Letter No. 8

PLANNING AND CONSERVATION LEAGUE

May 8, 2006

Mr. Jeff Hogan, Senior Planner
City of Santa Clarita
Dept. of Community Development
23920 Valencia Blvd. Suite 300
Santa Clarita, CA 91355
FAX: (661) 259-8125

Re: Gates/King Additional Information Document

Dear Santa Clarita Planning Commission:

The Planning and Conservation League submits the following comments on the Draft Additional Analysis for the Final Environmental Impact Report for the Gate-King Industrial Park SCH. #2001021121.

In *California Oak Foundation v. City of Santa Clarita*, 133 Cal. App. 4th 1219 (2005) the Court of Appeal, to which the Planning and Conservation League submitted an amicus brief, found that the previous Environmental Impact Report for the Gate King Industrial Park was deficient due to its defective assessment of water supplies supporting the project. Noting that the EIR must serve as "an informative document to make government transparent," the court warned that "[t]ransparency is impossible without a clear and complete explanation of the circumstances surrounding the reliability of the water supply. " *Id.* at 1237.

1

Unfortunately, the new Draft Additional Analysis repeats the deficiencies of the original analysis and relies on the same unreliable water supplies included in the original analysis. The Draft Additional Analysis relies centrally on a legally deficient SB 610 Water Supply Assessment (WSA) from Newhall County Water District. That WSA relies on highly uncertain "paper" water amounts that may not be available from the State Water Project, including a controversial, non-final and legally contested Monterey Amendments-based transfer of 41,000 acre feet of water allocation amounts from the Kern County Water Agency to the Castaic Lake Water Agency. Like the WSA, the Draft Additional Analysis fails to establish the reliability of water from this contested transfer to support final approval of this project, and fails to identify and analyze reliable water to support the project in its absence. PCL previously submitted letters to your commission and to the Newhall County Water District outlining the deficiencies of the SB 610 Water Supply Assessment for the Gate King Project. PCL submits those comments to your commission in full as attachments to this letter.

2

The Draft Additional Analysis and the SB 610 WSA also repeatedly rely on the Castaic Lake Water Agency's 2005 Urban Water Management Plan, which is now in litigation, and the 2005 Draft State

Water Project Delivery Reliability Report, which has been the subject of extensive criticism and is not yet final. These documents are the apparent source of numerous untenable and legally flawed conclusions in the Draft Additional Analysis. Just several of these are (1) the conclusion that "substantial evidence" supports the reliability of the 41,000 acre-foot transfer; (2) the premise that this transfer must already be "considered permanent"; (3) the claim that the Monterey Settlement Agreement, which excludes this transfer from the list of "final" transfers and clarifies that it must be the subject of statewide programmatic review, supports the finality of the transfer; (4) the claim that the CALSIM II model is sufficient to support the reliability of future State Water Project supplies; and (5) the notion that it would be "too speculative" to analyze the effects of climate change on water supply reliability. The Planning and Conservation League submits our comments to the Castaic Lake Water Agency and the Department of Water Resources outlining the substantial deficiencies of both of these documents. 2

Finally, the Draft Additional Analysis's assessment of local groundwater and perchlorate contamination fails to overcome the extensive deficiencies identified by the appellate ruling in *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2004) 123 Cal. App. 1. The 2005 Urban Water Management Plan is defective in its assessment of both state and local sources available to Castaic Lake Water Agency. Local sources will become increasingly important due to the unreliability of imported water from the State Water Project. 3

For the reasons outlined in this letter and the attached letters, and for continued concerns about the quality and quantity of your local aquifers, we urge your Commission not to approve the Draft Additional Analysis Draft Additional Analysis for the Final Environmental Impact Report for the Gate-King Industrial Park SCH. #2001021121.

