monterey Statement of Principles
9 arrived at in December of 1994 resolved this
10 allocation issue by proposing contract revisions that
11 eliminated the initial agricultural use cutbacks and
12 specifying that all project water would be allocated
13 based upon contractor's annual Table A amounts.

14 So in essence what the principles did was to
15 agree to sort of collapse 18(a) and 18(b) into a
16 single article.

17 Okay. Then in May of 1994, the Central Coast
18 Water Authority, serving as the state lead agency,
19 prepared a draft EIR to address the effects of
20 implementing the Monterey Agreement Statement of
21 Principles.

22 The final EIR was completed in October of
23 1995 and subsequently used by DWR to support the
24 decision to amend certain State Water Project contract
25 provisions.

1 Since 1996, 27 of the 29 contractors have
2 executed the Monterey Amendment. The exception to
3 that, the two that have not, are Empire West Side
4 Irrigation District and the Plumas Flood Control and
5 Water Conservation District.

6 In December of 1995, the Planning and
7 Conservation League sued the department on the basis
8 that DWR should have been the lead agency preparing
9 the EIR and that the lack of an analysis with respect
10 to deleting Article 18(b) was a fatal flaw.

11 The lower court ruled in the department's
12 favor, but the decision was overturned by the Third
13 District Court of Appeals. The Court ruled that DWR
14 had the statutory duty to serve as the state lead
15 agency and that the EIR failed to adequately analyze
16 the effects of deleting Article 18(b).

17 The department and most of the State Water
18 Project contractors have been in a settlement process
19 with the plaintiffs since 2000. This process has
20 nearly concluded and is the basis for the proposed
21 project.

22 We should mention that PCL was joined in a
23 lawsuit by Plumas County Flood Control and Water
24 Conservation District and the Citizens Planning
25 Association of Santa Barbara. We term all three of

1 these the plaintiffs.

2 So that brings us to today and the reason for
3 the scoping meeting. We are now starting a brand-new
4 CEQA process with DWR as the lead agency. The
5 proposed project includes the original Monterey
6 Amendment provisions as well as other contract
7 amendments and actions to be carried out by DWR as a
8 result of the settlement agreement.

9 The objective of this project is to improve
10 the operation and management of the State Water
11 Project water supply through the Monterey Amendment
12 and the other contract amendments and to carry out the
13 associated actions of PCL versus DWR settlement
14 agreement.

15 The new EIR will evaluate potential
16 environmental effects of the following five elements
17 from the Monterey Amendment and settlement process.
18 I'm going to review each of these individually, and if
19 you remember, we have 14 settlement principles, so
20 we've grouped the principles into these elements, so
21 we've collapsed the 14 down to four, and then the
22 settlement agreement provisions are the fifth.

23 Okay. First of all, the Monterey Amendment
24 would allocate all water supplies in proportion to
25 each contractor's annual Table A amounts, eliminate

1 the initial supply reduction to agricultural
2 contractors in years of shortage, replace certain
3 categories of water with a single category called
4 Interruptible Water, allocated again on the basis of
5 Table A amounts, and eliminate the permanent shortage
6 provision, and I wanted to give a definition of
7 "interruptible water." The department may make
8 interruptible water available to contractors when it
9 is not needed for fulfilling contractors' Table A
10 water deliveries or for meeting project operational
11 requirements including reservoir storage goals.
12 Interruptible water has been made available during
13 excess delta conditions.

14 A second item is the transfer of Table A
15 amounts and land, and the first item is to permanently
16 retire 45,000 acre-feet of agricultural Table A
17 amounts to make 130,000 acre-feet of agricultural
18 Table A amounts available for permanent transfer and
19 sale to urban contractors and to transfer the Kern Fan
20 Element of the Kern Water Bank to local control, and
21 the Kern Water Bank was originally described in EIR
22 back in 1996. DWR at that time owned the lands, but
23 we have now transferred those to local control as part
24 of the Monterey Amendment.

25 And for those of you who don't know, the Kern

1 Water Bank is located southwest of Bakersfield in Kern
2 County.

3 Now these are the permanent water transfers
4 from Kern County Water Agency to urban contractors.
5 So far 111,781 acre-feet have been transferred, 18,219
6 acre-feet remains to be transferred, so the agencies
7 who have received the water are Mojave Water Agency,
8 Castaic Lake Water Agency, Palmdale Water Agency,
9 Alameda County Flood Control and Water Conservation
10 District, Solano County Water Agency and Napa County
11 Flood Control and Water Conservation District.

12 We did want to note that the Castaic Lake
13 Water Agency transfer has not been made totally final.
14 A notice of preparation was issued by Castaic Lake
15 Water Agency last week, and they are preparing an
16 independent Environmental Impact Report about this
17 transfer.

18 Okay. The water management provisions
19 included enabling voluntary water marketing,
20 groundwater banking and improving use of existing
21 State Water Project facilities, allowing groundwater
22 or surface water storage of State Water Project water
23 outside of the state water's -- within its service
24 area and expand the opportunity to store water in the
25 San Luis when space is available.

1 Additionally it permitted contractors to
2 withdraw and later restore water from the State Water
3 Project terminal reservoirs, clarify the terms for
4 transport of contractor's non-State Water Project
5 water and create a turnback pool for the annual sale
6 of contractor's unneeded State Water Project water
7 supplies to other interested water contractors, and
8 the terminal reservoirs that I mentioned here are
9 Castaic and Perris, and this program provides greater
10 coordination in the management of local and State
11 Water Project supplies.

12 The financial restructuring provisions were
13 to establish a State Water Project operating reserve
14 and to establish a water rate management program when
15 cash flow permits.

16 Now for the provisions for the settlement
17 agreement that are included in the proposed project,
18 first is to establish a Plumas watershed forum for
19 watershed restoration, amend Plumas's State Water
20 Project contract regarding shortages, impose
21 additional restriction on use of the Kern Fan Element
22 lands of the Kern Water Bank and amend the State Water
23 Project contractors to eliminate the use of the word
24 "entitlement" in many cases and replace it with the
25 term "Table A amounts."

1 Other provisions, we're to disclose a new
2 procedure for State Water Project delivery
3 capabilities, issue permanent transfer of Table A
4 amount guidelines, establish a public participation
5 procedure for certain types of contract amendments and
6 provide certain funding to the plaintiffs for multiple
7 purposes including Feather River watershed
8 restoration.

9 The first item that deals with the delivery
10 capability procedures, there is a draft report that
11 DWR has had under public review for the past several
12 months. A final report is scheduled to be released
13 later this month, and I look for it on the DWR home
14 page. There is a link already established for the
15 draft report and the comments and the response to
16 comments, and the final report will also be posted on
17 that site.

18 As far as the proposed project location for
19 the environmental document, it would include the State
20 Water Project facilities including the delta
21 conveyance facilities, the State Water Project service
22 areas, including the Kern Fan Element of the Kern
23 Water Bank, and also includes the State Water Project
24 contractor's service areas where those may be larger
25 than State Water Project service area.

1 Depending upon the particular State Water
2 Project contractor actions under the proposed project,
3 the area of influence could actually extend beyond
4 these areas, and that will be determined during the
5 preparation of the document.

