MONTEREY AMENDMENT TO THE STATE WATER PROJECT CONTRACTS
INCLUDING KERN WATER BANK TRANSFER AND ASSOCIATED
ACTIONS AS PART OF A SETTLEMENT AGREEMENT,
MONTEREY PLUS

Wednesday, June 1, 2016
6:00 p.m. - 8:00 p.m.
Fresno, California
Woodward Park Library

Department of Water Resources:

Kevin Faulkenberry
Chief of South Central Region Office
3374 East Shields Avenue
Fresno, California 93726
(559) 230-3300

John Kirk
Engineering Geologist
3374 East Shields Avenue
Fresno, California 93726
(559) 230-3300

Karen Dulik
Environmental Program Manager
3374 East Shields Avenue
Fresno, California 93726
(559) 230-3300

Reported by: Bree Mervin, CSR No. 13057, RPR, CRR

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MR. FAULKENBERRY: Good evening everyone.

Thank you for coming. Thank you for taking time out of your busy day to attend this evening.

I would like to welcome you to the public comment meeting for the Monterey Agreement to the State Water Contracts and associated actions as part of the settlement agreement, Monterey Plus, Draft Revised Environmental Impact Statement Report.

My name is Kevin Faulkenberry. I'm with the California Department of Water Resources. I'm the chief of the South Central region office and the project manager for the Monterey Plus revised document that we're here to take comments on today. We are holding a series of meetings of which this is the first. The second one will be in Bakersfield, tomorrow night at five o'clock.

We'll be accepting both your written and oral comments here in a minute. As you can see, we have cameras in the room today. We're being filmed for potential use in an upcoming movie about water in California.
Be sure that when you come in, that everybody is signed in, or in respect to oral comments, please fill out a card. Karen has cards at the desk. Please fill out one of the cards and submit it to her. We'll take the cards and assemble them later on and then call your name out and ask you to give your oral comment one by one. You'll be given five minutes. We'll ask you to speak loudly, clearly, and slowly so that our reporter can record your comments.

We'll also be taking written comments. You can pick up sheets, also at the table where you came in. You can write -- you can write on those sheets and submit them to us today, or you can -- there's an address on them, and you can mail them in from home.

Everything that's happening today is being recorded and will be part of the admin record for the EIR. Just as an additional reminder, the public comment period ends June 13th, 2016. Comments on the EIR must be received by 5:00 p.m. on that day, at the address that's included on the written comment sheet that's over there on the table.

The EIR will be completed, and the administrative record collected on September 28th, 2016, and then we will be done with the document.

Now we can start with -- I don't know how many
comment cards have been submitted at this point, for
people who want to give oral comments.

We can stand up, you can do that. Why don't we
do that? That way I know better. Thank you, John. We
can go one by one. If you can stand up and introduce
yourselves in the room so I have a better idea of who's
here. That would be good. We'll start with you, sir.

MR. KEATS: Good morning evening. My name is
Adam Keats, a senior attorney with the Center For Food
Safety. I was the lead counsel on the lawsuit that
precipitated this EIR, the Monterey Plus lawsuit. I'm
here on behalf of my organization and the clients in
that lawsuit, which I'm sure are familiar to the
department. Thank you.

MR. FAULKENBERRY: Go ahead.

MR. VERKERK: My name is Robert Verkerk, I'm a
consultant from here in Fresno. Just here because of my
interest in water issues in California.

MR. FAULKENBERRY: Thank you.

MR. MERLO: Phillip Merlo. I'm a recent UC
Berkeley graduate interested in the water law. I'm
coming to check things out.

MR. FAULKENBERRY: Perfect, thank you.

Go ahead.

MR. PARKER: John Parker with Kern Water Bank.
MR. FAULKENBERRY: Thank you.

MS. HAYES: I'm Gene Hayes, representing Women's International League For Peace and Freedoms Earth Democracy Group.

MR. FAULKENBERRY: Sir, you in the back.

Dennis --

MR. FOX: Dennis Fox. I'm involved in water. I'm with CALFED Watershed Work Group, and on the State Water Plan.