Sincerely,

Mindy McIntyre
Water Program Manager

Attachments

May 2, 2006

Mr. Jeff Hogan, Senior Planner
City of Santa Clarita
Dept. of Community Development
23920 Valencia Blvd. Suite 300
Santa Clarita, CA 91355
FAX: (661) 259-8125

RE: SB 610 Water Supply Assessment for the Gate-King Project

Dear Santa Clarita Planning Commission:

The Planning & Conservation League, a plaintiff in the Monterey Amendments litigation and signatory to the 2003 Settlement Agreement resulting from that action, strongly urges your Commission NOT to approve the Gate-King Project, Master Case Nos. 99-264. The Gate King project relies on a legally deficient Water Supply Assessment (WSA) that is based on flawed materials and includes false information. Because the reliable water supplies have not been identified for the Gate King project, the water supply of existing Santa Clarita residents would be endangered should this project move forward based on the deficient WSA.

The Planning & Conservation League has previously expressed concerns to both Newhall County Water District and Castaic Lake Water Agency regarding the unreliable water supply for the Gate-King Project, and their misrepresentations of the state water available to the Castaic Lake Water Agency. We have also documented concerns with reliance on water supplies included in the Stetson Report that have not been fully realized. We now reiterate our concerns and submit our previous comments to NCWD and CLWA on the Gate-King water supply assessment and the Stetson Report (attached).

The WSA for the Gate-King project falsely states, "The pending challenges to the EIR for the 41,000 afy transfer do not affect the reliability of the transfer amount, and it is still appropriate to include the transfer amount as part of CLWA's 95,200 afy Table A Amount, for the following reasons. First, the transfer was approved by DWR and completed 1999, and DWR has allocated and annually delivered the water in accordance with the completed transfer (WSA page 8)."

This statement is factually untrue. The Monterey Settlement Agreement, to which Castaic Lake Water Agency is a signatory, expressly excludes that transfer from its list of "final" transfers, and makes clear that this transfer is still subject to DWR's statewide programmatic review and decision. This Agreement precludes reliance on the 41,000 afy transfer and on projects approved after March 26, 2001 until the new Monterey agreement EIR is completed The statement in the WSA that the transfer is somehow authorized by the Monterey Settlement Agreement (page 8) is emphatically false.

Per the Court Order filed June 6th, 2003, item 4:

"As part of the Settlement Agreement, DWR and the SWP Contractors who are signatories to the settlement agreement have agreed that, pending DWR's filing of a return in satisfaction of the Writ of Mandate and this Court" dismissal of the Writ of Mandate, they will not approve any new project or activity (as defined in Section VII.A of the Settlement Agreement) in reliance on the 1995 Environmental Impact Report for the Implementation of the Monterey Agreement."

Castaic Lake Water Agency approved a new EIR for that transfer in December 2004, now the subject of a pending court challenge in Los Angeles County. That EIR is legally inadequate, and both the Court of Appeals' decision in the Monterey Amendments litigation and the Monterey Settlement Agreement preclude Castaic Lake Water Agency from approving the 41,000 afy transfer—the largest agriculture-to-urban transfer proposed under the Monterey Amendments--without DWR first reviewing and deciding on that transfer as the lead agency for the statewide review of those amendments.. It is indisputable that DWR's new Monterey Amendments EIR is not complete, and at this point has not even been released in draft form. Therefore, the transfer cannot be relied upon as a reliable water supply. Moreover, although the WSA speculates that transfers might occur outside the Monterrey Amendments, it fails to identify or analyze any reliable alternate sources. Accordingly, the WSA does not meet the legal test of Government Code Section 66473.7 (d).

The WSA for the Gate King project also relies heavily on the 2005 CLWA Urban Water Management Plan., which is also the subject of a pending legal challenge. PCL submitted comments on that document outlining several specific flaws, which we re-submit to you as an attachment to this letter. Primary among those flaws, in addition to its misrepresentations of the 41,000 afy transfer, is the fact that the 2005 UWMP relies on a single draft chapter of the SWP Delivery Reliability Report provided by the Department of Water Resources in May 2005. Your Commission should note that the draft information provided in May 2005 is not consistent with the information DWR subsequently included in its full draft Delivery Reliability Report in December 2005.

In addition, CLWA included the May 2005 draft materials in the UWMP without verifying that the information was valid, as required by law. In fact, both the May draft chapter and the draft full report from December 2005 relied on flawed information. We refer your Commission our comments on the 2005 Draft SWP Delivery Reliability Report for further explanation.