6 As required by CEQA, the EIR must include a
7 description of the environmental conditions in the
8 vicinity of the project as they exist at the time of
9 the Notice of Preparation. The environmental setting
10 normally constitutes the baseline physical conditions
11 which the lead agency determines against which the
12 impacts may or may not be significant. Normally the
13 environmental baseline and the existing conditions are
14 one and the same. In the case of the Monterey
15 Amendment, since we have some preexisting actions that
16 have taken place, the two are going to be different.

17 We have not yet identified the reasonable
18 range of alternatives to be included in the EIR;
19 however, we do know that to comply with the Court's
20 instructions, we will be evaluating a no project
21 alternative with and without invoking Article 18(b),
22 shortage provisions of the contracts.

23 As far as potential environmental effects, we
24 will analyze all resource categories that could be
25 impacted by the proposed project, and these impacts

1 will arise due to the physical changes such as the
2 re-operation of water deliveries with and without
3 Article 18(b), changes in reservoir operations, water
4 storage in the contractors' service areas and outside
5 their service areas, and watershed actions in Plumas
6 County as well as other actions as part of the
7 settlement agreement.

8 And with that I'm going to turn it back over
9 to Kathy McEfee from IEP to talk about our schedule.

10 MS. McAFEE: Thank you. Thank you, Barbara.

11 First I would just like to again reiterate
12 that one of the purposes of today's meeting is to
13 provide input on issues to be evaluated in the EIR.
14 There are multiple ways to do that. One is to provide
15 verbal testimony today. We have a court reporter here
16 who will record any comments. If you do not want to
17 provide verbal comments today, we have comment cards
18 that can be filled out and left on the back table. We
19 also have some mailers that you can take with you and
20 fill out and mail in, or you can also send by E mail
21 to Delores at water.ca.gov.

22 I just wanted to now talk a little bit about
23 the schedule. As you know, we are in the midst of the
24 NOP circulation, the comment period closes on
25 February 24th, so you have till that time to provide

1 the department with any comments on issues to be
2 evaluated in the EIR. We will then spend the next
3 year doing the analysis and developing a draft EIR
4 that will be published in the late spring/early summer
5 of 2004.

6 The next point at which the public will have
7 input into the process will be during the circulation
8 of the draft EIR, and that will be during the, again,
9 late summer -- or, I'm sorry -- late spring/early
10 summer of 2004. Once we receive those comments, and
11 we will have a public hearing during that time or
12 multiple public hearings as we have multiple public
13 scoping meetings, we will then prepare responses to
14 all comments received with the final EIR being
15 published in the fall of 2004.

16 Before I open it up for any public comments,
17 I would like to ask if there are any questions in the
18 audience, either on Barbara's presentation or the
19 purpose of today's meeting or the CEQA process.

20 Okay. With that, I know we did not receive
21 any speaker cards, but is there anyone who would like
22 to speak at today's meeting, like to open it up for
23 public comment?

24 Okay. Having none, we'll go ahead and close
25 the public comment period of the scoping meeting, and

1 thank you all very much, and if you have any other
2 questions, we will be here for a little while, so
3 please feel free to ask us. Thank you very much.
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REPORTER'S CERTIFICATE

I certify that the foregoing proceedings in the within-entitled cause were reported at the time and place therein named; that said proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California, and were thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said cause of action, nor in any way interested in the outcome of the cause named in said cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2003.

CARRIE STOTTLEMEYER
Certified Shorthand Reporter
State of California
Certificate No. 4373

SCOPING MEETING

Environmental Impact Report for Monterey
Amendment to the State Water Project Contracts
(including Kern Water Bank Transfer) and Other
Contract Amendments and Associated Actions as
Part of a Proposed Settlement Agreement in
Planning and Conservation League v. Department
of Water Resources (SCH No. 200301118)

Lead Agency: Department of Water Resources

TRANSCRIPT OF PROCEEDINGS

Ventura, California

Wednesday, February 5, 2003

Reported by:
LYNN ZINK
CSR No. 9466
JOB No. 36331

1 SCOPING MEETING

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Environmental Impact Report for Monterey
Amendment to the State Water Project Contracts
(including Kern Water Bank Transfer) and Other
Contract Amendments and Associated Actions as
Part of a Proposed Settlement Agreement in
Planning and Conservation League v. Department
of Water Resources (SCH No. 200301118)

Lead Agency: Department of Water Resources

Transcript of proceedings taken at 800 South
Victoria Avenue, Hall of Administration, Board of
Supervisors Hearing Room, Ventura, California,
beginning at 7:28 p.m. and ending at 7:51 p.m. on
Wednesday, February 5, 2003, before LYNN ZINK,
Certified Shorthand Reporter No. 9466.

1 SPEAKERS:

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BARBARA McDONNELL
Chief, Division of Environmental Services
Department of Water Resources

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6

JOHN DAVIS, URS and BIP

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CLAIRE LaFLORE
Legal Council
Department of Water Resources

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NANCY QUAN
Analysis Office
Department of Water Resources
State Water Project

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1 Ventura, California, Wednesday, February 5, 2003

2 7:28 p.m. - 7:51 p.m.

3
4 MS. McDONNELL: I'm going to kind of read a lot
5 of this because, again, the words are so specific, I
6 can't ad lib this stuff. So pardon my kind of reading
7 my script, but I really want to get this correct. And
8 then you can correct me if I'm off base from your
9 perspective.

10 As required by the California Environmental
11 Quality Act, the Department of Water Resources will
12 prepare an Environmental Impact Report for the Monterey
13 Amendment to the State Water Project Contracts
14 (including the Kern Water Bank Transfer) and other
15 Contract Amendments and Associated Actions as Part of a
16 Proposed Settlement Agreement in Planning and
17 Conservation League versus Department of Water
18 Resources.

19 The purpose of our meeting is, of course, to
20 solicit your views on the Environmental Impact Report.
21 We are conducting five scoping meetings throughout the
22 State to obtain the views of agencies and other
23 interested parties about the scope and content of the
24 environmental information and analysis relevant to
25 agency statutory responsibilities and stakeholder

1 interests in the project.

2 The State Water Project contracts date from the
3 early 1960's. Each contract has been amended many times
4 over the intervening years. As water management in
5 California has changed over the years, there were issues
6 between the Department and the Contractors that the
7 contracts had some provisions that ran counter to good
8 financial and water management practices.

9 The Monterey Agreement is a set of 14
10 principles agreed to by DWR and representatives of the
11 State Water Project contractors in 1994 to remedy some
12 of these problems. The Monterey Amendment is the
13 amendment made to the contracts as a result of the
14 Monterey principles. The Amendment resolved long-term
15 water allocation issues and established a new water
16 management strategy for the State Water Project.

17 The water allocation issue focused on Article
18 18 of the State Water Project contracts. Article 18
19 addresses the allocation of shortage in water supply,
20 and under what circumstances the initial reductions to
21 agricultural use should be imposed before reducing
22 allocations to urban contractors.

