

RESOLUTION OF THE BOARD OF SUPERVISORS,)
 COUNTY OF ALPINE, STATE OF CALIFORNIA)
 CONSIDERING AND MAKING FINDINGS AS TO) Resolution No. R2006-43
 THE FINAL ENVIRONMENTAL IMPACT REPORT)
 FOR THE PROPOSED BEAR CREEK WATER)
 RIGHTS APPLICATIONS; ADOPTING A STATEMENT)
 OF FINDINGS, FACTS, AND OVERRIDING)
 CONSIDERATIONS; AND ADOPTING A MITIGATION)
 MONITORING AND REPORTING PROGRAM)

WHEREAS, as the Lead Agency, the County of Alpine ("County") has caused to be prepared an Environmental Impact Report (EIR) on the proposed Bear Creek Water Rights Applications (the "Project") pursuant to the California Environmental Quality Act (Public Resources Code section 21000 et seq., hereinafter referred to as "CEQA"), the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, section 15000 et seq., hereinafter referred to as the "State CEQA Guidelines"), and procedures adopted by the County relating to environmental evaluation; and

WHEREAS, on January 12, 2006, the County transmitted for filing a Notice of Preparation of an EIR and thereafter in accordance with CEQA and State CEQA Guidelines (§15082) forwarded the necessary information to the Office of Planning and Research and the State Clearinghouse for distribution to those state agencies which have discretionary approval or jurisdiction by law over natural resources affected by the Project; and,

WHEREAS, during the 30-day comment period after the filing of the Notice of Preparation written comments were received and included in the Draft EIR; and,

WHEREAS, on May 19, 2006, the County transmitted for filing a Notice of Completion of the Draft EIR and thereafter in accordance with CEQA and the State CEQA Guidelines (§15085) forwarded the Draft EIR to the Office of Planning and Research and the State Clearinghouse for distribution to those state agencies which have discretionary approval or jurisdiction by law over natural resources affected by the Project, to the affected agencies, and to other interested persons and agencies and sought the comments of such persons and agencies; and

WHEREAS, notice to all interested persons and agencies inviting comments on the Draft EIR was published on May 19, 2006 in accordance with the provisions of CEQA and the State CEQA Guidelines (§15087); and

WHEREAS, the 45-day review and comment period on the Draft EIR began on May 19, 2006 and ended on July 3, 2006; and

WHEREAS, a public meeting on the Draft EIR was held by the County on June 13, 2006, following notice duly and regularly given as required by law, and all interested persons expressing a desire to comment or object have been heard; and

WHEREAS, the Draft EIR was thereafter revised and supplemented to adopt changes suggested, to incorporate comments received during the public review period pursuant to CEQA and the State CEQA Guidelines (§15088), and to incorporate the County's responses to said comments, and as so revised and supplemented, a Final EIR was caused to be prepared by the County; and

WHEREAS, the County has not received any significant new information requiring recirculation pursuant to State CEQA Guidelines (§ 15088.5); and

WHEREAS, a public meeting was held by the County on September 5, 2006, on the Final EIR, following notice duly and regularly given as recommended by law (§15089), and all interested persons expressing a desire to comment or object have been heard, and said Final EIR and all comments and responses have been considered; and

WHEREAS, the Final EIR consists of the Draft EIR, as revised and supplemented to incorporate all comments received and the responses of the County; and

WHEREAS, all of the findings and conclusions made by the Board of Supervisors pursuant to this Resolution are based upon substantial evidence in the entire record before the Board of Supervisors, and are not based solely on the information provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of the County of Alpine finds as follows:

1. The Board of Supervisors finds that it has reviewed and considered the Final EIR, including Responses to Comments, in evaluating the Project, that the Final EIR is an accurate and objective statement that fully complies with the CEQA and the State CEQA Guidelines, and that the Final EIR reflects the independent judgment of the Board of Supervisors. The Board of Supervisors certifies the Final EIR based on its finding and conclusion that all significant environmental impacts from the implementation of the Project have been identified in the Final EIR and, with implementation of the identified mitigation measures, those impacts will be mitigated to a level of insignificance, except for the potential to expose people or structures to a significant risk of loss, injury or death involving flooding as a result of the failure of a dam. With respect to that impact, the Board of Supervisors finds, as reflected in the Statement of Overriding Considerations in Exhibit A, attached hereto, that the Project's benefits outweigh that significant unavoidable impact.