The WSA states that the 2005 Draft Delivery Reliability Report still provides the best available information regarding water supplies and demand projections. However, your Commission should be aware that the Draft Reliability Report is based on outdated information, including modeling based on historic rainfall assumptions. It is now recognized that future hydrology in California will not be like the past. Climate change is altering the timing and amount of rainfall in California. DWR's draft Reliability Report fails to include demand or reliability projections under expected impacts of climate change, even though that information is available. DWR has in fact modeled reliability and demands under climate change. The California Energy Commission has also modeled water supply reliability from the SWP under climate change (see PCL comments to DWR on the December Draft 2005). According to that information, deliveries from the SWP could be up to 1 million acre feet per year *less than* what was

reported in the DWR's Draft Reliability Report. If the SWP deliveries are cut back by 1 million acre feet, NCWD would not receive the water relied on for the Gate King project.

DWR's Delivery Reliability Report, the CLWA UWMP and the WSA for this project all rely on the CALSIM II model water availability projections. PCL has previously alerted NCWD and CLWA to the flaws in the CALSIM II and its applications. The CALSIM II model has not been calibrated or validated, as recommended by a CALFED Peer Review in December 2003. That same Peer Review also identified several other flaws in the model, and specifically stated that the model was not an appropriate tool for providing the type of absolute predictions provided in the Gate King WSA. Given the unresolved flaws in the CALSIM II model, it is inappropriate for the WSA for the Gate King Project to rely solely on model results to determine that there are adequate water supplies for the Gate King Project.

The reliability of the SWP supplies for the proposed Gate King Project is also questionable given that the SWP does not have a take permit to divert water from the Bay Delta Estuary under the California Endangered Species Act. On March 7th 2006, the California Sport Fishing Alliance notified DWR of their intent to sue DWR for operating the SWP in violation of CESA (see attached press release from CSPA). Under CESA, DWR is not permitted to take CESA listed species such as Delta smelt without a take permit. Your Commission should note that DWR does not have such a permit, and therefore, DWR could be required to cutback pumping from the Bay Delta Estuary.

For these reasons, and for continued concerns about the quality and quantity of your local aquifers, we urge your Commission not to approve the the Gate-King Project, Master Case Nos. 99-264 until these issues have been resolved.

Sincerely,

Mindy McIntyre
Water Program Manager

Attachments

Attachment 15

PLANNING AND CONSERVATION LEAGUE

March 9, 2006

Maria Gutzeit, President
Newhall County Water District & Board Members
PO Box 220970
Santa Clarita, Ca 91322-0970
VIA FAX (661) 259-9673

RE: SB 610 Water Supply Assessment for the Gate-King Project

Dear Ms. Gutzeit and Board Members,

The Planning & Conservation League, a plaintiff in the Monterey Settlement, strongly urges your Board NOT to approve the Water Supply Assessment for the Gate King Project. The Water Supply Assessment relies on flawed materials and includes false information. These flaws seriously call into question the reliability of the supplies for this project, and therefore, it is inappropriate to endanger the water supply of existing customers by approving this WSA.

The Planning & Conservation League has previously indicated our concern with the unreliable water supply for the Gate-King Project, and with the reliance on water supplies included in the Stetson Report that have not been fully realized. We now reiterate our concerns and resubmit our previous comments on the Gate-King water supply assessment and the Stetson Report (attached).

This WSA states, "The pending challenges to the EIR for the 41,000 afy transfer do not affect the reliability of the transfer amount, and it is still appropriate to include the transfer amount as part of CLWA's 95,200 afy Table A Amount, for the following reasons. First, the transfer was approved by DWR and completed 1999, and DWR has allocated and annually delivered the water in accordance with the completed transfer (WSA page 8)."

This statement is factually untrue. The Monterey Settlement Agreement, to which Castaic Lake Water Agency is a signatory superficially states that the 41,00 acre foot transfer is not completed. This Agreement precludes reliance on the 41,000 afy transfer and on projects approved after March 26, 2001 until the new Monterey agreement EIR is completed.