23 The contentious portion of the water shortage
24 contract provision dealt with Article 18(b) which dealt
25 with specified types of permanent shortages of supply of

1 project water and stated that DWR would reduce the
2 entitlement in the event of a permanent shortage. This
3 Article 18(b) has never been invoked to date. Article
4 18(a), which deals with cuts to agricultural contractors
5 first during droughts and other types of temporary
6 shortages has been invoked.

7 The Monterey Agreement Statement of Principles
8 arrived at in December of 1994 resolved the allocation
9 issue by: Proposing contract revisions that eliminated
10 initial agricultural use cutbacks, as in 18(a), and
11 specified that all project water would be allocated
12 based on contractor's annual Table A amounts, thereby
13 eliminating the need for different shortage provisions.

14 QUESTION: So even in the context of this
15 presentation you're already calling it Table A amounts.

16 MS. McDONNELL: Yes.

17 In May of 1994 Central Coast Water Authority,
18 serving as Lead Agency, prepared a Draft EIR to address
19 the effects of implementing the Monterey Agreement
20 Statement of Principles. The final EIR was completed in
21 October, 1995 and subsequently used by DWR to support
22 the decision to amend certain State Water Project water
23 supply contract provisions. Since 1995, 27 of the 29
24 contractors have executed the Monterey Amendment. The
25 two that have not are the Empire West Side Irrigation

1 District and Plumas County Flood Control and Water
2 Conservation District.

3 In December of 1995, the Planning and
4 Conservation they sued the Department on the basis that
5 DWR should have been Lead Agency preparing the EIR and
6 that the lack of an analysis with respect to deleting
7 Article 18(b) was a fatal flaw. The lower Court ruled
8 in the Department's favor, but the decision was
9 overturned by the Third District Court of Appeal. The
10 Court ruled that DWR had the statutory duty to serve as
11 Lead Agency, and the EIR failed to adequately analyze
12 the effects of deleting Article 18(b).

13 The Department and most of the State Water
14 Project Contractors have been in the settlement process
15 with the plaintiffs since 2000. This process is nearing
16 completion and will be included in the basis for the
17 proposed project.

18 We should mention that PCL was joined in the
19 lawsuit by Plumas County Flood Control and Water
20 Conservation District, which we'll now call Plumas in
21 the rest of the presentation, and the Citizens Planning
22 Association of Santa Barbara. We call all three the
23 plaintiffs.

24 So that brings us to today and the reason for
25 the scoping meeting. We are now starting a brand new

1 CEQA process with DWR as Lead Agency. The proposed
2 project includes the original Monterey Amendment
3 provisions as well as other contract amendments and
4 actions to be carried out by DWR as a result of the
5 proposed settlement agreement. The objective of this
6 project is to improve the operation and management of
7 the State Water Project water supply through the
8 Monterey Amendment and other contract amendments, and to
9 carry out associated actions of PCL versus DWR proposed
10 settlement agreement.

11 The new EIR will evaluate potential and
12 environmental effects in the following five elements
13 from the Monterey Amendment and also potential
14 additional actions. And I had said previously there
15 were 14 principles. So we've collapsed the principles
16 into the first four categories just for ease of
17 presentation, and then we'll talk about the potential
18 additional actions.

19 So our first action is allocation changes for
20 State Water Project water supplies: To allocate all
21 water supplies in proportion to each contractor's annual
22 Table A amounts, eliminate initial supply reduction to
23 agricultural contractors in years of shortage, replace
24 certain categories of water with a single category
25 (Interruptible Water) allocated on the basis of annual

1 Table A amounts, and eliminate the permanent shortage
2 provision.

3 Now, the definition Interruptible Water is
4 pursuant to the water supply contracts, the Department
5 may make Interruptible Water available to contractors
6 when it is not needed for fulfilling contractors' annual
7 Table A water deliveries or for meeting project
8 operational requirements, including reservoir storage
9 goals. Interruptible Water has been made available
10 during excess Delta conditions.

11 The second element is the transfer of Table A
12 amounts and land. And that is to permanently retire
13 45,000 acre-feet of agricultural Table A amounts, make
14 130,000 acre-feet per year of agricultural Table A
15 amounts available for permanent sale to urban
16 contractors, and to transfer the Kern Fan Element
17 properties to local control.

18 The Kern Fan Element of the Kern Water Bank was
19 originally described in the EIR written in December of
20 1996. DWR owned the Kern Water Bank but transferred the
21 property to local control as part of the Monterey
22 Amendment. And the Kern Water Bank, if you don't know,
23 is located southwest the Bakersfield in Kern County.

24 Here are the permanent annual Table A transfer
25 amounts that I spoke of that went to the various urban

1 contractors. So far 111,781 acre-feet have been
2 transferred; 18,219 acre feet remain to be transferred.
3 So we have water that's been transferred to Mojave Water
4 Agency, Castaic Lake Water Agency, Palmdale Water
5 Agency, Alameda County Flood Control Water Conservation
6 District, Solano County Water Agency and Napa County
7 Flood Control and Water Conservation District.

8 We want to mention that the asterisk transfer
9 has been completed, but there is a new EIR that's being
10 prepared for that, and notice of preparation has
11 recently been submitted to the State Clearing House and
12 is available to the public.

13 For the water management provisions, the
14 amendments were to enable voluntary water marketing,
15 groundwater banking, and improved use of existing State
16 Water Project facilities, allow groundwater or surface
17 water storage of State Water Project water outside of
18 the contractor's service area for later use within its
19 service area, and expand contractor's ability to store
20 water in San Luis Reservoir when space is available.

21 Additionally, permitted contractors to withdraw
22 and later restore water from the State Water Project
23 terminal reservoirs, clarify terms for transport of
24 contractors' non-project water, and create a Turnback
25 Pool for the annual sale of contractors' unneeded State

1 Water Project water supplies to other interested
2 contractors. And the terminal reservoirs that we speak
3 of are castaic and Perris. This program provides or
4 this element provides greater coordination and
5 management of local and State Water Project supplies.

6 Financial restructuring included establishing a
7 State Water Project operating reserve, and also
8 establishing a water rate management program when cash
9 flow permits.

10 Now, for the potential additional actions
11 included in the proposed project description. First was
12 to establish a Plumas watershed forum for watershed
13 restoration with other (inaudible) watershed, amend
14 Plumas' State Water Project contract regarding
15 shortages, impose additional restrictions on use of Kern
16 Water Bank lands, and amend the State Water Project
17 contracts to substitute "Table A amounts" for
18 "entitlement." And as you notice, in the presentations
19 we've been using the word the phrase "Table A amounts"
20 and not using the term "entitlement."

21 Also as part of the proposed project, could be
22 to disclose new procedures for State Water Project
23 delivery capabilities, issue permanent Table A transfer
24 guidelines, establish a public participation procedure
25 for certain contract amendment negotiations, and a draft

1 report on the State Water Project delivery capability,
2 which is that first bullet up there, has been under
3 public review for several months.

4 A final report is scheduled to be posted on the
5 DWR home page web site in late February. So watch for
6 that. And also will be posted all the comment letters
7 and the responses to those comments. In fact, the
8 comment letters may be up already. If you're interested
9 in seeing the comment letters, they're posted. And this
10 report is intended to be updated on a two-year cycle.