2. That the Board hereby adopts the Statement of Findings, Facts, and Overriding Considerations relating to the environmental impact of the Bear Creek Water Rights Applications as set forth in Exhibit A, attached hereto and incorporated by this reference. Based upon such Statement of Findings, Facts, and Overriding Considerations, the Board hereby finds that all significant environmental effects have been eliminated or substantially lessened except the following unavoidable adverse impacts:

A. The project may expose people or structure to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam

3. That the Final EIR has been completed in compliance with CEQA, and that the Final EIR reflects the County's independent judgment and analysis.
4. That the Board hereby adopts the Mitigation Monitoring and Reporting Program for the Bear Creek Water Rights Application as set forth in Exhibit B, attached hereto and incorporated by this reference.
5. That upon approval and adoption of the Final EIR by the Board, the County Clerk is directed to cause a Notice of Determination to be filed in its own office pursuant to the provisions of section 21152 of CEQA and section 15096(i) of the State CEQA Guidelines.
6. That the documents and materials that constitute the record of proceedings on which these Findings have been based are located at the Alpine County Planning Department, 17300 Highway 89, Markleeville, California, 96120. The Custodian of Records for these materials is Brian Peters, Planning Director. This information is provided in compliance with CEQA § 21081.6.

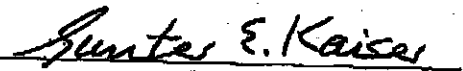
PASSED AND ADOPTED this 5th day of September 2006 by the following vote:

AYES: Supervisors Donald Jardine, Henry Veatch, Phillip Bennett, Terry Woodrow and Gunter Kaiser.


NOES: None.

ABSENT: None.

By:


Gunter E. Kaiser, Chair
Board of Supervisors
County of Alpine, State of California

ATTEST:


Barbara K. Jones, County Clerk and Ex
Officio Clerk of the Board of Supervisors
By: Barbara Howard, Assistant County Clerk

APPROVED AS TO FORM:

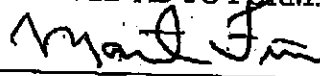

Martin Fine, County Counsel

EXHIBIT A

Statement of Findings, Facts, and Overriding Considerations Relating to the Environmental Impacts of the Bear Creek Water Rights Applications

I. Introduction

A. Project Description, History and Objective

The Project consists of the following applications to obtain water rights for the existing water system for the Community of Bear Valley, Alpine County:

- (1) a petition for partial assignment of State-filed Application 5648 held by the SWRCB (Application 5648X07);
- (2) a petition to change the place and purpose of use and add a point of diversion on State-filed Application 5648; and
- (3) a companion Application 31523 to appropriate water by permit as a backup in the event the Petition for Partial Assignment of State-filed Application 5648X07 and petition for change of State-filed Application 5648 are not approved.

This Project implements a mitigation measure contained in the Bear Valley Master Plan Environmental Impact Report, certified by the County on December 28, 1978. The Bear Valley Master Plan modified and expanded an existing master plan for residential, commercial, and recreational uses at Bear Valley on State Highway 4 in the County. A mitigation measure in the BVMPEIR required the County to develop a guaranteed water source to serve the Master Plan. Thus, the purpose of this Project is only to serve planned growth in the Master Plan, and not to facilitate additional growth beyond what was already approved in the Master Plan.

The objective of the Project is to obtain water rights to adequately serve development within the Bear Valley Master Plan, as approved by the County in 1978, and to support the economic base of local businesses, the viability of this mountain community and Bear Valley Ski Area, and to create potential tax revenues for the County.