Per the Court Order filed June 6th, 2003, item 4:

As part of the Settlement Agreement, DWR and the SWP Contractors who are signatories to the settlement agreement have agreed that, pending DWR's filing of a return in satisfaction of the Writ of Mandate and this Court'' dismissal of the Writ of Mandate, they will not approve any new project or

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California Affiliate
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activity (as defined in Section VII.A of the Settlement Agreement) in reliance on the 1995 Environmental Impact Report for the Implementation of the Monterey Agreement.

Castaic Lake Water Agency has purported to prepare a new EIR for that transfer, but that EIR is legally inadequate, and both the Court of Appeals' decision in the Monterey Amendments litigation and the Monterey Settlement Agreement preclude Castaic Lake Water Agency serving as the lead agency for the new EIR for the 41,000 AF transfer. It is indisputable that DWR's new Monterey Amendments EIR is not complete. Therefore, the transfer cannot be relied upon as a water supply, and that water supply does not meet the legal test of Government Code Section 66473.7 (d).

The WSA for this project also relies on the 2005 CLWA Urban Water Management Plan. PCL submitted comments on that document outlining several specific flaws, which we re-submit to you as an attachment to this letter. Primary among those flaws is the fact that the 2005 UWMP relies on draft information on SWP reliability provided by the Department of Water Resources in May 2005. NCWD should note that the draft information provided in May 2005 is not consistent with the information DWR subsequently included in its full draft of the 2005 Delivery Reliability Report in December 2005.

In addition, CLWA included the May 2005 draft materials in the UWMP without verifying the validity of the information included in the May 2005 draft material or the subsequent December 2005 complete draft. Both draft documents relied on flawed information. We submit to your Board our comments on the 2005 Draft SWP Delivery Reliability Report.

The WSA states that in NCWD's judgment the 2005 still provides the best available information regarding water supplies and demand projections. However, NCWD should be aware that the Draft Reliability Report is based on old information, including modeling based on historic rain fall assumptions. However, it is now recognized that future hydrology in California will not be like the past. Climate change is altering the timing and amount of rainfall in California. The DWR draft Reliability Report fails to include demand or reliability projections under expected impacts of climate change, even though that information is available. DWR has in fact modeled reliability and demands under climate change. The California Energy Commission has also modeled water supply reliability from the SWP under climate change (see PCL comments to DWR on the December Draft 2005). According to that information, deliveries from the SWP could be up to 1 million acre feet per year *less than* what was reported in the DWR's Draft Reliability Report. If the SWP deliveries are cut back by 1 million acre feet, NCWD would not receive the amount of water relied on in this WSA.

PCL has previously alerted NCWD to the flaws in the CALSIM II. The CALSIM II model still has not been calibrated or validated, and many other flaws remain as well. Both DWR's Delivery Reliability Report and CLWA UWMP rely on that faulty model. Given those flaws of the model, NCWD should not rely solely on the model results to determine whether actual supplies exist from the SWP for this Water Supply Assessment.

The reliability of the SWP is also questionable given the fact that the SWP does not have a take permit to divert water from the Bay Delta Estuary under the California Endangered Species Act. On March 7th 2006, the California Sport Fishing Alliance notified DWR of their intent to sue DWR for operating the SWP in violation of CESA (see attached press release from CSPA). Under CESA, DWR is not permitted to take CESA listed species such as Delta smelt without a take permit. NCWD should note that DWR does not have such a permit, and therefore, DWR could be required to cutback pumping from the Bay Delta Estuary.

For these reasons, and for continued concerns about the quality and quantity of your local aquifers, we urge your Board not to approve the WSA for this project until these concerns have been addressed.

Thank you for consideration of these comments,

Mindy McIntyre

Attachments

CC: Newhall Water District Board Members
Attachments

PLANNING AND CONSERVATION LEAGUE

July 13, 2005

Maria Gutzeit, President
Newhall County Water District & Board Members
PO Box 220970
Santa Clarita, Ca 91322-0970
VIA FAX (661) 259-9673

RE: Gate-King Project-Resolution Nos. 2005-24 and 2005-25

Dear Ms. Gutzeit and Board Members,

The Planning & Conservation League, a proponent of open process and of the California Environmental Quality Act, strongly urges the Newhall County Water District Board members to reject the proposed addendum to include the Gate-King Project in the previous project EIR. Approving this addendum would endanger existing water supplies, circumvent the CEQA process, prevent public disclosure and discussion on this project, and would be inconsistent with an open public process.