11 So that's the proposed project description.
12 The project location includes the State Water Project
13 facilities, which includes the conveyance facilities in
14 the Sacramento-San Joaquin Delta, the State Water
15 Project service areas including the Kern Water Bank
16 lands and the State Water project contractors' service
17 area. Now, depending upon the actions that are going to
18 be evaluated, the area of influence could extend beyond
19 the contractors' and State Water Project service areas.

20 As far as the environmental baseline goes, as
21 required by CEQA, an EIR must include a description of
22 the physical environmental conditions in the vicinity of
23 the project as they exist at the time of the notice of
24 preparation. The environmental setting normally
25 constitutes the baseline physical conditions by which a

1 Lead Agency determines whether an impact is significant.
2 Normally, the environmental baseline is the same as the
3 existing conditions. In the case of the Monterey
4 Amendment, the two are different.

5 We have not yet identified the reasonable range
6 of alternatives to be evaluated. However, to comply
7 with the Court's instructions, we do know we will be
8 evaluating a no-project alternative with and without
9 invoking Article 18(b) permanent shortage provision.

10 And the EIR will analyze all resource
11 categories that could be impacted by the proposed
12 project. The proposed project's physical changes
13 include re-operation of water deliveries, with and
14 without Article 18(b), and reservoir operation changes,
15 water storage in service areas, watershed actions in
16 Plumas County and other actions.

17 And at this time I'd like to turn it over to
18 John Davis, who is our project manager from our
19 consultant team or URS and BIP, to go over the project
20 schedule.

21 MR. DAVIS: This is where we actually have
22 members of the public and so we go into the CEQA process
23 in more detail. I want to mention to you the schedule
24 is a little different and a little longer than most EIR
25 preparation schedules, and the reason is that we will be

1 working closely with the EIR committee to review various
2 pieces of the EIR as it's put together.

3 So our expectation is that the draft will be
4 available by the spring of 2004. It will be published
5 at that point. Then there will be the public comment
6 period. During the summer of 2004 we expect to be
7 responding to comments, putting together the final EIR.
8 And the final EIR would be certified in the fall of
9 2004. Ultimately the project would be approved in the
10 winter of 2004.

11 So that's the schedule that we are expecting.
12 At this point we would like to take any questions you
13 might have on the project description. And then once
14 we've responded to those questions, we'd like to hear
15 more comments.

16 QUESTION: Barbara, I just want to make sure I
17 captured this correctly. You said the project analysis
18 could extend beyond the State Project service area and
19 the contract service areas?

20 MS. McDONNELL: Yes. What we're trying to say is
21 wherever the analysis takes us is -- you know, we're not
22 going to cut it off at a particular jurisdictional
23 boundary.

24 I think there's some differences -- and,
25 Claire, maybe you can clarify this. There's some

1 differences between the State Water Project service
2 area, the contractors' service area, and other areas
3 that might be influenced by actions that go on. We
4 certainly have that in Plumas County in terms of the
5 watershed restoration and things like that. So we're
6 not absolutely positive that all the analysis will stay
7 within particular jurisdictional boundaries just
8 depending upon the actions.

9 QUESTION: But is that just to allow for the
10 possibility that the upper watershed would get contained
11 in this or are we looking at downstream?

12 MS. LaFLORE: I don't think we're limiting it to
13 the upper watershed.

14 MS. McDONNELL: No. We're not.

15 MS. LaFLORE: And it really depends on where the
16 analysis takes us. We don't want to at this point have
17 an arbitrary cutoff to the service areas because
18 obviously, you know, it could influence the neighboring
19 areas and that sort of thing, especially with these
20 changes and such.

21 QUESTION: You're not going to be the reverse, that
22 is, arbitrarily expand the area.

23 MS. LaFLORE: We're not planning to be arbitrary at
24 all.

25 MR. DAVIS: The idea was to do the analysis, and

1 the analysis will help us define the affected area.

2 QUESTION: Could you explain in a little more
3 detail what actions in Plumas County -- what you're
4 trying to achieve there when it says watershed forum,
5 sort of why those have gotten rolled into this. And
6 then also the Kern Water Bank plan. I've just never --

7 MS. McDONNELL: I'm going to ask -- I should
8 introduce Claire LaFlore from our legal staff and Nancy
9 Quan from our State Water Project analysis office. And
10 those are part of the proposed actions at this point
11 because they're part of the proposed settlement
12 agreement in some form or another. So that's about as
13 much as we can say at this point.

14 MS. LaFLORE: We're not really at liberty to talk
15 about it at this point, and we're hoping that within the
16 next two weeks we will be at liberty to talk about it.
17 But those are generally some of the proposals that are
18 included in the (inaudible).

19 QUESTION: Can you talk about just what you're
20 trying to achieve here? Is it just simply to get rid of
21 one of the concerns of one of the litigants, or is there
22 actually some water supply goal that you have here?

23 MS. LaFLORE: Well, I think, you know, it's really
24 a combination, and the watershed -- it's dependent of
25 the watershed and has to do with the water supply and

1 the availability for one of our upstream contractors.
2 And so it's really a combination, and I don't really
3 think we can address that much beyond that now. If you
4 have comments on what you think would or would not be
5 appropriate, then you can make that.

6 QUESTION: Has the Kern Water Bank plan fallen into
7 that same category?

8 MS. LaFLORE: Well, the Kern Water Bank plan was
9 definitely part of what was challenged in the lawsuit.
10 And so it is part of the settlement.

11 MS. McDONNELL: The Kern Fan Element provision
12 is -- I don't think we've got to date that that's a
13 water management provision. It is part of the
14 settlement issues.

15 QUESTION: On the alternatives, so I think I heard
16 you correctly is to say the no-project alternatives will
17 then include with or without Article 18(b) which is what
18 this issue is saying? With or without Article 18(b) --

19 MS. McDONNELL: Invoked I think is the word that I
20 used.

21 QUESTION: Does that mean you analyze just the fact
22 that it's in the contract, or you actually conceptualize
23 what would have happened had it been?

24 MS. McDONNELL: I think we're going to have to go
25 through an analysis of the actual physical changes that

1 would occur if we invoked Article 18(b). Yeah, I think
2 that's what the Court has instructed us to do. And then
3 we also would evaluate it without ever invoking -- the
4 no-project without invoking --

5 QUESTION: Which is would be what's happened.

6 MS. McDONNELL: What has happened, yeah, or what at
7 least happened until the contracts were amended. So,
8 yeah.

9 Turn it back over to John.

10 MR. DAVIS: Any other questions, comments? If any
11 of you feel listening to this that you would like to
12 make a comment later, there's a number of cards and
13 things that would on the table at the back that you may
14 fill out. If you have some thoughts later, you want to
15 send us something, please do so.

16 Anything else? I think we'll close the meeting
17 then. Thank you.

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

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That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

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I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

17

18

IN WITNESS WHEREOF, I have this date subscribed my name.