B. Findings Required by CEQA

The California Environmental Quality Act (Public Resources Code Section 21000 et seq., "CEQA") provides, in Section 21081, that:

No public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
1. Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effect on the environment.
 2. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
 3. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

II. Less Than Significant Impacts of the Project

The Initial Study and EIR prepare for the Project revealed that the Project would result in less than significant impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology/soils, hazards and hazardous materials, land use/planning, mineral resources, noise, population/housing, public services, recreation, and transportation/traffic. While CEQA does not require lead agencies to adopt specific findings regarding impacts that are less than significant, the Final EIR explained why those impacts are less than significant, and the Board of Supervisors therefore incorporates those sections of the EIR into these findings by reference. (Final EIR, at pp. 7, 13-23.)

III. Environmental Impacts of the Project and Findings Regarding Significant Effects of the Project

A. Utilities and Service Systems

- i. Identified Potential Significant Impact
 - The project will result in the right to make available new water supplies for the continued development of the master plan. In the future this is expected to increase the amount of water discharged to the wastewater treatment provider, which in turn is expected to increase the amount of water needing treatment and the amount discharged.
- ii. Level of Significance
 - Found to be potentially significant.
- iii. Mitigation Measures
 - Update Waste Discharge Requirements with Regional Water Quality Control Board as appropriate.
- iv. Findings

- Changes or alterations are within the responsibility and jurisdiction of the Bear Valley Water District and not the County, and these changes should be adopted by the Bear Valley Water District
- v. Facts in Support of the Finding
- The Project does not propose any alterations to the Bear Valley Water District wastewater treatment facilities serving the community. (Final EIR, at p. 27.) The Project will only make additional water available to the Bear Valley Master Plan area, and will not require expansion of the wastewater facilities at this time. (*Ibid.*) While the use of additional water in the Master Plan area may require treatment of additional wastewater, the potential increase in treatment demand will be consistent with the development contemplated in the Bear Valley Master Plan and BVMPEIR. The wastewater treatment system is regulated by the Central Valley Regional Water Quality Control Board Land Disposal Requirements WDR Order No. 5-01-208, and has a design capacity of 0.5 million gallons per day. (*Ibid.*) The wastewater treatment plant's existing permits allow for expansion of capacity to accommodate planned development, and require that such increases "will not have significant impacts on aquatic life" or "cause a violation of water quality objectives[.]" (Central Valley Regional Water Quality Control Board Order No. R5-2005-0139, at p. 16.) Thus, impacts resulting from expansion of wastewater capacity will be mitigated by implementation of the facility's CVRWQCB permits by the Bear Valley Water District. (Final EIR, at p. 29.)

B. Hydrology and Water Quality

- i. Identified Potential Significant Impact
- The project may expose people or structure to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.
- ii. Level of Significance
- Found to be significant.
- iii. Mitigation Measures
- Maintain Division of Safety of Dams permit for the dam
- iv. Findings
- Changes or alterations have been required in, or incorporated into, the project which substantially lessen the significant effect on the environment, but will not reduce the impact to a less than significant level. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible any additional mitigation measures or alternatives identified in the environmental impact report.
- v. Facts in Support of the Finding

- Even though the project will not involve increasing the reservoir level or maintaining the level above historic highs, use of the Reba Dam will still be required to operate the Project. (Final EIR, at p. 25.) No changes are proposed to the Dam. (*Id.* at p. 26.)
- The risk of dam failure, however, is low. The California Department of Water Resources, Division of Safety of Dams, concluded that even during maximum lake levels and peak storms, the distance between the top of the dam and the lake surface would be 1.5 feet, leaving a margin of safety that would prevent overtopping of the dam. (Final EIR, at pp. 25-26.)
- The dam is routinely inspected by Division of Safety of Dams engineers, with the most recent inspection being September 29, 2005. (Final EIR, at p. 26.) The engineer concluded that the "dam, reservoir and appurtenances are judged satisfactory for continued use." (*Ibid.*) The Division has reported the dam as satisfactory since its first inspection report in 1968. (*Ibid.*)
- The BVMPEIR and Initial Study for this Project identified the potential for dam failure as a significant impact. (Final EIR, at p. 26.) The Division of Safety of Dams inspection program, and implementation of its recommendations, will mitigate this impact to the degree feasible, but will not completely eliminate the risk of dam failure. (*Ibid.*) No other feasible mitigation measures have been identified to reduce this impact to a less than significant degree. Thus, the potential to expose people or structures to a significant risk of loss, injury or death involving flooding as a result of dam failure remains significant and unavoidable. (*Ibid.*)
- The County finds this significant an unavoidable impact to be acceptable in light of the Project's benefits, described in the Statement of Overriding Considerations in Section V below.