The Planning & Conservation League has previously indicated our concern with the unreliable water supply for the Gate-King Project, and with the reliance on water supplies included in the Stetson Report that have not been fully realized. We now reiterate our concerns and resubmit our previous comments on the Gate-King water supply assessment and the Stetson Report (attached).

In addition to reliance on the unsecured water identified in the Stetson Report, the Gate-King Project would further stress your aquifer and further mobilize the perchlorate plume that has already resulted in the closing of four of your local wells. Your action to approve the addendum on the Gate-King Project would therefore endanger the water supply of your existing residents and customers.

Moreover, it is inappropriate for the NCWD Board to approve this addendum before allowing the public to fully consider the impacts to their community that will result from the Gate-King project by re-circulating the EIR. As elected representatives of the Santa Clarita Valley, we urge you to uphold good public policy by rejecting the request for an addendum, and instead requesting a re-circulated EIR.

Thank you for consideration of these comments,

Jonas Minton

Jonas Minton

CC: Newhall Water District Board Members
Attachments

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Website: www.pcl.org Email: pclmail@pcl.org

PLANNING AND CONSERVATION LEAGUE

October 26,2006

Mary Lou Cotton
Water Resources Manager
CLWA
27234 Bouquet Canyon Road
Santa Clarita, CA 91350
Fax: 661/297-1611

Re: Planning & Conservation League Supplemental Comments on the Castaic Lake Water Agency Draft 2005 Urban water Management Plan

Ms. Cotton,

The Planning and Conservation League submitted comments on the Draft 2005 Urban Water Management Plan to the Castaic Lakes Water Agency (CLWA) on October 21, 2005 (see attachment A). The following comments are submitted to supplement our previous comments.

PCL's previous comments identified several flaws in the draft UWMP. Primary among these flaws was the inappropriate inclusion of 41,000 acre feet of water supply from an unapproved and legally challenged transfer from Kern County Water Agency to CLWA. The draft UWMP assumes the 41,000 af transfer to be a component of CLWA's State Water Project (SWP) contract amount. However, the 41,000 af transfer of SWP contracted amount is contingent on completion of the Monterey Plus EIR and resolution of pending superior court actions by the Planning and Conservation League and California Water Impact Network contesting both the finality of the transfer and Castaic's most recent EIR. The Planning and Conservation League has repeatedly notified CLWA of legally inappropriate reliance on this transfer. We now re-submit several letters written by PCL on this matter and request full consideration of this material prior to approval of the draft UWMP (see attachments B, C, D, E and F) . In accordance with the above comments and the attached letters, CLWA is urged to remove the 41,000 af transfer from the SWP contract amount cited in the draft UWMP.

Thank you ,

Mindy McIntyre
Water Policy Specialist

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Website: www.pcl.org Email: pclmail@pcl.org

Planning and Conservation League

Attachments:
Attachment A: PCL comments to CLWA on the draft Urban Water Management Plan, October 21,2005
Attachment B: PCL letter dated August 16, 2004 to Mary Lou Cotton
Attachment C: Rossmann & Moore letter on behalf of PCL dated March 28, 2003 addressed to Delores Brown
Attachment D: Rossmann & Moore letter on behalf of PCL letter dated February 3, 2004 addressed to Daryl Koutnik
Attachment E: Rossmann & Moore letter on behalf of PCL dated March 1, 2004 addressed to Ms. Hsio-ching Chen
Attachment F: Rossmann & Moore letter on behalf of PCL dated May 4, 2004 Jeff Hogan, Associate Planner

PLANNING AND CONSERVATION LEAGUE

October 21, 2005

Mary Lou Cotton
Water Resources Manager
CLWA
27234 Bouquet Canyon Road
Santa Clarita, CA 91350
Fax: 661/297-1611

Re: Castaic Lake Water Agency Draft 2005 Urban water Management Plan

Ms. Cotton,

The Planning and Conservation League submits the following comments to the Castaic Lakes Water Agency on the Draft 2005 Urban Water Management Plan.