19

20 Dated:

21

22

23

24

LYNN ZINK
CSR No. 9466

25

1 REPORTERS' COMPENSATION STATEMENT

2

3 Reporter's Name: Lynn Zink
 4 Job Number: 36331
 5 Date taken: February 5, 2003

6 Original & one charges 19 pages @ \$3.85
 per page = \$73.15

7 Original & two charges pages @ \$3.{}
 per page = \$

8 Expedite Fee { pages @ \${}
 {}-day % = \${}
 9

10 Hourly Fees {after hours|waiting} \$
 Per Diem (half day) \$145.00
 11 Affidavit \$
 Parking Fees \$
 12 Video depo {} pages @ \$.20 per page \$
 RD { pages @ \$.50 per page \$
 13 IR { pages @ \$.75 per page \$
 IR&RD { pages @ \$1.00 per page \$
 14

15 SUBTOTAL \$218.15

16

17 Copies (based on {} pages ea.\${}
 @ \$1.00 /page) ea.\$
 18 ea.\$

19

20 TOTAL \$218.15

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22

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1 SCOPING MEETING

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Environmental Impact Report for Monterey
Amendment to the State Water Project Contracts
(including Kern Water Bank Transfer) and Other
Contract Amendments and Associated Actions as
Part of a Proposed Settlement Agreement in
Planning and Conservation League v. Department
of Water Resources (SCH No. 200301118)

Lead Agency: Department of Water Resources

Transcript of proceedings taken at 800 South
Victoria Avenue, Hall of Administration, Board of
Supervisors Hearing Room, Ventura, California,
beginning at 7:28 p.m. and ending at 7:51 p.m. on
Wednesday, February 5, 2003, before LYNN ZINK,
Certified Shorthand Reporter No. 9466.

1 SPEAKERS:

2

3

BARBARA McDONNELL
Chief, Division of Environmental Services
Department of Water Resources

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JOHN DAVIS, URS and BIP

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CLAIRE La FLORE
Legal Council
Department of Water Resources

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NANCY QUAN
Analysis Office
Department of Water Resources
State Water Project

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3435 Wilshire Boulevard
Suite 320
Los Angeles, CA 90010-1904

(213) 387-4287 phone
(213) 387-5383 fax
www.angeles.sierraclub.org

3-28-03

Ms. Dolores Brown
Chief, Mitigation and Restoration Branch
Dept. of Water Resources
3251 S Street
Sacramento, Ca. 95816

Re: Notice of Preparation for Monterey Agreement EIR

Dear Ms. Brown:

As you are undoubtedly aware, the Sierra Club, Angeles Chapter has been pro-active in its efforts to ensure accurate water reporting in the high growth regions of Los Angeles and Orange Counties. We have litigated on the issue of properly reporting water supplies in Environmental Impact Reports, at the Public Utilities Commission and in Urban Water Management Plans. We are therefore pleased with this opportunity to correct a large portion of the information that has been a source for over-stating water supplies in these various documents. We request that we receive all environmental documents and notification on this process. We are also pleased that the DWR will be the lead agency since this is a project of statewide concern.

We request that you address the following issues:

- the growth-inducing impacts and the conversely linked issue of loss of farm land
- the potential privatization and control, hoarding and manipulation of water resources that may result from the Kern Fan water bank being 48% privately held
- Proper reporting of state water supply and reliability
- An analysis of articles 18(a) and 18(b)

Thank-you for your time. We look forward to participating in this process.

Sincerely,

GORDON LABEDZ, M.D.
Chair
Conservation Committee

Found 3-28-03. Hard copy via regular mail.



ROBERT C. WILKINSON

1428 West Valerio
Santa Barbara, California 93101 USA

tel: (1-805) 569-2590 fax: (1-805) 569-2718
E-mail: wilkinso@lifesci.ucsb.edu

3/27/03

Ms. Delores Brown
Chief, Mitigation and Restoration Branch
Department of Water Resources
3251 S Street
Sacramento, CA 95816

By E-mail: delores@water.ca.gov

**RE: Comments in Response to DWR's Notice of Preparation for
Environmental Impact Report for "Monterey Plus"**

Thank you for providing an opportunity for public comment and input on scoping for the Environmental Impact Report (EIR) for "Monterey Plus". I am submitting comments as a concerned citizen. Although these comments are offered as my own, I am a member of the Department of Water Resources' California Water Plan Update (Bulletin 160-03) Advisory Committee. The following comments are submitted in the interest of improved public policy with regard to water resources management.

DWR's Special Responsibility

DWR is both a major purveyor of water in California, and the ostensibly neutral and objective public entity charged with planning and administering water policy in the state in the public interest and public trust. These tasks at times appear to be in conflict. DWR is asking the citizens of the state to place trust in its analysis of the environmental impacts of its project and in its assessment of future water supplies and uses in California. At the same time, DWR is appropriating large amounts of water to sell, and it is making claims with regard to its own capabilities and supply reliability. It is therefore of critical importance that the department strive for objectivity, transparency, and accountability in its conduct of the new EIR process.

As the courts have clearly indicated, DWR failed to provide this important public agency role in its previous EIR effort on the same matter. Objectivity, transparency, and accountability were not in notable evidence. The result was a deeply flawed EIR and costly and time-consuming litigation to correct the deficiencies. The appeals court ruled unanimously that DWR failed to comply with the law.¹ Upon DWR's petition to the

California Supreme Court, not a single justice voted to grant review of the appellate ruling. Having seriously and substantively failed to comply with the California Environmental Quality Act in its first effort, and having been clearly directed by the courts to go back and do it right, DWR is now finally embarking on a second try. As the court admonished DWR in *PCL v DWR*, “CEQA compels process. It is a meticulous process designed to ensure that the environment is protected.”² The public has a right to expect a very different approach to the analysis this time around.

DWR’s burden is in fact more than properly framing this new EIR in the scoping process and then fully and properly analyzing the impacts and alternatives as dictated by CEQA. DWR is the contracting entity on behalf of the citizens of California and the bond-holders for the SWP dating back to the original Burns-Porter Act.³ As such, DWR’s assessment of its own legal rights and capabilities to extract and divert water to sell, and its analysis of the impacts of the “project” as defined in the current scoping process, must be beyond reproach.

To restore and fulfill this public trust, DWR must rise well beyond past performance. The current scoping process is the first test of DWR’s recognition of both its legal responsibilities and its obligations.

The Monterey “Agreement” and “Amendments” as a Project

The 1994 Monterey Agreement was in fact a “deal” made in secret meetings in Monterey. DWR met with six contractors in closed and unnoticed sessions to acknowledge the reality that the State Water Project (SWP) could not deliver anything close to its contract or “entitlement” amounts as set forth in “Table A” of the SWP contracts. During the 1980s, the SWP delivered just under 2 million acre feet per year (maf) on average. (See the SWP deliveries graph below.) During the drought, the SWP’s deliveries dropped to a low of about 0.5 maf against contract “entitlements” of over 4.2 maf. Farmers and urban agencies were cut short, and the Metropolitan Water District of Southern California (MWD) had its “requests” for SWP water deliver “adjusted” down by DWR.