IV. Findings Regarding Alternatives

CEQA requires that an EIR evaluate a reasonable range of alternatives to a project, or to the location of a project, which: (1) offer substantial environmental advantages over the Project proposal, and (2) may be feasibly accomplished in a successful manner within a reasonable period of time considering the economic, environmental, social and technological factors involved. An EIR only need evaluate reasonable alternatives to a Project that could feasibly attain most of the Project objectives, and evaluate the comparative merits of the alternatives. In all cases, consideration of alternatives is to be judged against a rule of reason. The lead agency is not required to choose the environmentally superior alternative identified in the EIR if the alternative does not provide substantial advantages over the proposed Project and, (1) through the imposition of mitigation measures the environmental effects of a Project can be reduced to an acceptable level, or (2) there are social, economic, technological or other considerations which make the alternative infeasible.

As noted above, the Project's objective is to obtain water rights to adequately serve development within the Bear Valley Master Plan, as approved by the County in 1978, and to support the economic base of local businesses, the viability of this mountain community and Bear Valley Ski Area, and to create potential tax revenues for the County. The only significant and unavoidable impact identified in the Final EIR is the potential failure of the Reba Dam.

The EIR identified several alternatives to the Project. These include:

- Capturing additional runoff from the Bear Creek Drainage Basin
- Capturing additional spring water
- Reliance on a groundwater well or well field
- Reliance on Water Conservation
- No Project Alternative

The Board of Supervisors finds that none of the above alternatives would feasibly accomplish the objectives of the Project, and on that basis rejects those alternatives. The infeasibility of each alternative is discussed below.

1. Capturing additional runoff from the Bear Creek Drainage Basin

The existing Project relies on runoff from the Bear Creek Drainage Basin as its source. (Final EIR, at p. 30.) Thus, capturing additional runoff would require development of additional diversion and storage facilities. (*Id.* at pp. 30-31.) Development of additional facilities would require additional ground disturbance and other environmental impacts in the vicinity of the Project. (*Ibid.*) Additional diversion and storage facilities, moreover, would not avoid the significant and unavoidable potential impact resulting from failure of Reba Dam. Therefore, while this alternative would achieve the objectives of the Project, it would not avoid the significant and unavoidable impact associated with it, and indeed may result in additional environmental impacts. The Board of Supervisors, therefore, rejects this alternative for failure to avoid the significant effect of the Project. (State CEQA Guidelines, § 15126.6, subd. (a).)

2. Capturing additional spring water

Additional water to serve the Bear Valley Master Plan area may be obtained from spring water. Capturing spring water would require the County to obtain necessary water rights, similar to the existing project. (Final EIR, at p. 31.) Spring water is subject to climatic variability, however, and may not provide sufficient water to serve the needs of the Bear Valley Master Plan. (*Ibid.*) Additionally, capture of additional spring water may result in impacts to surface riparian habitat served by the springs. (*Ibid.*) The Board of Supervisors, therefore, rejects this alternative for failure to accomplish the Project's objective. (State CEQA Guidelines, § 15126.6, subd. (a).)

