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VIA ELECTRONIC MAIL

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95814-0100
Email: commentletters@waterboards.ca.gov

Re: Comments on Bay-Delta Water Quality Control Plan SED

Dear Ms. Townsend:

Stockton East Water District (District) appreciates the opportunity to comment on the Draft Substitute Environmental Document (Draft SED) in support of potential changes to the Water Quality Control Plan for the San Francisco Bay-Sacramento/San Joaquin Delta Estuary (Bay-Delta WQCP): San Joaquin River Flows and Southern Delta Water Quality (San Joaquin River Flow and South Delta Salinity Objectives). As you know, the District has been extensively involved in the review of the San Joaquin River Flow and South Delta Salinity Objectives and has submitted comments throughout the process. At the outset, the District would like to join in support of the extensive comments submitted by the San Joaquin River Tributaries Authority (SJRTA). The SJRTA raise many legal challenges to the State Water Resources Control Board (State Water Board) manner of proceeding as identified in the Draft SED, as well as a host of CEQA challenges based the Draft SED's woeful inadequacies. We support the SJRTA comments to the extent they are consistent or not in conflict with the District's comments. Additionally, the District has attached an errata sheet with questions and comments on a chapter by chapter basis for your consideration.

I. INTRODUCTION

The District is vitally interested in and concerned about environmental issues relating to water rights and water supplies. Indeed the District routinely and regularly comments on proposals by California and the United States about these matters and has, on occasion when the circumstances demanded it, successfully challenged legally deficient actions in strategic lawsuits. The District is particularly interested in the State Water Board discharging its public duty to satisfy the requirements of the California Environmental Quality Act ("CEQA"). Generally speaking, the Draft SED is

legally deficient and does not fulfill its duty as an informational document. Rather than certify the Draft SED, you are requested to sufficiently evaluate the potential environmental effects and thereafter provide a new public review draft SED and comment period. In this instance the proposed project directly affects the District, District operations and ultimately District landowners, landowners who could be directly and negatively affected by the project's negative environmental consequences. The proposed project also has direct and secondary effects on the general public.

The Legislature declares that environmental quality is a statewide concern and requires public agencies to exercise regulatory authority "so that major consideration is given to preventing environmental damage." Pub.Res.C. §21000(g); Title 14 California Code of Regulation §15002(a)(2)-(3)(underline added) (hereinafter unidentified reference refer to the CEQA Guidelines).¹ Ignoring direct and cumulative impacts defeats an overriding policy as articulated by the Supreme Court that CEQA is "to be interpreted...to afford the fullest possible protection to the environment within the reasonable scope of the statute language." *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 (underscoring added). "The EIR requirement is the heart of CEQA." §15003(a). A legally adequate SED demonstrates "to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its actions" (§15003(d)); and "enable[s] the public to determine the environmental and economic values of their elected and appointed officials thus allowing for appropriate action come election day." *People v. County of Kern* (1976) 39 Cal.App.3d 830, 842. The Supreme Court succinctly observes, "The EIR process protects not only the environment but also informed self government." *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 ("Laurel Heights").

If a SED is adopted without sufficiently discussing and mitigating environmental effects, the agency has not proceeded in a manner required by law. *TRIP v. City Council* (1988) 200 Cal.App.3d 671, 679. The Fifth District underscores the EIR's information disclosure feature: "A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process." *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26 ("Dry Creek"); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712 ("Kings County").

¹We acknowledge the citations presented herein involve challenges to EIRs rather than to a SED. Nevertheless, substantial overlapping legal requirements applicable to each type of document make these important citations directly applicable here. Throughout this comment letter we rely on statutory, administrative guidelines and decisional law statements that apply with equal dignity to the legal sufficiency of either an EIR or a SED. Hence, the term "EIR" and the term "SED" may be used interchangeably in this comment.

Thus, an “adequate EIR must be ‘prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences.’ (Citation) It ‘must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” *Kings County* at 712 (emphasis added) citing *Laurel Heights* at 405. See, also *Dry Creek* at 26. Omitting relevant information itself “is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.”).

A SED's legal sufficiency is determined by Code of Civil Procedure (C.C.P.) §1094.5 and Pub.Res.C. §21168. An abuse of discretion occurs if an agency does not proceed in a manner required by law or if the decision is not supported by substantial evidence. “Failure to provide enough information to permit informed decision making is fatal.” *Napa Citizens for Honest Government v. Napa County* (2001) 91 Cal.App.4th 342, 361. To put a finer point on it, certifying “an EIR which is legally deficient because it fails to adequately address an issue constitutes a prejudicial abuse of discretion regardless of whether compliance would have resulted in a different outcome.” *Citizens to Preserve Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 428.

The applicable two prong standard presented by C.C.P § 1094.5 compels a trial court to take a hard and demanding evaluation of the evidence and the agency's treatment of this evidence. In sum, a reviewing court ascertains whether a challenged EIR or SED was prepared “with a sufficient degree of analysis” to allow “a decision which intelligently takes account of environmental consequences.” *Dry Creek* at 26. This means the SED “must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Laurel Heights* at 405. Therefore, “where the failure to comply with the law results in a subversion of the purpose of CEQA by omitting information from the environmental review process, the error is prejudicial.” *Rural Landowners v. City Council* (1983) 143 Cal.App.3d 1013,1023

The District's comments pivot on the principle that a SED acts as an informational document identifying potentially significant impacts of a project, as well as alternatives and mitigation measures necessary for informed decision-making (Pub.Res.C. §21002.1), and that substantial evidence must support the SED's findings and conclusions. *Laurel Heights* 47 Cal.3d 376. An adequate SED “must be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences” and “must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Id.*

The Draft SED does not meet this threshold; accordingly, it is not adequate for certification, and the project cannot be approved until a legally sufficient SED is prepared.

Moreover, a public agency must proceed in a manner required by law and failing to proceed in a manner required by law represents an independent and separate prong of abusing discretion as identified in C.C.P. § 1094.5. Omitting relevant data or the failing to conduct environmental studies or analysis based on a legally sufficient project description or baseline amounts to a failure to proceed in a manner required by law. *Rural Landowners v. City Council* (1983) 143 Cal.App.3d 1013, 1023

This is because CEQA is to be expansively interpreted in order to provide maximum evaluation and consideration of potential direct and indirect environmental effects. § 15003(f); *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259. Cohering to this expansive statutory mandate the "EIR requirement is the heart of CEQA." § 15003(a); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795.

More specifically, a SED must consider both direct and indirect environmental effects (§ 15064(e)). The expansive interpretation of this rule was presented in *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1205-1206 and illustrates the meaningful relationship between socio-economic direct effects to secondary or indirect environmental effects:

Guidelines section 15131, subdivision (a) provides, "An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes in turn caused by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes."