MR. FAULKENBERRY: Okay. Has everybody had a chance to fill out comment cards that are interested in commenting? We'll give you a little time to do that. Not everything has to be done immediately. We have until eight o'clock. So in case you guys missed in the beginning, I will not be -- there's not a presentation to be given here. We are accepting, again, oral and written comments only. So, again, this is a good time to get your cards in. We'll go through the stack and give you each five minutes to give your oral comments.

Is that all the cards? Is anybody else submitting an oral comment card? Raise your hand and let me know. We got two. That should be easy. All right.

We're going to start with Adam. You'll be the first one to speak. You get five minutes. Go ahead.
Say -- give your comments, and she'll record them for you.

MR. KEATS: Would you like me to do them from here? Sitting down?

MR. FAULKENBERRY: That's perfect. So everybody else can hear in the room. Make sure she can hear. She'll flag you if she can't. Speak as loud as you can, clearly, and slowly.

MR. KEATS: Well, thank you. Thank you for having the hearing today. My name is Adam Keats, with the Center For Food Safety. I formally was at the Center For Biological Diversity, and I represent a number of organizations that sued back in 2010 on the earlier version of the Monterey Amendments, the second version of Monterey Amendments, EIR, the Monterey Plus EIR. As a result of that lawsuit, we won on one significant issue. The environmental review of the Kern Water Bank, and that is the review that we're here commenting on tonight. The EIR -- the revised EIR focused on the environmental impacts of the transfer, use, and operation of the Kern Water Bank as a water bank facility.

So I appreciate the opportunity to be able to comment. I appreciate the folks here that are here to witness -- the couple of folks here to witness democracy
in action. I understand -- you know, I'm hopeful that more folks will be submitting comments in written form. My organization will be also, and so tonight, I would like to say a couple of things that we'll be following up in more detail in written comments at a later date before the deadline.

I think that the -- I would like to first say a word of commendation of DWR for -- and the CIR for acknowledging -- I think, perhaps, the most significant aspect and the most significant impact of the transfer of the Kern Water Bank, which is the conversion, the relationship, and the causal relationship that has to do with the conversion of huge swaths of agricultural land in Kern County and Southern San Joaquin Valley to permanent crops.

Back in 1995, 1996, and 1997 when this idea was hatched, and since then, we have implementing a extraordinarily significant policy change in California, regarding a massive change in land use that has shifted huge portions of the state and the agricultural capacity to an incredibly unsustainable form of ag related to almonds, pistachios, some citrus, some grapes. That's all been a result of this transfer of the Kern Water Bank from the State to the Kern Water Bank Authority and the other entities.
The EIR acknowledges that there is a potentially significant cumulative impact related to the transfer of the Kern Water Bank and that shift in crop patterns, but then, unfortunately, the EIR determines that impact is less than significant for a variety of reasons. And we take issue with those -- with that rational, and we hope that the department reviews that conclusion and goes back and does a more substantial and legally sufficient analysis of those impacts.

Number one, the EIR excuses its lack of analysis based on the absence of significant criteria in Appendage G of the guidelines. Appendix G is clear it's not an exhaustive list of significant criteria. We believe the shift in crop patterns from annual to permanent crops is an objectively permanent -- objectively significant impact that needs to be analyzed regardless of whether it's a significance criteria labeled in Appendix G or not.

Moreover, I think that the EIR -- the EIR runs, it tries hard to avoid any responsibility for that shift in crops. It says -- it basis -- it tries to place in context the shift in crop patterns on the Kern Water Bank service area within this broader context of what's happening in Kern County in general or what's happening in the county in general or the neighboring farms.
And for context, in Kern County, we have the EIR discloses some very significant numbers. 1996, there was approximately 100,000 acres devoted to nut crops. In 2014, that number has risen to 302,000. Citrus rose from 41,000 to 64,000. Fruit, 93,000 to 143,000. These are percentage increases of 200 percent, 53 percent and 53 percent. These are extraordinary increases in this type of crop. They came with an extraordinary impact on water usage.

They were all -- the evidence, I think is there, they're all causal to the making of the Kern Water Bank go online, the decision to use it as a supplemental water supply for growers, specific growers that control the Kern Water Bank that were interested in profiting -- shifting their crop production to a high profit crop that required water year in and year out.

That impact and that -- that impact is significant and foreseeable. It was foreseeable then and obviously foreseeable now because it happened. We have the numbers.