PCL engaged and prevailed in *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.3d due to concerns that over reliance on future increased State Water Project delivery levels was equivalent to reliance on paper water. The court's decision in *PCL v DWR* held that in fact reliance on water that does not exist is indeed a serious threat to California.

This Draft 2005 Urban Water Management Plan (draft UWMP) contains serious flaws, including inappropriate use of draft data from the Department of Water Resources, inappropriately accounting of transfer water and inappropriate reliance on infeasible water supplies. Together these flaws result in potentially significant overstatement of supply equivalent to reliance of paper water.

Because of the importance as a base planning document, it is vital that the CLWA ensure the information provided in the draft UWMP is accurate and reliable. CLWA has a responsibility to its customers to ensure that the following flaws are addressed prior to issuing the final UWMP.

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The Urban Water Management Plan inappropriately relies on the Draft 2005 Delivery Reliability Report information provided as draft material to water contractors.

The credibility of the draft UWMP is greatly compromised due to significant reliance on incomplete and inaccessible draft information. The draft UWMP projections of future water supply availability are based on a single draft chapter of the working draft 2005 Reliability Report prepared by the Department of Water Resources. The complete Draft Reliability Report including the assumptions behind the reported water supply delivery reliability have not been reviewed or released to the public. Without the complete report, neither the public nor CLWA can accurately discern the credibility of the information included in the Reliability Report. Water supply information from one chapter of a draft report does not provide an adequate level of certainty or rigorous review required to determine the reliability of future water supplies for the residents of the Castaic Lake Water Agency service area.

Accordingly, it is inappropriate to finalize the draft UWMP until the complete Draft Reliability Report is made available to CLWA and the public, and until sufficient time has been provided for the CLWA and public to review and confirm the validity of the information provided in that document.

The draft UWMP fails to recognize or report uncertainty and risk associated with water supply. This failure results in overly confident statements of water supply availability.

The UWMP inappropriately relies on the CALSIM II model.

Most of the water supply identified in the draft UWMP is SWP water supply. The UWMP lists SWP supplies as precise amounts, rather than a range of possible supplies based on uncertainty. These precise predictions of SWP water availability to CLWA and its purveyors are based on DWR calculations that use the CALSIM II model.

A recent peer review of the CALSIM II by the California Bay Delta Water Authority Science Program found several major deficiencies in the model and determined that CALSIM II is unfit to determine absolute predictions for water reliability.

Furthermore, the peer review found that the CALSIM II model has not been calibrated or validated. The peer review states:

> In our opinion CALSIM II has not yet been calibrated or validated for making absolute predictions values. Yet it is apparent that there has been a distinct need by model users for absolute predictions. In the absence of alternatives, users are adopting CALSIM II results as the best absolute prediction available and they are likely to continue to do so. We recommend that model developers recognize the requirement for CALSIM II to provide absolute predictions. To satisfy this new purpose, additional calibration of the model will be required to ensure that the output it produces is fits for this purpose. Regardless of how possible it is to match the model closely with observed behavior, statistics on the accuracy of the calibration run should be supplied to users to enable them to gauge the likely errors involved with using the model output.[i]

The peer review also states, "… procedures need to be developed to enable the estimation of measures of uncertainty associated with the model output."[ii]

Without calibration, use of the CALSIM II model likely overstates delivery capability of the State Water Project to contractors, including CLWA. The CALSIM II model produces estimates of deliveries based on optimization calculations. An optimization model can be used to determine a set of actions from a range of possibilities that could obtain a preferred outcome. However, the CALSIM II model optimizes the outcome, water exports and deliveries, without a realistic review of whether the actions needed for that outcome are realistic or possible.