Case law already has established that in appropriate circumstances CEQA requires urban decay or deterioration to be considered as an indirect environmental effect of a proposed project. The relevant line of authority begins with *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 217 Cal.Rptr. 893 (*Bishop*). There, the appellate court held that adoption of multiple negative declarations for different aspects of the same large regional shopping center violated CEQA. (*Id.* at p. 167, 217 Cal.Rptr. 893.) The court also agreed with appellant that on remand "the lead agency must consider whether the proposed shopping center will take business away from the downtown shopping area and thereby cause business closures

and eventual physical deterioration of downtown Bishop." (*Id.* at p. 169, 217 Cal.Rptr. 893.) Citing Guidelines section 15064, the court found that the lead agency had an affirmative duty to consider whether the new shopping center would start an economic chain reaction that would lead to physical deterioration of the downtown area. (*Id.* at p. 170, 217 Cal.Rptr. 893.) Therefore, "[o]n remand the lead agency should consider physical deterioration of the downtown area to the extent that potential is demonstrated to be an indirect environmental effect of the proposed shopping center." (*Id.* at p. 171, 217 Cal.Rptr. 893.)

Accordingly, in *Bakersfield Citizens* the socio-economic impact of store closures required the two EIRs to study in depth the potential that this non-environmental effect could start a "chain of events" leading to urban decay, a recognized environmental effect. To the same extent, this SED fails to identify and omits significant secondary effects of the proposal. For instance, as explained later, the preferred project will induce agricultural operations to rely more heavily on groundwater as a substitute for reduced surface water deliveries. This in turn means that more air pollution will be emitted as agricultural operations increasingly use diesel engines to pump groundwater for application to crops. Against the *Bakersfield Citizens* standard of legal sufficiency the SED is legal deficient and approval of the SED as currently presented amounts to a prejudicial abuse of discretion.

II. THE SED IS LEGALLY DEFICIENT FOR PURPOSES OF COMPLYING WITH THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. THE SED'S PROJECT ENVIRONMENTAL SETTING AND BASELINE IS LEGALLY DEFICIENT

Evaluating a project's potential to cause individual and/or cumulative impacts requires identifying an accurate environmental setting/baseline. See §15130(b) (1). Indeed, "[t]he purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind. (*Bozung v. LAFCO* (1975) 172 Cal.App.3d 151)" (§15003(g)), and an analysis relying on a factually inaccurate environmental setting/baseline reflects an exercise in paper pushing rather than good-faith information disclosure. Accordingly, incorrectly including certain features or omitting relevant features of the baseline or environmental setting is inherently prejudicial, for a "[p]roper cumulative impacts analysis is absolutely critical to meaningful environmental review". *Bakersfield* at 1217.

The environmental setting and baseline consists of "the physical environmental conditions in the vicinity of the project" viewed from "local and regional perspective(s)." §15125(a) and (c). It should be sufficiently comprehensive to allow a project's significant impacts "to be considered in the full environmental context."

§15125(c). It should be sufficiently clear and accurate to allow informed comparisons of the pre-project and post-project conditions. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955. A SED's assessment of a project's environmental impacts examines changes to existing physical conditions expected to result from the project. §15126.2(a). A SED must focus on the project's impacts to the environment, not its impacts on hypothetical situations. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App. 4th 931, 952.

Here the SED's baseline is legally deficient thereby rendering the SED inadequate as a document required to comply with CEQA. The SED contains multiple baseline deficiencies. The baseline assumptions rely on a 2009 Department of Water Resources (DWR) State Water Project Reliability Study (DWR Reliability Study) as the inputs into the Water Supply Evaluation Model (WSE Model). The WSE Model in turn is the entire basis for the environmental impact analysis in the SED. The DWR Reliability Study grossly misrepresents operations of the New Melones Project on the Stanislaus River. First, it expressly limits allocation to Central Valley Project Contractors to 90,000 acre feet (af) instead of 155,000 af, which is the full contractual obligation of the U.S. Bureau of Reclamation (Reclamation).² This amounts to a 65,000 af reduction in supply and this material reduction is never disclosed and evaluated in the Draft SED.

The DWR Reliability Study also contains certain "off-ramps" to compliance with objectives to make the study work throughout the 82 year history which produces either erratic or non-compliance with objectives. Using this study as the input assumptions to the WSE Model results in an erroneous depiction of conditions and cannot be the basis of comparison for alternatives rendering the entire SED legally flawed.

The baseline assumptions also include the June 2009 National Marine Fisheries Service's Biological Opinion and Conference Opinion on the Long-Term Operations of the Central Valley Project and State Water Project (NMFS BiOp) Reasonable and Prudent Alternative 3.1.3 (June 2009 BiOp Appendix 2-E flow schedule). It is unclear why the baseline conditions include the flows set forth in June 2009 BiOp Appendix 2E flow schedule for the Stanislaus River. First, the Draft SED states that CEQA requires a description of the physical environmental conditions in the vicinity of the project as they exist at the time of the Notice of Preparation (NOP) is published (February 3, 2009) [SED 4-11]. As such, why are the June 2009 BiOp Appendix 2-E flows included since they were not in existence as of February 2009, instead they were issued four (4) months following the issuance of the NOP.

² Despite repeated references in the Draft SED that Reclamation has rarely delivered much of the 155,000 af, the District has received a full allocation in 2010, 2011, 2012 and 2013.

Inclusion of the June 2009 BiOp Appendix 2-E flows in the baseline is further complicated by the fact that the Federal District Court Judge Oliver Wanger³ previously ruled that implementing the Appendix 2-E flows without first complying with NEPA violated Federal law. It is very significant to note that there has been NO environmental analysis done ever either pursuant of NEPA or CEQA of the human and/or environmental effects of implementation of the NMFS BiOp or the associated impact to Stanislaus River water users by implementation of the Appendix 2-E flows.

Judge Wanger further found Appendix 2E flows were not based on the best available science and therefore found that Appendix 2-E flows were arbitrary, capricious and unlawful. The NMFS BiOp was remanded to Reclamation/NMFS and demanded compliance with NEPA and a new NMFS BiOp issued based on the best available science. The current remand schedule has the NMFS BiOp completed by 2016. In short, since June 2009 BiOp flows have been set aside by a Federal Court, it is a prejudicial error to treat such flows as part of the existing physical or environmental baseline.

Besides including flows that have been remanded for compliance with NEPA and to be supported by best available science, the SED strangely omits flows from the San Joaquin River Restoration Program (SJRRP). The SJRRP is the result of a settlement reached in 2006. The settlement addresses restoration of fish habitat and requires flows be provided to re-connect the river upstream of the Friant to Dam to the Upper San Joaquin River at the mouth of the Merced River. The flows provided for pursuant to the settlement agreement existed at the time of NOP; therefore, they ought to have been included in the environmental setting and the baseline.