The appellate court in *PCL v DWR* noted that the contracts (pre-Monterey) provided the mechanism to correct the problem: “Those who negotiated the existing long-term contracts anticipated water shortfalls and incorporated article 18 as a mechanism for resolving both temporary and permanent shortages.”⁴ Rather than invoke the contract provisions that were designed to deal with this situation (correct the Table A amounts to reflect reality), DWR chose to change the terms of the contracts and eliminate the existing mechanism.

**Article 18(b) contract provision was included to deal explicitly
with the possibility of the present permanent shortage situation**

Article 18(b) was written into the SWP contracts specifically to address the situation, foreseen as a possibility by the contracting parties at the time the contracts were signed and therefore included, that the SWP might not be capable of delivering full entitlement amounts. In the event of a permanent shortage, 18(b) “shall” be invoked. The language is clear; invoking 18(b) is a necessary and required action in the event that the SWP cannot deliver the water.

Both “tests” in paragraph 1 of 18(b) seem to be met:

“In the event that ...the State is unable to construct sufficient additional conservation facilities to prevent a reduction in the minimum project yield”

or, (Note: 18(b) stipulates only “or”, not “and”):

“... if for any other reason there is a reduction in the minimum project yield, which, notwithstanding preventative or remedial measures taken or to be taken by the State, threatens a permanent shortage in the supply of project water to be made available to the contractors: ...”

Under these circumstances, by the terms of the contracts:

The annual entitlements and the maximum annual entitlements of all contractors, except to the extent such entitlements may reflect established rights under the area of origin statutes, shall, by amendment of Table A included in Article 6(b), and of Article 7(b), respectively, be reduced proportionately by the State to the extent necessary so that the sum of the revised maximum annual entitlements of all contractors will then equal such reduced minimum project yield”⁵

Note that the language in the contracts indicates a *mandate* that the state correct the contracts to reflect reality. The language is explicit:

“...shall ... be reduced proportionately by the State to the extent necessary so that the sum of the revised maximum annual entitlements of all contractors will then equal such reduced minimum project yield”

In the scoping of the new EIR, it will be important for DWR to include a full examination of the option of correcting the pre-Monterey contracts according to this provision. As the court of appeal noted, this must be included in the EIR’s assessment of the “no project” alternative. Correcting the Table A amounts according to the 18(b) provision would not

necessarily change the pre-Monterey provisions for differential pricing and delivery reliability between agricultural and urban users. This should be examined as well.

DWR also sought to transfer real property under state ownership (the Kern Fan) and its water system without public notice and without direct compensation to the state. An indirect deal involving “retirement” of SWP agricultural entitlement volumes was later advanced as due consideration for the state’s asset. The “water bank” asset on, and underlying, this Kern Fan and its operation (and profits) were to be transferred under the deal. According to the settlement agreement, the EIR is to include all aspects of the Kern Bank transfer. This should include the various sources of water that find their way into the bank (e.g. San Joaquin River water via the Friant-Kern Canal, Kern River water, SWP water, and other sources), the reliability of and legal rights to those waters, the water extracted and sold from the bank, and other issues relating to the bank.

The deal cut in Monterey in 1994 was originally designed to avert litigation by and between the specific parties involved. It was not necessarily a deal that prioritized or protected the interests of the people of California who own the SWP. The subsequent EIR prepared by one these parties on behalf of the state (CCWA, one of the participating parties in the Monterey meetings) was deemed deficient under CEQA. After nearly a decade of litigation to correct the problem and a lengthy mediation that ultimately produced a proposed settlement, the state has a new opportunity to fulfill its duties, this time with the benefit of input from constituencies who were not invited to the Monterey meetings. The new EIR will, one would hope, make up for the serious failure of DWR in round one.

It is essential from the standpoint of the public interest that DWR clearly identify and frame the new “project” and then proceed with a proper EIR analysis under the requirements of the law. As the court in *County of Inyo v. City of Los Angeles* noted: “an accurate, stable and finite project definition is the *sine qua non* of an informative and legally sufficient EIR.”⁶

Specific Elements to be Included in the Scope of the EIR

The scope of the EIR should include the following elements:

DWR Water Rights and “Surplus” Water

The state has legal rights to certain waters from the Feather River watershed, and it pumps “surplus” water out of the delta. Most of the water DWR extracts from the delta is in fact unclaimed “surplus” water, not Feather River water. Because DWR is a “junior” appropriator relative to most of the other entities with claims to water within the watershed, this surplus water may not exist under a number of circumstances. (We have seen recently what reliance on “surplus” Colorado River water can lead to.)

The EIR should clearly set forth DWR's water rights and the amounts of water DWR is extracting as "surplus". Under pre-Monterey contracts, "surplus" water is accounted for differently than in the proposed project. The EIR should clearly identify the impacts under a no-project option and under the proposed changes. Under both, the EIR needs to clearly identify the basis for assumptions regarding where the "surplus" water (renamed "interruptible" water in the Monterey contracts) is coming from and who else may have senior claims to it (e.g. area of origin users, diverters with water rights senior to DWR, etc.).

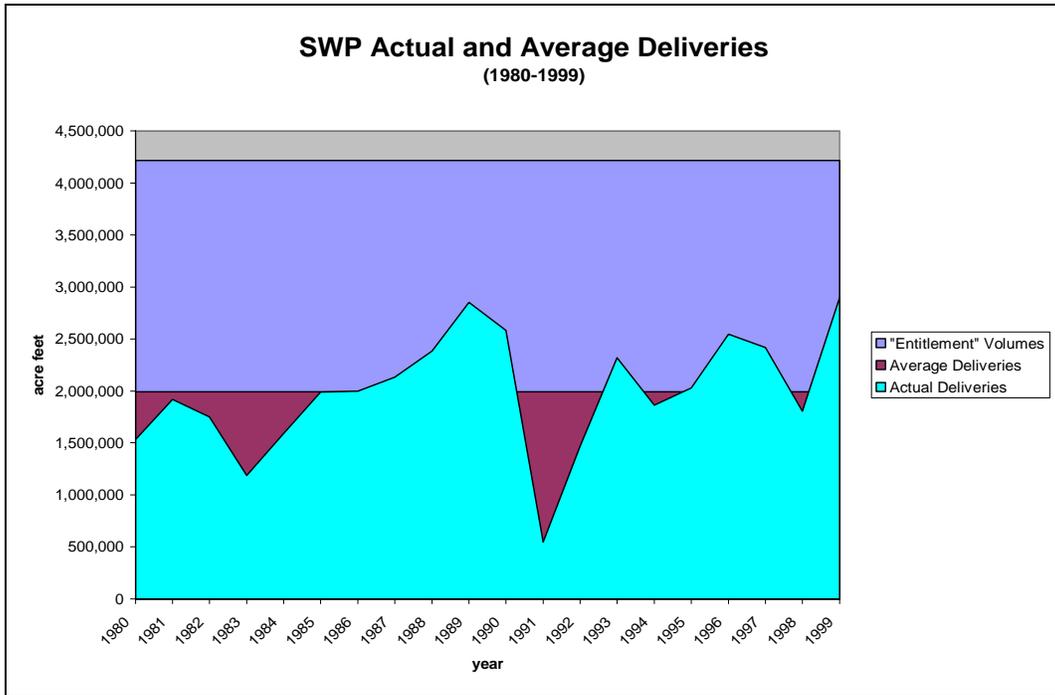
The EIR should also clearly set forth the full range of constraints under law to restore and protect the delta ecosystem and species that rely on it, and it needs to make a reasonable effort to project ahead and consider further constraints. These legal requirements for flows, salinity, temperature, and other factors may seriously limit the old notion that ample "surplus" water is available for extraction from the delta.