The Bay-Delta Authority peer review states, "However unless the optimization is calibrated in such a way as to actually resemble what takes place in practice it can produce an optimistic description of system performance. This is particularly true if the optimization model is allowed to have perfect foresight of future events that in practice would not be available to system operators."[iii]

Such is the case with the CALSIM II model, where optimal outputs are produced with little regard as to whether those outputs can be implemented. The model does not take into account many limitations (i.e. reduced storage resulting from reduced snowpack, reduced reliability of water from the Bay Delta due to , etc.) resulting from impacts of global warming.[iv] The model assumes no upper bound for groundwater pumping from the Sacramento Valley. This assumption does not reflect reality, and allows more water to be exported from the Sacramento Valley than is realistic.[v] Therefore, it is likely that

CALSIM II projected water deliveries based on actions that will not in reality be available to system operators.

The peer review concludes, "Most successful applications of optimization that attempt to simulate the behavior of a system have calibrated their functions (i.e., set the weight that prioritize flows over time and space) so that the model results correspond to what actually happens or would happen under a particular hydrologic and demand scenario. In these cases the model's decisions correspond to those the operator would make, as often prescribed by the rules that have been worked out in a legal/political process. It does not appear that such calibration of the objective function weights in CALSIM has yet been completed."[vi]

For the reason described above, the CALSIM II model is not capable of producing absolute predictions, and therefore the CALSIM II outputs should not be used as absolute predictions for water supplies in the draft UWMP.

In addition to use of the CALSIM II model, the UWMP fails to acknowledge impacts of climate change including reduced reliability of the State Water Project.

The majority of water identified in the Draft UWMP will come from the State Water Project. DWR and climate change experts have concluded that climate change is having and will continue to have a significant impact on the State Water Project, including the ability to deliver water to contractors.

Currently the State Water Project depends on snowmelt to refill reservoirs and provide SWP water during over the year. However, with decreasing snowpack, water available to SWP may be significantly reduced. DWR's April 7, 2005 Public Review Draft of the California Water Plan Update states:

> California's relies on snowpack as its largest means of annual water storage. Runoff from the Sierra Nevada mountains during April through July of each year averages 14 million acre-feet and comes primarily from snowmelt. Computer modeling of global climate change scenarios predict significant future reductions in the Sierra snowpack. A reduced snowpack will reduce the total water storage for the state. Figure 4-7 (Model simulation of potential changes in snowpack during the 21st Century) shows a 52 percent reduction in the annual April through July runoff for a 2.1 degree C (3.8 F)

of warming, well within the 1.4 to 5.8 degree C (2.5–10.4 F) range predicted by global climate models for this century.[vii]

> Changes in the timing of snowfall and snowmelt, as a result of climate change, may make it more difficult to refill reservoir flood control space during late spring and early summer, potentially reducing the amount of surface water available during the dry season. Changes in reservoir levels also affect lake recreation, hydroelectric power production, and fish habitat by altering water temperatures and quality. Reductions in snowpack may require changes in the operation of California's water systems and infrastructure, and increase the value of additional flood control space in reservoirs.

In addition to reduced water availability, climate change will likely reduce the ability of the SWP to physically deliver water. The SWP conveys water from Northern California through the low-lying Bay-Delta Estuary. SWP export facilities in the Bay Delta are protected from salt water intrusion by Bay Delta levees. However, as sea level rises with expected climate change, Bay Delta levees are more prone to failure. This uncertainty is documented in the Draft California Water Plan Update:

> Global climate change is already leading to sea level rise. Figure 4-9 (Golden Gate annual average and 19-year mean tide levels) shows historical sea level rise at the Golden Gate. During the 20th century, sea levels increased by 0.2 meters (0.7 feet). Models project a median rise of 0.5 meters (1.6 feet) over the 21st century due to climate change (IPCC 2001). Sea level rise could eventually disrupt ecosystems and communities in coastal areas and disrupt ongoing tidal wetland restoration efforts. The biggest impact of sea level rise on California's water supply and tidal wetlands restoration efforts could be in the Sacramento-San Joaquin River Delta. Sea level rise would increase pressure on Delta levees that protect low-lying lands, much of which are already below sea level. A single-foot rise in sea level would increase the frequency of the current 100-year peak high tide in the western Delta to about a 10-year event. Another effect of sea level rise is increased salinity intrusion from the ocean, which could degrade freshwater supplies pumped from the Delta unless more freshwater from upstream reservoirs is released to push back intruding sea water. Sea level rise could also threaten coastal aquifers.[viii]

The draft UWMP fails to account for the potential impacts listed above to future water supplies. The final UWMP should indicate how CLWA and the other water purveyors preparing the UWMP intend to analyze and address the impacts of climate change. Los Angeles Department of Water and Power has included such an analysis in its UWMP.[ix]

The draft UWMP inappropriately identifies 41,000 acre feet of water supply from an unapproved and legally challenged transfer from Kern County Water Agency to CLWA.