Including features not reasonably part of the environmental setting/baseline while unreasonably excluding features of the existing environmental setting/baseline is incoherent in the extreme. These materially defective errors results in the SED inaccurately analyzing significant impacts from implementing alternatives and grossly underestimate impacts to water diversions. For instance, for the Stanislaus River, the document discloses that Alternative #2 will increase the surface water diversions by 73,000 af over baseline; Alternative #3 decreases on average only 8,000 af to surface water diversions. The understated environmental effect also results in inadequate analysis and a failure to consider mitigation measures to minimize this more significant environmental effect.

A project's environmental effects must be measured against actual physical conditions on the ground as opposed to hypothetical uses. *City of Carmel-by-the-Sea*

³ San Luis and Delta-Mendota Water Authority et al v. Locke, Case Number is 1:09-CV-01053 OWW DLB - The Consolidated Salmonid Cases.

v. *Board of Supervisors* (1986) 183 Cal.App.3d 180, 186-187. “[T]he environmental baseline is the basis on which the environmental impacts of the project are to be measured normally is the physical condition of the project site at the time the notice of preparation of the EIR is published.” *Woodward Park Homeowners Assoc., Inc. v. City of Fresno*, (2007) 150 Cal.App.4th 683 (citing to §15125(a)). There the court determined an EIR for a shopping center that used operation of an authorized but non-existent office building as its baseline was “legally inadequate as an informational document because it failed to analyze consistently and coherently the impacts of the project relative to leaving the land in its existing physical condition.” *Id.* at 710. The court ultimately held the EIR was deficient because it “failed to use the existing physical environment as the environmental baseline” and inappropriately compared the project’s environmental effects to a hypothetical project and not the existing conditions on the ground. *Id.* at 711.

The wobbly baseline employed by the SED does not meet minimum legal requirements. Without explanation it omits relevant aspects of the existing physical environment while contemporaneously adding other features that were not part of this existing physical environment. This converts the environmental setting and baseline from accurately depicting the existing setting to offering a hypothetical environmental setting where some current features were omitted and potential features were included. These serious errors produce an inaccurate baseline that contaminates the SED’s study of environmental effects.

B. THE SED LACKS AN ADEQUATE PROJECT DESCRIPTION

A Project Description is a mandatory element of a legally sufficient SED. §15124. At a minimum the SED’s Project Description must include four elements: 1) “The precise location and boundaries of the proposed project”; 2) “A statement of the objectives sought by the proposed project”; 3) “A general description of the project’s technical, economic and environmental characteristics”; 4) “A statement briefly describing the intended uses of the EIR.” §15124(a) through (d).

The SED’s Project Description plainly does not meet minimum legal requirements and this deficiency is fatal. This is because a “finite project description is indispensable to an informative, legally adequate EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.3d 185,199. Thus a project description omitting integral components of the project may result in a SED that fails to disclose all relevant impacts of the project. *Santiago County Water District v. County of Orange* (1994) 118 Cal.App.3d 818, 829. Simply stated, “an accurate project description is necessary for an intelligent evaluation of the potential environmental effects of the proposed activity.” *San Joaquin Raptors/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.

The Supreme Court has concluded that if the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake. *Laurel heights Improvement Association v. Regents* (1988) 47 Cal.3d 376.

Here the project description is fatally flawed. First, there is no clear concise statement of the proposed project. There is a general mention of the consideration of amendments to the 2006 Bay-Delta Plan to change flow requirements in the San Joaquin River basin and changes to water quality objectives in the Southern Delta, but nowhere in the body of the SED is there a clear concise description which sets forth the objectives of the propose project and measurable benefits that will be achieved by implementation of the proposed project.

Secondly, the project description excludes from the Plan area the Upper San Joaquin River above Merced River. The State Water Board cannot legally exclude the main stem of the San Joaquin River above the Merced River from meeting the San Joaquin River flow objectives as this area contributes nearly 35% of the unimpaired flow of the entire San Joaquin River basin. If one of the stated purposes of the proposed project is to mimic the natural hydrograph, how can this purpose be accomplished when nearly 35% of the natural flow is excluded?

Appendix K of the SED contains the program of implementation which fails to set forth in sufficient detail the suite of actions that will be undertaken to implement the proposed project. Instead, there are many references to actions to be developed by federal and state agencies with participation by stakeholders and delegation of actions to the Executive Director of the State Water Board. The SED fails to describe the proposed project, improperly excludes mandatory areas and fails to describe the program of implementation in sufficient detail to conduct a legally adequate evaluation of the environmental impacts associated with the proposed project including the program of implementation. This lack of a sufficient project description renders the Draft SED fatally flawed. A revised SED must include a clear concise project description and well articulated program of implementation from which there can be a thorough analysis of the environmental impacts of implementation of the proposed project.

C. THE SED FAILED TO IDENTIFY AND CONSIDER A REASONABLE RANGE OF ALTERNATIVES AND FAILED TO EXPLAIN WHY FEASIBLE ALTERNATIVES WERE REJECTED FROM THE REASONABLE RANGE OF ALTERNATIVES

CEQA requires an EIR or SED to describe a range of reasonable alternatives to a proposed project, or to the location of a proposed project, which feasibly obtain most of the basic objectives of the proposed project, but would avoid or substantially lessen any of the significant effects of the proposed project, and evaluate the comparative

merits of the alternatives. §15126.6(a). "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects." §15126.6(c). Indeed, an alternatives analysis is "the core of an EIR." *Citizens for Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. A SED must describe a reasonable range of alternatives. It must evaluate the comparative merits of those alternatives. §15126.6(a). A SED must explain how project alternatives were selected for analysis. It should also identify alternatives rejected as infeasible and explain why they were rejected. §15126.6(c).

The alternatives analysis contains multiple errors. To start with, the No Project Alternative oddly includes features that are not part of the current environmental setting or baseline. Therefore, it is not truly a "No-Project" alternative. For instance, the No Project Alternative places entire burden of meeting the 2006 Bay Delta WCQP requirements on New Melones Reservoir. This effectively means full compliance with D1641 flow objectives during February through June, April 15 – May 15 pulse flows and salinity water quality requirements not only at Vernalis, but also at the three interior stations. There is no basis for the assumption that full implementation of these standards will be exclusively the responsibility of New Melones. Reclamation currently meets the Vernalis salinity requirements from New Melones, it has never met, nor even attempted to meet, the interior standards with New Melones water. In addition, D1641 itself contemplates that within two years of expiration or termination of the Vernalis Adaptive Management Plan, that the State Water Board would assign responsibility for these objectives.