3. Reliance on a groundwater well or well field

A potential alternative source of water is groundwater. (Final EIR, at p. 31.) The aquifer in the area may be limited by shallow granite bedrock. (*Ibid.*) Additionally, an undefined plume of MTBE is affecting groundwater to the north of Highway 4, and, therefore, may affect the availability of groundwater to serve the Master Plan area. (*Ibid.*) Finally, use of groundwater

would require significant ground disturbance, both in drilling the well or wells, but also in developing the necessary pumping infrastructure. (*Ibid.*) Such disturbance may result in its own biological, archeological, noise, visual and other impacts. (*Ibid.*) Given the potential impacts of groundwater development, and the uncertainty of its quality resulting from nearby contamination, the Board of Supervisors thus rejects this alternative for failure to feasibly achieve the Project's objectives. (State CEQA Guidelines, § 15126.6, subd. (a).)

4. Reliance on Water Conservation

Some additional water may be made available through water conservation. (Final EIR, at p. 31.) However, the Bear Valley Master Plan already requires that low flow fixtures be installed in all new homes, and the Lake Alpine Water Company is already installing radio-controlled metering devices on all existing water connections. (*Ibid.*) These measures are expected to result in 10 to 20 percent reduction in water use; however, this reduction will not be sufficient to meet the remaining needs of the Bear Valley Master Plan. (*Ibid.*) Additionally, those conservation measures, and reductions in water use, were factored in to the amount of water applied for in the Project. (*Ibid.*) Thus, the Board of Supervisors rejects this alternative for failure to feasibly attain the Project's objective. (State CEQA Guidelines, § 15126.6, subd. (a).)

5. No Project Alternative

Under the No Project Alternative, the County would not apply for additional water rights, and the level of development in the Bear Valley Master Plan area could not expand. (Final EIR, at p. 32.) This constraint on development would prevent the County from achieving its land use objectives and would stifle tax revenues resulting from additional planned development. (*Ibid.*) Moreover, because Reba Dam would continue to exist under this alternative, the No Project Alternative would not avoid the significant potential impact associated with the operation of the dam. The Board of Supervisors, therefore, rejects the No Project Alternative for failure to feasibly achieve the Project's objective and for failure to avoid the Project's significant and unavoidable impact. (State CEQA Guidelines, § 15126.6, subd. (a).)

V. Statement of Overriding Considerations

- A. Section 15093 of the CEQA Regulations requires a public agency to balance the benefits of the proposed project against its unavoidable environmental risks in determining whether to approve the project. As set forth in Part II B above, the Board has determined that the only unavoidable environmental consequence of the Project is that the project may expose people or structure to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.
- B. The Board finds that the above-referenced unavoidable environmental consequence of the project is acceptable when balanced against its benefits. This finding is based on the following facts:

- i. The project will serve a critical need, that being the provision of water supply to new residents within the County.
- ii. The promotion of new and continuing private sector investment with the project area will prevent the loss of and facilitate the capture of commercial activity.
- iii. The project will result in the retention and expansion of business by means of redevelopment and rehabilitation activities and by encouraging and assisting in the cooperation and participation of owners, businesses, and public agencies in the project area.
- iv. Revitalized commercial development will result in the creation of local job opportunities and the preservation of the area's existing employment base.
- v. The project will involve the implementation of water conservation measures that will reduce water consumption.
- vi. All of these benefits can be obtained without creating any other unavoidable environmental impacts.

C. Any one of the above reasons is sufficient to justify approval of the Project. Thus, even if a Court were to conclude that not every reason is supported by substantial evidence, the Board of Supervisors would stand by its determination that each individual reason is sufficient. The substantial evidence supporting the various benefits can be found in this Resolution and in the documents found in the Record of Proceedings for this Project.

Exhibit B

Mitigation Monitoring and Reporting Program

Hydrology / Water Quality	
Maintain Department of Water Resources, Division of Safety of Dams Permit for Reba Dam.	
Party Responsible for Measure:	Lake Alpine Water Company
Responsible Monitor:	Alpine County Planning Department and Lake Alpine Water Company
Rationale/ Background:	The Department of Water Resources, Division of Safety of Dams regularly inspects dams under its jurisdiction to ensure safety and directs the dam's owner to correct any deficiencies identified. Maintenance of Reba Dam's permit will ensure that the dam is operated as safely as possible and will reduce the potential risk of dam failure.
Timing:	Ongoing
Start Date:	Ongoing