The EIR should go -- the department should go back and change its analysis in the EIR and acknowledge that impact is significant and acknowledge the transfer of the Kern Water Bank's relationship to that conversion.
Now, the EIR attempts to avoid that causal relationship by saying, "Well, this happened within, you know, all of Kern County." What the EIR does not reveal is who owns the Kern Water Bank, and what other properties in Kern County do they own? How many other -- how many other -- on fields and, you know, tree groves and crop land and all the rest of it, did the same member -- did the member entities of the Kern Water Bank Authority control outside of the Kern Water Bank service area, and what was the relationship of the rest of the county conversion permanent nut crops to permanent crops?

Those are just presented in the EIR as an abstract idea, and saying since it's happening everywhere else, we don't need to analyze it. Obviously, we had nothing to do with it. Moreover, to what extent was the Kern Water Bank Authority's -- one minute.

MR. FAULKENBERRY: I've given you a little more time.

MR. KEATS: I'm almost done.

To what extent was the Kern Water Bank Authority member service area, what percentage and what proportion of that was contributed to the overall county numbers? We did some numbers. We tried to do some work
on numbers. The Kern Water Bank Authority participants alone, within Kern County, represented more than a quarter of the increase of nuts countywide between 1995 and 2014. Half of the increase in fruit and nearly all the increase in citrus. That's just within the Kern Water Bank Authority service area.

Now, again, what about the rest of the lands? Where are they getting their water, and why did they switch over to permanent crops, also?

We believe that the Kern Water Bank was the facilitator of a water use regime in Kern County that enabled both the member agencies within the Kern Water Bank Authority zone and member owners, the private owners, including Paramount Farms and their subsidiary and corollary and related companies that control a lot of land crop in Kern County and their affiliated and contractual related companies in Kern County. This is a dynamic process controlled by a few players in Kern County. They all had a concerted focused effort to convert the crop land in Kern County to an extraordinarily unsustainable permanent crop. That is has devastating impacts in our water supply in California.

All the impacts and all the analysis are completely absent from the EIR. We challenge you to go
back and look at those -- look at those numbers and look
at those impacts, and do a proper environmental analysis
of that incredibly significant matter.

MR. FAULKENBERRY: Thank you. Thank you for
your comment.

MR. KEATS: Thank you.

MR. FAULKENBERRY: All right. So the next
person is Dennis.

MR. FOX: The reason you have a hard time
hearing me is I have driven up past the water bank, and
all the dust has gotten to me.

Actually, it was very good. I don't know who
wrote that. It was very extensive.

MR. FAULKENBERRY: Thank you.

MR. FOX: I have a lot of arguments what can be
mitigated and what can't. I'm the great mitigator, they
call me. It is -- I do take exception to a lot of it.

There are impacts to the air, because without the water
bank, it wouldn't be. When they plow, the tumble weeds
under, which also clog the canals, that it is causing --
they're just planting. Tumble weeds roll. They plant.

So you're getting -- it's worse shape than what they
are. I rather see goats and cows. They get rid of all
that nasty stuff.

Some of the things that are primary and
secondary, when the water bank went in, the State Water
Project had enough water for the state at that time.
Since then, the only thing that's been added has been
the water bank. I haven't seen any Dos Rios sites or
anywhere. So you have -- the supply is the same, but
the demand is increased, and the water bank has
increased demand. It's basic 101 Econ.
So as it increases, so there is possibility to
increase the state water supply, but because of that
water bank and their -- the -- wanting an uncle to take
care of everybody and the nanny thing, they whine
enough. As you probably will see tomorrow, we have some
world champion whining. It's called the Bakersfield
Sound. We will not have guitars there, but you will
like it.

The -- it has caused more on the west side, and
I go along with Victor Davis Hansen of Fresno, who says
they should abandon the west side because it's taking
the water from the east side. You're using -- it has
increased the demand.

What is going to happen, as I was wondering, is
it is a Delta. You're taking water from one Delta to
put in another, especially if San Luis meadows, which
has been meadows for the last couple of years and not a
reservoir, unfortunately, but if you can't store it
there, you probably have to store it in the water bank, which will increase things.

The water bank -- I would suggest you might start looking at wet stocking in the area, the oil companies invented that down there and great at it. The water people ought to do it, too.