It is also important to note that both the CVP and the SWP water rights are conditioned upon meeting the three interior Delta stations salinity objectives, and all CVP water rights (not just New Melones) are conditioned upon meeting the Vernalis salinity objective. The three interior Delta stations salinity objectives are consistently exceeded and neither the CVP nor the SWP projects operate to release water to meet these objectives. Therefore for the No Project Alternative to assume these objectives would be met with releases from New Melones Reservoir is completely erroneous. Finally, the No-Project Alternative also assumes June 2009 BiOp Appendix 2E flows on Stanislaus River are met. As detailed above, the Appendix 2-E flows were remanded because they are not based on best available science and therefore were arbitrary, capricious and unlawful.

These features amount to significant changes to the current environmental and regulatory setting and convert the no project alternative into an "action" or change alternative. Contrary to CEQA's minimum legal requirements and procedure, a true "no alternative" is omitted from the SED. §15126(c).

Additionally, the SED, without a sufficiently detailed explanation, omitted feasible alternatives or feasible alternative features to the preferred project. In the District's opinion, each of these alternative features to the proposal are feasible as that term is defined by Section 15364, and would lessen the intensity of the environmental effect anticipated to occur as a result of implementing the proposal. While the District does not have a legal duty to instruct a Lead Agency about how to conduct a legally sufficient CEQA review, we offer the following comments about the truncated alternatives analysis.

With respect to LSJR flow objectives, the only alternatives considered were based on dedication of a percentage of unimpaired flow. The purported purpose of the LSJR flow objective is the reasonable protection of fish and wildlife and to support and maintain the natural production of native fish populations. However, there are other feasible alternatives including targeted short duration pulse flows during the time period needed for emigrating juvenile fish. These feasible alternatives were rejected without sufficient explanation by the SED or the State Water Board. Choosing an alternative that uses more water than reasonably necessary to meet the purpose of the water quality objective certainly constitutes an unreasonable use of water violating the California Constitution, as discussed below.

There are other feasible non-flow alternatives that will reasonably protect the fishery including, but not limited to, improving riparian habitat, gravel enhancement and augmentation, and reduced ocean harvest are present. Most importantly excluded from consideration is a predator suppression program. Extensive information was submitted to the State Water Board regarding the significant effects of predation both in the tributaries and in the Delta. For instance on the Stanislaus River, 95% of the juvenile fish population is lost to predation in the river, that is, fish are caught at an upstream rotary screw trap and then 95% are not captured at the lower trap – lost to predation. It is vital for the State Water Board to consider non-flow measures such as predator suppression as a means to lessen the environmental effects of implementing only flow based alternatives. A failure to consider such an alternative renders this SED legally deficient.

With respect to the South Delta salinity objectives, the program of implementation program narrows the evaluation process exclusively to conditioning Reclamation water rights to attain the stated objectives. There are additional flow alternatives that are reasonable and must be evaluated in the SED. The salinity problem is caused by deliveries from the San Luis Unit of the CVP. The Congressional authorization for the San Luis unit conditioned water deliveries upon completion of a drain. Because deliveries were made without provision for a drain, pollution of the San Joaquin River has resulted. Consequently, one of the alternatives for achieving the Vernalis salinity objective should be imposition of a condition upon the San Luis Unit permits to release water to comply with the Vernalis salinity objective. Several

alternatives would be available under this scenario, including releases from San Luis and/or the Delta Mendota Canal with or without recirculation. All of these alternatives must be evaluated.

The salinity problem is also caused by discharges from wetlands and wildlife refuges; discharges which have increased over the past twenty years after augmentation of refuge water supplies through the Central Valley Project Improvement Act. The SED must analyze reducing, eliminating or otherwise diluting at the source of this discharge. One very effective way of mitigating the adverse impact caused by the wetland and wildlife refuge discharge is to require the wetlands and wildlife refuges to reserve a portion of their enhanced water supply for use to dilute the discharge in the spring months.

The salinity problem is also caused by agricultural drainage and tile drainage entering the San Joaquin River from westside agricultural interests. The Grasslands Bypass and West Side Drainage Projects have successfully reduced a significant amount of salt laden drainage entering the San Joaquin River. The SED must evaluate additional drainage reuse and other measures to control these discharges or change the timing of these discharges to occur when there is natural assimilative capacity in the San Joaquin River.

In addition to controlling salinity by providing dilution flows, there are additional salinity control actions that should be analyzed, including subsurface storage of drainage, land retirement and out of valley disposal. Adopting salinity objectives for the entire river and implementation through waste discharge permits that would prohibit discharge rather than control its timing should also be evaluated.

The contemplated program of implementation in the SED violates the California Constitution prohibition on the waste and unreasonable use of water. Article X, section 2 declares, "The right to water or to the use of flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversions of water." The "[u]se of upstream water to wash out salts downstream is an unreasonable use of water." (*Jordan v. City of Santa Barbara* (1996) 46 Cal.App.4th 1245, 1270; see also *Antioch v. Williams Irrigation District* (1922) 188 Cal. 451, 465).

As discussed above, maintaining the Vernalis objective at its current levels, in light the increase of the interior Delta objectives, is unnecessary and overprotective of the agricultural beneficial uses at Vernalis. Requiring an artificially low salinity objective and conditioning the Bureau's water right permits to release water to create

assimilative capacity to dilute downstream pollution flies directly in contravention of the Constitution and constitutes waste and an unreasonable use of water.

The 2006 Bay Delta Plan acknowledged and discussed the various factors that contribute to elevated salinity in the southern Delta. In its implementation plan, the State Water Board identified various actions that could be used to implement the South Delta salinity objectives. The salinity objectives were to be attained using dilution flows as well as "non-water right actions" which included completion of a drain to remove the salts generated by agricultural drainage and municipal discharges and various other projects aimed at reducing high salinity drainage to the San Joaquin River and improving circulation in the southern Delta. Unfortunately not one of these "non-water right actions" has contributed to meeting the salinity objectives. As a result, dilution flows released by the Bureau of Reclamation from New Melones Reservoir have been the sole means by which the Vernalis objective has been attained. Because of this, the New Melones CVP contractors, which include Stockton East, have had their water supply reduced and a disproportionate burden has fallen on these contractors which have not caused the pollution.

The State Water Board is now proposing to meet the interior Delta objectives through the assimilative capacity provided by maintaining the salinity objective at Vernalis at its current levels. In seeking to do so the State Water Board is now attempting to place an additional burden of meeting the interior objectives on New Melones and its contractors as well. To place this additional disproportionate burden on New Melones and its contractors is fundamentally unfair. The State Water Board should take action to appropriately apportion this burden among all those contributing to the problem as originally intended.