If "surplus" water is unavailable to DWR due to uses by more senior appropriators and/or upstream users exercising their legal claims to water, and/or due to water quality, environmental, and other legal requirements, the SWP's ability to deliver water will be impacted. This is unquestionably the case. It would appear that the mid-1900s notions (when the SWP was originally established) of "surplus" water assumed that virtually all water flows were available for diversion and extraction. What was considered "surplus" then may now be understood to be critical flows for threatened and endangered species. The EIR should examine both the definition and the impacts of "surplus" water, or the lack of it, under pre-Monterey conditions and under the proposed project.

The impacts of extracting both surplus water and water to which DWR holds rights should be examined in the EIR.

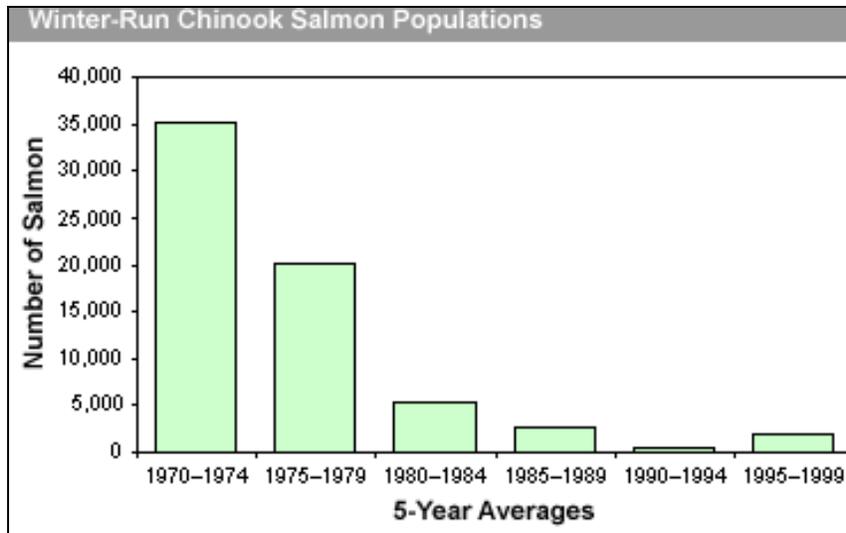
DWR's Assertion of SWP Reliability

DWR released a draft report in 2002 asserting that the SWP can *reliably* extract and deliver – *on average over time* – about 1 million acre feet *more water* than it delivered in the 1980s or the 1990s.⁷ During the 1980s, the bay-delta ecosystem was deteriorating and certain fish populations were in serious trouble. In the 1990s, several fisheries collapsed and several species were listed. The following graph indicates the actual and average deliveries of the SWP. Note both the high degree of variability (reliability) in deliveries. Also note the steady average of 2 mafy through the past two decades. (Data for 2000, 2001, and 2002 appear to follow both the trends in variability and averages, though DWR had an all-time high year in these three years.)



Sources: DWR Bulletins 132 from 2001 and 1990.

As noted, during the time represented in the graph, ecosystems were seriously impacted and species declined sharply and were listed. In 1990, the winter run Chinook salmon, an anadromous fish, became the first salmon run to be listed under the *Endangered Species Act* in the United States. The run had declined from 118,000 in 1969 to just 533 adults in 1989. The following graph indicates the decline of the winter run Chinook salmon since the 1970s.



Source: Natural Resources Defense Council, 2001. Based on the California Department of Fish and Game, <http://www.nrdc.org/greengate/water/diverteddf.asp>

A reasonable conclusion is that water extractions are related to environmental impacts and that increased extractions are at least partly responsible for declines in fish populations. The EIR will need to examine the impacts of changes in extractions under both pre-Monterey and proposed project conditions. An increase of 50% in extractions from the delta (from an average of 2 mafy to 3 mafy) as set forth in DWR's draft reliability report, requires careful analysis in the EIR for a wide range of impacts.

Integrated Assessment of the SWP and CVP

The State Water Project and the Central Valley Project extract water from the delta in a coordinated management program – including pumping, storage, and conveyance. Both systems must therefore be examined in an integrated way. The joint operation of the SWP and CVP, together with impacts of extractions, shortages, physical constraints, and legal constraints must be examined. The Bureau of Reclamation has submitted comments in this scoping process requesting that the EIR examine potential impacts on the CVP. Similar comments were submitted by commenters on the SWP reliability draft report prepared by DWR.

Neither the SWP nor the CVP can deliver all the water that users might like to have, or even volumes that have been contracted for. Both systems are constrained by various physical and legal limits, and both are causing serious environmental impacts including impacts on threatened and endangered species.

Given that neither system can deliver the full volumes of water they “promised” to users back in the mid-1900s, the EIR will need to analyze both the limits of the systems and the tradeoffs between them. For example, how can the SWP extract and deliver an additional million acre feet of water per year – reliably and on average over time – without seriously impacting both CVP operations and the environment.

The No Project Alternative

The no project alternative in this EIR needs to include a careful examination of the impacts of managing the limited water supplies in the SWP system under provisions and terms included in the pre-Monterey contracts. The “existing conditions” as described in CEQA are the pre-Monterey contracts. The law also requires that the EIR examine “what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.”⁸

The court in *PCL v DWR* provided the following comment on CEQA and the no project alternative:⁹

“CEQA is a comprehensive scheme designed to provide long-term protection to the environment. [Citation.] In enacting CEQA, the Legislature declared its intention that all public agencies responsible for regulating activities affecting the environment give prime consideration to preventing environmental damage when carrying out their duties. [Citations.] CEQA is to be interpreted ‘to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’ [Citation.]” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112.)

Both the mandate and the mechanism of CEQA are carefully crafted and well ingrained into the law of this state. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 943.) The environmental impact report, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision making and to expose the decision-making process to public scrutiny. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123.) The EIR is, as the courts have said repeatedly, the “‘heart of CEQA,’” “an ‘environmental “alarm bell,”” and a “document of accountability.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights*)).

CEQA requires that the no project alternative discussed in an EIR address “existing conditions” as well as “what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.” (Guidelines, former § 15126, subd. (d)(4), now § 15126.6, subd. (e)(2).)

The settlement agreement indicates that DWR has agreed to include in the new EIR, as part of the no project alternative:¹⁰

An analysis of the effect of pre-Monterey Amendment SWP contracts, including implementation of Article 18 therein. This analysis shall address, at a minimum, (a) the impacts that might result from application of the provisions of Article 18(b) of the SWP Contracts, as such provision existed prior to the Monterey Amendments, and (b) the related water delivery effects that might follow from any other provisions of the SWP Contracts.