The City of Bakersfield, which is buying -- which has hidden tax paying for most of this stuff, has a great urban water management plan, but they didn't do it. It was done for them, as usual, by the agency ID4, and I -- I do notice that partially treated sewage has been sent to these areas. Currently, they're doing it through soccer fields. It's going to percolate out. That is something to look at. I don't mind it as the water bank is being pumped out and City water is going over, and that's getting pumped out going to LA. I don't mind the sewage plant -- sewage water going down there, but they might not like it. We call it brain food. So that's something.

Also, the water bank has been operated as a private duck club for benefit of Phillimore, etc. It should be checked to make sure they're using the proper non-lead stuff. You're creating a situation down there, at the water bank and at the wildlife refuge with less water and getting partially treated sewage, setting up
for one of those epidemics, avian cholera and botulism. That's something you should check with Fish and Game, keep on top of that. That -- it's possible, hopefully, to mitigate it. Those are -- I think one other -- oh, mainly it has to do with the -- I would say sociological and the health and safety issues when they ignored the West Nile virus situation. Just general health because it's a colonial situation. People who are operating it aren't there.

George and Alex and Tom and the other guys, Ben, we all thought that back in 1776, this was not the best situation. It definitely isn't. It's going to -- it is not good for -- it causes the whining. People who get the subsidies are not able to foresee things; therefore, that's when, I think, a major reason we're not going -- people are not looking at getting more water to various ways of getting water to the state. They're looking at getting other people's water. It sounds like something in Wall Street. The problem is OP water, other people water. I think that's about it.

Oh, subsidence. That is definitely a problem. Unless you guys can really pump that rock back up, you know? The storage capacity is going. The slabs I mentioned to cracking of slabs on houses, and if that is an issue or not, which I know -- I want to check in Taft
and that area, as well as close to it.

The subsidence is going to be -- I think it's
going to have an impact, also, on this river over here,
about, what, a mile? Whether that's going to impact the
flows and the geomorphism of the San Joaquin as it's
already having problems with the Kern. It's not as --
it's a channel, not a river. Thank you.

MR. FAULKENBERRY: Okay. All right. Thank
you.

MR. FOX: I have a lot of babble. I left it in
the car, my notes.

MR. FAULKENBERRY: Thank you for your comments.
So far, we have had two. I don't think we have anyone
else. Have we received any other oral comment cards?
So we'll go ahead and stay here and wait. We'll be here
until eight o'clock, waiting for other comments; is that
right? We still have a ways to go. That's a lot of
time.

Thank you. Let me know if you want to comment.
Like I said, please provide any written comments over
here. Give them to Karen.

(Recess taken)

MR. FAULKENBERRY: Looks like we have another
speaker. I'm just going to jot the name down.

Our next speaker is going to be Phillip Merlo;
is that correct?

MR. MERLO: Yes.

THE COURT: Go ahead and start. You get five minutes plus.

MR. MERLO: My name is Phillip Merlo. I'm a recent UC Berkeley graduate. Interested in going into water law. Born and raised in Stockton. I go to a lot of different meetings for DWR and different water authorities and water districts in California, just to get interested, and the one thing I have realized over the course of the past six months while going to the different meetings, is the California water system is very interconnected.

So when you have something involving the Kern Water Bank, something as important as the Kern Water Bank, I feel it's important to actually have, for this particular meeting, there should have been outreach to different parties across the state. The Kern Water Bank drives exports in the Delta, which in turn drives the water system throughout the state.

So I guess I was just kind of interested -- I only heard of this from a friend. My boss knows Dennis. I thought that was kind of interesting that there was no public outreach. So I guess that's my comment. It's a little frustrating.
Cocl. That's all I have to say.

MR. FAULKENBERRY: Thank you. Appreciate your comment.
STATE OF CALIFORNIA)
COUNTY OF FRESNO ) ss.

I, Bree Mervin, a Certified Shorthand Reporter
for the State of California, hereby certify that I was
present and reported in stenotypy all the proceedings in
the foregoing-entitled matter; and I further certify
that the foregoing is a full, true, and correct
statement of such proceedings and a full, true, and
correct transcript of my stenotype notes thereof.

Dated at Visalia, California, on Monday,
June 13, 2016.

Bree Mervin, CSR No. 13057