Furthermore, the proposed program of implementation of maintenance of the existing Vernalis salinity objective to provide assimilative capacity for the dilution of downstream pollution violates the Clean Water Act. Requiring dilution flows directly contradicts 40 CFR 131.10(a) which states "in no case shall a State adopt waste transport or waste assimilation as a designated use for any water of the United States." Effectively conditioning implementation of the existing Vernalis salinity objective is not for the protection of agriculture, but instead to provide dilution flows for downstream, the designated use that the State Water Board is establishing is really "waste assimilation" and expressly prohibited by Federal Law.

Finally, the program of implementation requiring continuation of the Vernalis salinity objective for the express purpose of providing assimilative capacity completely disregards the Congressional directive contained in H.R. 2828 (Public Law 108-361 to reduce the use of New Melones Reservoir to meet the existing Bay-Delta water quality objectives. The Congressional directive is clear, the legislation expressly directs the Bureau of Reclamation, with the assistance of the State, to initiate and implement

actions to achieve the Bay-Delta water quality objectives while reducing the demand on water from New Melones Reservoir for meeting these objectives. Conditioning the Bureau's water rights to make releases violates this important provision of federal law.

As detailed above other feasible alternatives exist and were ignored without explanation. The SED does not attempt to explain why all feasible alternatives were rejected as infeasible. The SED has a duty to explain why feasible alternatives such as the alternatives mentioned herein should not be evaluated as part of the SED.

D. WITHOUT EXPLANATION THE SED APPLIED DIFFERENT MODELS TO DIFFERENT ASPECTS OF THE SED WHICH RESULTS IN NON-COMPARABLE RESULTS AND ERRONEOUS EVALUATION OF THE ENVIRONMENTAL IMPACTS

Without explanation the SED bases its entire environmental analysis on a newly created Water Supply Evaluation (WSE) Model. The WSE Model has never been used in any proceeding, never been peer reviewed and never been verified in any manner. Most importantly, as explained by a recognized modeling expert on the San Joaquin Basin, Dan Steiner [March 21, 2013 presentation to State Water Board], the WSE Model is so fatally flawed it cannot be used as the basis for the SED environmental analysis.

First, the WSE Model incorporates certain data and results from the DWR Reliability Study CALSIM run for which the SED establishes as the CEQA "baseline." As explained above, the DWR Reliability Study CALSIM run has significant flaws, including, but not limited to, grossly misrepresenting operations of the New Melones Project on the Stanislaus River and CVP contractor allocations, including the Vernalis Adaptive Management Pan flows, off-ramps to make the model run through the 82 year hydrology period, and inclusion of certain elements of the June 2009 NMFS BiOp. This CALSIM run is used as the inputs into the WSE Model. If there are faulty inputs all outputs will be equally erroneous.

In addition, the WSE Model then utilizes a series of unreasonable and/or unlawful operational assumptions. The WSE Model assumes annual water delivery quantities would be determined based on reservoir storage levels on January 31 with no consideration given to runoff into the reservoir after January 31, water deliveries would be reduced in order to maintain baseline reservoir levels, and water delivery reduction would not occur according to by water right priority or contractual obligation. The fundamental differences between the two models CALSIM II and the WSE Model operational protocols and operating criteria result in non-comparable results.

The bottom line, the SED modeling is fatally flawed and not usable for estimating hydrologic conditions. The SED modeling is woefully non-representative of potential changes in operations that could result due to implementation of any of the alternatives. If the depicted water supply and reservoir operations are fundamentally

flawed in the model, then the corresponding river flows will be equally ill represented resulting in completely erroneous analysis. Also, any analysis must have the proper baseline as it is the basis for all comparisons. The SED modeling must be completely re-done with a model and assumptions that accurately represents baseline and water supply operations. Failure to do so renders this SED fatally flawed.

E. THE SED FAILS TO ACCURATELY DEPICT ENVIRONMENTAL EFFECTS OF THE PROJECT

Because of the errors in the WSE Model described in detail above, the entire SED effects analysis is flawed, inaccurate and misrepresents impacts associated with implementing any of the Alternatives, including the Preferred Alternative, on Stanislaus River water users. As a result, for water users on the Stanislaus River, it is impossible to evaluate the environmental effects to groundwater resources, agricultural resources, municipal service providers, as well as all of the other resources.

The SED must correctly quantify reduction in surface water deliveries to the Stanislaus River water users and then correctly analyze the impacts. In particular, there must be a thorough evaluation of the impacts to the Eastern San Joaquin groundwater basin overdraft problem by the reduction of surface water supplies. In 1980 the Eastern San Joaquin County Groundwater Basin was declared by DWR's Bulletin 118-80 to be in a state of 'critical overdraft.' Since the 1920's local residents have been concerned about continually lowering groundwater basin levels, and the intrusion of saline waters from under the Delta. The District was specifically formed in 1948, succeeding and continuing the efforts of the Linden Irrigation District to address the declining groundwater basin and obtain supplemental surface water supplies.

Due to limited surface water supplies, groundwater is the primary source of supply for water users within the District. Groundwater is pumped by individual farmers to irrigate their crops, and is pumped by the City of Stockton, San Joaquin County, and California Water Service Company to deliver to homes and businesses in the greater Stockton metropolitan area.

In 2001, the annual overdraft of the basin was approximated at 107,000 acre-feet and usable surface water lost to saline intrusion was estimated at 42,000 acre-feet each year. The cumulative overdraft of the basin has caused a continuous decline in groundwater levels in Eastern San Joaquin County over the past 70 years. It is estimated that cumulative groundwater overdraft in the last 70 years has reduced storage in the basin by as much as 2 million acre-feet. Groundwater levels have declined an average of 2 feet per year and have dropped as much as 100 feet in some areas. The overdraft has also caused significant groundwater depressions below the City of Stockton and east of the City, within the District. The depressions extend to depths of 80 feet below sea level. The groundwater depressions within the District create a steep gradient in the

basin that pulls groundwater from west to east. The groundwater underlying the land west of the City is highly saline and unusable. The steep gradient caused by the overdraft pulls this saline front eastward by about 140 to 150 feet per year, gradually destroying the usability of the groundwater underlying the City.

Groundwater overdraft has serious consequences which threaten the economic health of the region. In addition to the continued migration of saline groundwater, the overdraft adversely impacts the quality of the groundwater that remains in the basin generally, in terms of nitrate levels and total dissolved solids. It also reduces the amount of groundwater available for future use and leads to increased pumping costs. Direct and indirect effects of a reduction in the provision of surface water and the corresponding impact to the groundwater basin and agricultural resources must be included in a revised SED.

Currently, the District treats and supplies up to 50,000 af to the City of Stockton San Joaquin County and the California Water Service company. Due to the provision of treated surface water, groundwater levels within the City of Stockton have improved dramatically. Direct and indirect effects of a reduction in the provision of treated surface water and the corresponding impact to the municipal services providers must be included in a revised SED.