Implications of Limits and the Requirement for Restoration

In response to environmental damage, Congress, the legislature, administrative agencies, and the courts have established requirements for *restoration* of environmental systems and species.¹¹ *Restoration* is defined by the National Research Council as:¹²

Returning an ecosystem to a close approximation of its condition prior to disturbance. Accomplishing restoration means ensuring that ecosystem structure and function are recreated or repaired, and that natural dynamic ecosystem processes are operating effectively again.

The law requires restoration of listed species, not just maintenance at reduced levels. To accomplish this requirement, the EIR must examine the impacts of the proposed project on ecosystems it impacts.

The “Racanelli Decisions” in 1986 (*United States v. State Water Resources Control Board*) broadened the scope of responsibility for restoring the delta to all diverters in the watershed.¹³ Judge Racanelli held that all diverters of water flowing into the delta, and extractors from it, were responsible for meeting restoration needs. Water rights of parties should not govern water quality standards for the Delta. The CALFED process is proceeding in accordance with the framework established by the courts in the 1980s and since.

The new EIR will need to take a broad view of the potential impacts of the proposed project and it must proceed under the logic of watershed management developed in the Racanelli decisions and since.

Land-Use Planning and Water for “Average-Intelligence” Growth

The California legislature has addressed the issue of water scarcity and management and promulgated new laws since DWR’s first ill-fated EIR effort. In 2001, California finally legislated a meaningful link between water supplies and development. Initially proposed as a one-sentence bill (“No lead agency shall approve a development project unless the applicant identifies a long-term, reliable supply of water to serve the proposed project.”¹⁴), it emerged ten years later as law (with additional verbiage and qualifications).¹⁵

As of January 1, 2002, projects of 500 units of more must show that adequate water supplies are available for the project. The law amends the code in part as follows:¹⁶

The legislative body of a city or county or the advisory agency, to the extent that it is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, shall include as a condition in

any tentative map that includes a subdivision a *requirement that a sufficient water supply shall be available.*

If the public water system fails to deliver the written verification as required by this section, the local agency or any other interested party may seek a writ of mandamus to compel the public water system to comply.

The claims of DWR regarding reliability, and the impacts associated with extraction, diversion, and use of those amounts, must be examined in the new EIR. Land-use decisions are being made based on DWR's assertions of reliability.

Minimizing the Need for Inter-Basin Transfers

The implicit logic of California water policy has been that moving water from one watershed to another is the only way to meet the water “needs” of the state. Often the development and use of local water resources, and especially groundwater, has been neglected due the preoccupation with large interbasin transfers. In 2001, a little-noticed provision in SB 672 regarding urban water management plans requires that the state of California in its state water plan (Bulletin 160-03), examine ways to “*minimize the need to import water from other hydrologic regions.*”¹⁷ A new focus, and legal mandate, has been placed on developing *local* water supply sources, including re-use. The specific section of the law is worth quoting:¹⁸

The department, as a part of the preparation of the department's Bulletin 160-03, shall include in the California Water Plan a report on the development of regional and local water projects within each hydrologic region of the state, as described in the department's Bulletin 160-98, to improve water supplies to meet municipal, agricultural, and environmental water needs and *minimize the need to import water from other hydrologic regions.*

The legislation then sets forth the range of local supply options to be considered:¹⁹

The report shall include, but is not limited to, regional and local water projects that use technologies for desalting brackish groundwater and ocean water, reclaiming water for use within the community generating the water to be reclaimed, the construction of improved potable water treatment facilities so that water from sources determined to be unsuitable can be used, and the construction of dual water systems and brine lines, particularly in connection with new developments and when replacing water piping in developed or redeveloped areas.

The EIR will need to take this new legal requirement into consideration as it examines alternatives to the proposed project. Specifically, the EIR needs to consider alternatives to both existing and proposed levels of extraction of water from the delta.

Summary

DWR's task and responsibilities with regard to this EIR are considerable. The "Monterey Plus" project, and the no project alternative, along with other appropriate project alternatives that may be identified, will require careful analysis. CEQA requires, as noted above, a level of analysis that provides the public and decision-makers with sufficient understanding of the issues and potential impacts to make informed decisions. These decisions will include both water management and land-use decisions, as well as ecosystem restoration decisions.

I look forward to seeing the new and improved EIR process address these issues in the spirit worthy of the public trust.

Sincerely,

Robert C. Wilkinson

Sources

¹ *Planning and Conservation League et al. v. Department of Water Resources et al.* (2000) 83 Cal.App.4th 892) (*PCL v. DWR*)

² *Planning and Conservation League et al. v. Department of Water Resources et al.* (2000) 83 Cal.App.4th 892) (*PCL v. DWR*), p.26

³ See: Water Code, § 12930 et seq.

⁴ *Planning and Conservation League et al. v. Department of Water Resources et al.* (2000) 83 Cal.App.4th 892) (*PCL v. DWR*), p.20

⁵ The court in *Planning and Conservation League et al. v. Department of Water Resources et al.* (2000) 83 Cal.App.4th 892) cited this contract language at pp.6-7.

⁶ *County of Inyo v. City of Los Angeles (III)* (1977) 71 Cal.App.3d 185, 199.

⁷ State Water Project Delivery Reliability Report, 2002. <http://swpdelivery.water.ca.gov/>

⁸ See CEQA and 14 Cal. Code Regs. §1512.6(e)(2).

⁹ *Planning and Conservation League et al. v. Department of Water Resources et al.* (2000) 83 Cal.App.4th 892) (*PCL v. DWR*), pp.23-25

¹⁰ See: Settlement Agreement at [http:// www.montereyamendments.water.ca.gov/](http://www.montereyamendments.water.ca.gov/)

¹¹ For example, CVPIA, CALFED, <http://calfed.water.ca.gov/general/overview.html>, *National Audubon Society et al., Petitioners, v. The Superior Court of Alpine County, Respondent; Department of Water and Power of The City of Los Angeles et al., Real Parties in Interest*, 33 Cal.3d 419, S.F. No. 24368. Supreme Court of California. Feb 17, 1983. Available at: http://ceres.ca.gov/theme/env_law/water_law/cases/National_Audubon_v_Sup_Ct.html

¹² National Research Council. 1992. *Restoration of Aquatic Ecosystems*. National Academy Press: Washington D.C.

¹³ The Racanelli Decisions, [*United States v. State Water Resources Control Board*](#), (1986) 182 Cal.App.3d 82.

¹⁴ Original Language, AB 455 (In its entirety).

¹⁵ SB 221, Kuehl

¹⁶ Section 66473.7 is added to the Government Code, as amended by SB 221. (Emphasis added.)

¹⁷ SB 672, Machado. California Water Plan: Urban Water Management Plans. (The law amended Section 10620 of, and adds Section 10013 to, the Water Code) SEC. 2. Section 10013 to the Water Code, 10013. (a) SB 672, Machado. California Water Plan: Urban Water Management Plans. September 2001

¹⁸ SEC. 2. Section 10013 to the Water Code, 10013. (a) SB 672, Machado. California Water Plan: Urban Water Management Plans. September 2001, (Emphasis added.)

¹⁹ SEC. 2. Section 10013 to the Water Code, 10013. (a) SB 672, Machado. California Water Plan: Urban Water Management Plans. September 2001.