Finally, the Draft SED often completely masks the impacts associated with implementing the proposed Alternatives, including the Preferred Alternative because the analysis combines the effects of all the tributaries together. To put a finer point on it, in the Economic Analysis (Chapter 18), the economic impacts of implementation of the Alternative 2 are completely masked by combining the effects of each of the tributaries into a net effect. Because the SED inaccurately concludes there will be greater water diversions under Alternative 2 on the Stanislaus River this increase diversion negates the adverse effects on the Tuolumne and Merced Rivers. As such the Draft SED concludes the net effect is less than significant. This analysis must be redone and each tributaries impact should stand alone.

F. THE SED FAILS TO IDENTIFY AND EVALUATE ALL FEASIBLE MITIGATION MEASURES

The SED has a duty to "set forth" (P.R.C. §21100), "identify" and "describe" (§15126.4(a)(1)) proposed feasible mitigation measures. "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018,1039.

Thus a SED must describe feasible mitigation measures that could minimize the preferred project's adverse environmental effects. §15126.4(a)(1). Omitting feasible

mitigation measures undermines the minimum requirements of a SED. This is because "[w]here several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified." §15126.4(a)(1)(B). By omitting feasible mitigation measures the SED cannot comply with the requirement to discuss each feasible mitigation measure and provide guidance to decision-makers and the public about the relative merits of selecting one measure over another measure.

Specifically, the SED states:

"there is no mitigation possible for the reduced river diversions on the Merced River because the purpose of the LSJR Alternative 3 is to increase river flows during the months of February through June to improve fish habitat conditions and improve survival of the rearing and migrating fish. The runoff to the eastside tributary reservoirs is determined by rainfall and snowmelt conditions and the reservoir storage capacity is fixed. Accordingly, there is no possibility of increasing the total surface water supply to provide more water for surface water diversions. More water released to the Merced River would leave less water available for water supply diversions. Impacts would be significant"

SED at p. 5-89 (italics added).

The SED introduces the fatally flawed WSE Model as the tool to evaluate the impacts of the no project alternative and other alternatives. As described above, the WSE model utilizes an inaccurate baseline and unreasonable and/or unlawful operational assumption. Inclusion of these unreasonable and/or unlawful operational assumptions thwarts any ability to develop feasible mitigation measures for the severe impacts to water diversions. The WSE Model design does not account for post-January 31 inflows into the reservoir which would support additional diversions then those identified in the WSE Model. There is no evidence this design feature was incorporated because post-January 31 inflows or diversions are "economic, environmental, legal, social or technological" infeasible. Instead the reader must conclude this is just a nuance of the computer model without accounting for CEQA's method of rejecting mitigation measures as infeasible.

Thus use of the SED results in a prejudicial abuse of discretion by concluding any different post-January 31 inflow or diversion is automatically "infeasible" under CEQA. Yet this truncated analysis violates CEQA's clear definition of feasible as "being capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social or technological factors." §15364. The SED rejects post-January 31 inflows or diversions as feasible

because the model controlling the evaluation of alternatives does not account for this potential mitigation measure. At no point does the SED or WSE Model explain and support with substantial evidence why post-January 31 inflows or diversions are infeasible for "economic, environmental, legal, social or technological factors." Thus this potentially feasible mitigation measure was improperly rejected meaning the significance of the environmental impact could have been lessened is not lessened.

The WSE model attempts to maintain baseline reservoir storage, so there are no environmental effects from operating the reservoir more aggressively to draw down the reservoir's water supply to allow for equivalent water diversions. Concluding that mitigation measures are infeasible because the computer model does account for mitigation measures violates CEQA's definition of feasible mitigation, rendering the SED legally deficient.

G. THE SED'S TREATMENT OF THE GREEN HOUSE GAS ENVIRONMENTAL IMPACT IS LEGALLY DEFICIENT

The SED dispensed with the direct impact of the proposed project's on the environmental condition of global warming (referred to as "climate change" in the SED) by asserting without evidence that the impact was too remote to be studied. See SED page 14-1 at footnote 1.

Failing to address the global warming issue is a serious deficiency. Such an omission as found here results in the failure to proceed in the manner required by law and an agency must explain in at least minimum detail the "compelling, countervailing considerations". *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 430. ["The EIR does not explain in even minimum detail the basis for the omission and provides no reasoned analysis clarifying why complete reliance on the AQNP is justified when this major omission exists."] The error is at least three-fold. First, the SED fails to adopt a legally sufficient threshold of significance for purposes of evaluating the significance of the potential environmental impact. Second, the SED omitted clearly understood potential environmental impacts flowing from the preferred project. Third, the SED did not evaluate feasible mitigation measures that could lessen the impact of global warming caused by the preferred project.

This failure is exacerbated by the fact the State of California has aggressively promoted a policy requiring government agencies to consider and mitigate cumulative global warming impacts and yet here a state agency sidesteps this obligation. Without referencing or applying any threshold of significance the SED nakedly concludes that an individual project cannot have a direct environmental effect. This conclusion is reached without any analysis or any effort to compare some type of analysis to the applicable threshold of significance. This poses two problems. First, it truncates the analysis required by CEQA and collapses intermediate procedures required by CEQA

before a public agency can conclude that a direct impact is not significant. Second, the approach conflicts with various state policies regarding climate change.

The SED is inherently contradictory. At footnote one at page 14-1 it announces that climate change is too regional or global for an individual project to have a direct effect. However, at page 14-14 it provides a generalized threshold that apparently concludes that "climate change impacts were determined to be potentially significant (citation) and therefore are discussed in the analysis." The two statements are contradictory and promote confusion. Indeed the so-called threshold of significance for climate change is no criteria at all but instead a tautological mixed word salad. According to the SED, "climate change would be significant if the LSJR alternatives result in any of the following conditions. Generate GHG emission, either directly or indirectly, that have a significant impact on the environment." SED at 14-15. The object defectiveness of this abbreviated threshold of significance is explained by the CEQA Guideline definition of a threshold of significance:

"A threshold of significance is **an identifiable quantitative, qualitative or performance level** of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined as less than significant."

§15064.7(a) (bolding and underscoring added.) The SED's embryonic threshold of significance lacks "an identifiable quantitative, qualitative or performance level" and therefore is insufficient for CEQA purposes.

Public agencies are encouraged to adopt thresholds of significance. §15064.7. For evaluating individual projects the State of California and regional state agencies offered multiple thresholds of significance for global warming. For instance, the South Coast Air District believes a project emitting three tons of GHG a year is significant. South Coast Air Quality Management District, "Draft Guidance Document—Interim CEQA Greenhouse Gas (GHG) Significance Threshold (October 2008). AB 32 establishes a state goal of reducing GHG emissions to 1990 levels by 2020 (a reduction of approximately 25 percent from forecast emission levels).

Recently the State Air Resources Board concluded that the threshold should either be a zero threshold or, if a non-zero threshold is employed it "must be sufficiently stringent to make substantial contributions to reducing the State's GHG emission peak, to causing that peak to occur sooner or to putting California on the right track to meet its interim (2020) and long term (2050) emissions reduction targets." California Air Resources Board. Preliminary Draft Staff Proposal, Recommended Approaches for Setting Interim Significant Thresholds for Greenhouse Gases under the California Environmental Quality Act (October 24, 2008). In any event, the threshold is either a net

no increase in emitting GHG or "stringent" steps to foster attaining the 2020 and 2050 goals.

Since this public agency is acting as an agency of the State of California, it is bound by Executive Order Number 3-05 (June 1, 2005) calling for a reduction in GHG emissions to 1990 levels by 2020 and for an 80 percent reduction in GHG emissions to 1990 levels by 2050. This Executive Order constitutes a mandatory duty to all state agencies and constitutes a threshold of significance whenever a state agency is reviewing a proposal.

At least two fatal flaws are embedded in the SED concerning GHG. First, the section lacks a threshold of significance involving "an identifiable quantitative, qualitative or performance level". Instead the threshold of significance has as the threshold "significance". This tautological threshold prevents the reader from determining whether the impact is significant or not. Instead, the section, without any evidentiary support, concludes the emissions of a lone single project will not cause globe climate change. Yet the various thresholds of significance discussed earlier, and ignored by the SED, do not focus on this question. Instead, the thresholds of significance focus on whether the proposal helps or hurts efforts to meet the 2020 and 2050 goals. Without a threshold of significance statement the entire analysis lacks an intellectual context and results in omitting relevant information.

Indeed, a SED's sketchy treatment of the threshold or method to conclude whether an environmental effect is significant renders such a SED legal deficient. In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099. The court discussed the use of thresholds in determining (1) whether to prepare an EIR and (2) whether any of the possible significant environmental effects of the project will, in fact, be significant. *Id.* at 1106-09. The court held that "the fact that a particular environmental effect meets a particular threshold cannot be used as an automatic determinant that the effect is or is not significant...a threshold of significance cannot be applied in a way that would foreclose the consideration of other substantial evidence tending to show the environmental effect to which the threshold relates might be significant." *Id.* at 1109.

In the EIR, the Amador Water Agency set forth various standards of significance, which mirrored Appendix G sample questions. The agency determined the reduced stream flows "are insignificant since the thresholds developed from the standardized Appendix G checklist make it so." *Id.* at 1111. Petitioner asserted the agency abused its discretion by adopting narrow and irrelevant thresholds of significance which did not address the particular physical change the project would have on the seasonal reduction of surface flow in local streams.

The court did not even address petitioner's claim because "contrary to CEQA requirements, the EIR fails to explain the reasons why the Agency found the reduction in stream flow would not be significant." *Id.* at 1111. The court held the EIR provided nothing but a "bare conclusion" because it simply explained how construction would affect existing local hydrology by reducing surface flow and then baldly concluded the impact would not be significant. *Id.* Since the EIR lacked a "statement of reasons", the court was unable to determine whether the agency reached its "less than significant" conclusion based on substantial evidence in the record or because it applied standards of significance that did not address reduction in stream flow as a potential environmental effect of the project. *Id.* at 1112. Either way, the agency abused its discretion by omitting the required statement of reasons. *Id.*

Second, the SED does not provide information about the amount of GHG produced by the Project and whether the amount emitted facilitates meeting the 2020 and 2050 goals. In short, rather than contribute to reducing GHG emissions to 1990 standard this project has the individual characteristic of making the GHG situation substantially worse. This means, according to the Governor's Executive Order, the Project has a direct significant environmental effect to GHG.

Accordingly, under any of the proposed and adopted thresholds of significance discussed earlier, the Project's individual impact on GHG is significant. The DEIR omits relevant information and data and reaches the wrong conclusion about whether the impact is significant or not.

Besides presenting a flawed analysis due to the lack of a legally sufficient threshold to evaluate the potential impact, the SED also fails to address at least one potentially significant environmental effect. The preferred proposal will induce agricultural operations to rely more on groundwater to make up for the loss of surface water lost as surface water is diverted to environmental purposes. This means agriculture will rely more heavily on gas diesel pumps to obtain the groundwater that is being substituted for surface water. The SED fails to make any effort to quantify the significance of this material change in agricultural practices induced by the preferred alternative. Certainly the amount of additional pumping could be quantified and the amount of additional gas diesel emitted as a result of this new policy could be quantified and evaluated against existing air pollution standards. In addition, the SED could correlate the increased emission of diesel pollution to increase incidents of health ailments.

Failing to correlate the Project's adverse air quality impacts to increased incidents of health ailments constitutes a prejudicial abuse of discretion. Health problems caused by a project must be addressed in an EIR, including health effects caused by increases in air pollution. *Bakersfield* at 1220. Specifically, CEQA requires an EIR to discuss "health and safety problems caused by the physical changes" by the

proposal. §15126.2 (a). In order to meet CEQA's disclosure requirement, an EIR must "correlate the identified adverse air quality impacts to resultant adverse health effects." *Bakersfield* at 1219 (italics added). "Correlate" is defined as: "to bring (a thing) into mutual relation (with another thing); **calculate** or show the reciprocal relation between; specif., to bring (one or two related or interdependent **quantities**, sets of statistics, etc.) into contrast (with the other)." Webster's New World Dictionary 319 (2d College ed. 1985) (italics in original; bold added).

Thus, the court in *Bakersfield* used "correlate" to mean a SED must disclose the proportional relationship between increased tonnages in air pollution and increased incidents of health ailments. This SED fails to comply with this necessary informational disclosure requirement. Indeed, *Bakersfield* teaches us a truncated analysis involving a bare statement that increased air pollution tonnages means more people get ill fails to satisfy CEQA's information disclosure requirement. In *Bakersfield*, the two EIRs at issue calculated the approximate increased tonnage of air pollution and then baldly concluded that more air pollution means more health and respiratory ailments. *Id.* at 1220. According to *Bakersfield*, this embryonic level of detail is insufficient and resulted in the Appellate Court rejecting the air quality analyses for failing to quantify or correlate the relationship between increased health ailments and increased air pollution. *Id.* at 1220-1221. Accordingly, it is not enough for a SED to simplistically conclude air pollution will increase and then supply a laundry list of pollutants and related health effects. Rather, CEQA is satisfied only when a SED discloses and quantifies anticipated increases of health ailment events resulting from a project's increases in air pollution tonnages.

As *Bakersfield* holds, brief references to, or the listing of, potential respiratory illnesses do not satisfy CEQA. *Bakersfield* at 1220. It is only when correct and feasible scientific analysis is conducted and the SED calculates the significance of the impact in terms of increased events of disease and suffering, are the public and decision makers notified of a project's true impacts. This correlation information is scientifically possible) and legally required (*Bakersfield* at 1220), and the omission amounts to a prejudicial failure to proceed in the manner required by law.

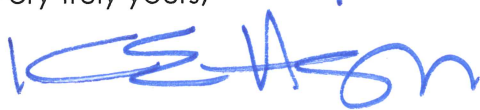
Moreover, the SED fails to discuss the feasibility of multiple mitigation measures that could be imposed to reduce this significant effect. CEQA requires all feasible mitigation measures to be incorporated into a project, even if the environmental effect remains significant. The State of California, Office of the Governor, Office of Planning and Research, has identified thirty three feasible mitigation measures to reduce GHG and attain the 2020 and 2050 goals. See State of California, Office of Planning & Research. "CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review (June 19,2008). Each mitigation measure is feasible for the proposal and the SED has a duty to identify and discuss each

proposed measure. Failing to perform this task results in an omission of information and failure to proceed in a manner required by law.

III. CONCLUSION

In conclusion, this Draft SED is fatally flawed and must be redone. The SED modeling must utilize a model and assumptions that accurately represents baseline and water supply operations. We appreciate the opportunity to comment and look forward to working with your staff on a revised SED.

Very truly yours,



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ATTACHMENT A

STOCKTON EAST WATER DISTRICT

State Water Resources Control Board – Substitute Environmental Document (Sed) Bay- Delta Water Quality Control Plan Amendments

- Throughout the document the terms San Joaquin River (SJR), San Joaquin River basin (SJR basin) and Lower San Joaquin River (LSJR) appear to be used interchangeably. The stated purpose for the plan amendment is to establish flow objectives for the reasonable protection of fish and wildlife beneficial uses in three eastside tributaries and the LSJR, but then there are statements that the plan amendments involve changes in the flow requirements in the SJR basin; no this is not correct only in the LSJR as Friant was improperly excluded. The document should be clear.
- All references to Stanislaus River maximum surface water deliveries should be 755,000 af.
- Table 2-4 and Page 2-22 – CVPIA (b)(2) and AFRP do not mandate releases from New Melones Reservoir, Reclamation elects to provide releases on the Stanislaus River.
- Page 2-2 – SEWD owns 1/3 of the Goodwin Dam with SSJID and OID.
- Page 2-3 – SEWD is a water conservation district not a “publicly owned utility in the City of Stockton.” All of the City of Stockton is within SEWD boundaries, but SEWD boundaries are much greater.
- SEWD boundaries include 143,300 acres of which 95,400 are irrigated agricultural.
- Page 2-3 – Not sure how the 90,099 was derived? Available water depends on hydrology.
- Page 2-3 – SEWD water transfer agreement with OID/SSJID ended and has not been renewed.
- Table 2-15 – should have 155,000 to CVP Contractors in all categories with a footnote in times of drought the minimum allocation to SEWD is 10,000 af for public health and safety purposes. Since 2010, the CVP Contractors have received their full 155,000 af allocation.
- Section 2.6.4 – This section should break down the sources of salinity, not simply provide a generalized statement. If the interior delta salinity “remains below 1.0 dS/M when Vernalis measured salinity is below approximately 0.9 dS/M,” why does the program of implementation require Reclamation achieve a 0.7 dS/M during the irrigation season?
- Page 3-7 – States that program of implementation expresses the willingness of the State Water Board to consider changes to these salinity objectives and the program of implementation based on the findings from the Central Valley Salinity Alternatives for Long-Term Sustainability (CV-SALTS) process and/or recommendations from the Central Valley Regional Water Quality Control Board (Central Valley Water Board). What does this mean? How will this work? Will it require a Basin Plan Amendment?
- Page 4-3 – Reduction in surface water diversions will not only have a direct effect on irrigated agricultural land, but also on M&I supplies.
- Page 4-13 – What is the legal authority for the rule curves contained in the WSE Model? How would this rule curve be implemented?
- Chapter 5 – Entire chapter needs to be redone as it fails to evaluate the significant effects of the reduction of surface water supplies resulting from implementation of LSJR Alternatives within SEWD.
- Table 5-22b – If the average annual reduced deliveries is 181,000 af, then is one to presume that the CVP contractors get zero (0) water on an average annual basis?

- Page 5-92 – Discussion on Table 5-24a summary of monthly Vernalis EC values – do these values include releases from New Melones Reservoir?
- Page 5-95 and 5-97 – Discussion of Table 5-26a and 5-27a shows monthly Vernalis EC values with adjusted Stanislaus River flows to meet Vernalis EC objectives – how much water was used from New Melones Reservoir to meet objective?
- Page 5-105 – Why were temperature conditions at Riverbank used for the evaluation? There is no temperature compliance point at that location. The proper temperature measuring point is Orange Blossom Bridge.
- Page 6-1 – If the LSJR alternatives take into consideration the maximum channel capacities of the effected rivers, but the WSE Model contains maximum diversion rates, will flows released pursuant to the Preferred Alternative ever exceed the WSE Model maximum threshold for the Stanislaus River 2,500 cfs?
- Page 6-4 – New Melones flood control operating rules should be detailed as was done from Lake McClure.
- Page 6-20 – Table 6-9 – Are these the flows that would be released under the Alternatives? The WSE Model limits Stanislaus River releases to 2,500 cfs. Will releases be above 2,500 cfs. The maximum daily flows should be identified, not simply averages.
- Table 6-13 – The text needs evaluate the significant environmental impact on the orchards on the Stanislaus River when flows will be higher than 1,500 cfs at Ripon by 11%, 13% 30%, 62% and 29% in February through June respectively. The analysis is woefully inadequate.
- Chapter 9 – Entire chapter needs to be redone as it fails to evaluate the significant increase in groundwater pumping that will result from implementation of LSJR Alternatives. It is also silent on the impacts to the groundwater basin underlying the City of Stockton. Reduction in surface water supplies on the Stanislaus river will have significant impacts to groundwater levels and water quality, including the further intrusion of saline brine, this must be addressed in this Chapter.
- Page 9-10 – Eastern San Joaquin groundwater basin declared in a state of critical overdraft in 1980.
- Table 9-5 – SEWD has 95,400 irrigated acres.
- Table 9-6 – How was the surface water supply deficit derived for the Eastern San Joaquin groundwater basin?
- Page 9-14 – See changes to SEWD description above.
- Table 9-7 – SEWD groundwater management plan approved in 5/9/2006.
- Page 9-26 – Statement that average increase in groundwater pumping is expected to be minimal is patently false.
- Chapter 11, 13 and 18 – Entire chapter needs to be redone as it fails to evaluate the significant effects of the reduction of surface water supplies resulting from implementation of LSJR Alternatives within SEWD.