The draft UWMP that CLWA's current total SWP Table A amount is 95,200af, which includes 41,000 af of water transferred from Kern County to CLWA as part of the Monterey Amendments. However, as CLWA is aware, this 41,000 af transfer cannot be considered final until the Monterey Plus EIR has been completed.

We bring to your attention the Monterey Settlement Agreement, to which Castaic Lake Water Agency is a signatory. This Agreement precludes reliance on the 41,000AF transfer and on projects approved after March 26, 2001 until the new Monterey agreement EIR is completed.

Per the Court Order filed June 6th, 2003, item 4:

> As part of the Settlement Agreement, DWR and the SWP Contractors who are signatories to the settlement agreement have agreed that, pending DWR's filing of a return in satisfaction of the Writ of Mandate and this Court" dismissal of the Writ of Mandate, they will not approve any new project or activity (as defined in Section VII.A of the Settlement Agreement) in reliance on the 1995 Environmental Impact Report for the Implementation of the Monterey Agreement.

Castaic Lake Water Agency has purported to prepare a new EIR for that transfer, but that EIR is legally inadequate, and both the Court of Appeals' decision in the Monterey Amendments litigation and the Monterey Settlement Agreement preclude Castaic Lake Water Agency serving as the lead agency for the new EIR for the 41,000 af transfer. It is indisputable that DWR's new Monterey Amendments EIR is not complete. Therefore, the transfer cannot be relied upon as a water supply, and that water supply does not meet the legal test found in Senate Bill 221 (Government Code Section 66473.7 (d).

Stating that the 41,000 af transfer is final represents a significant overstatement of supply. This overstatement significantly decreases the reliability of water supplies for both future

and current residents of the CLWA service area. If, for example, the 41,000 af transfer were overturned in court or did not survive the statewide review of the "Monterey Plus" project, the amount of that surplus, and the water available to the CLWA service area, would be dramatically affected. For these reasons, it is inappropriate for the draft or final UWMP to infer that CLWA's Table A apportionment includes the disputed 41,000 af.

The draft UWMP identifies unrealistic and infeasible future water supplies.

The draft UWMP states that CLWA will pursue investments in future development of several desalination projects in exchange for State water Project Water. This proposal is speculative, infeasible and unlikely to occur. Most of the desalination projects listed in the draft UWMP are being pursued in areas that are not connected to the State Water Project system and do not receive SWP water. Therefore, exchange, even through a third party would be physically impossible. Significant infrastructure would be required tin order to make such an exchange possible. However, there are no current proposals or plans to build such infrastructure. In addition, for most of the desalination projects identified in the draft UWMP, the local water purveyors pursuing desalination have planned to continue to use any surface water supplies plus the yield of the desalination facility. Therefore, these projects will not produce extra water for exchange to CLWA. In addition, there is no history of a successful transfer of coastal desalination water in exchange for existing SWP supplies. The regulatory framework under which this type of exchange could be possible has not been established. Thus, there the feasibility of such a transfer is questionable. Reliance on desalination in the CLWA service area is purely speculative. Thus, these supplies should not be included in the final UWMP.

The significant issues identified above should be addressed prior to issuance of the final UWMP.

Thank you,

Mindy McIntyre

[i] A Strategic Review of CALSIM II and Its Use for Water Planning in Central California. California Bay-Delta Authority Science Program, December 2004., p 9
http://calwater.ca.gov/Programs/Science/adobe_pdf/CALSIM_Review.pdf
[ii] A Strategic Review of CALSIM II and Its Use for Water Planning in Central California. California Bay-Delta Authority Science Program, December 2004., p 10
http://calwater.ca.gov/Programs/Science/adobe_pdf/CALSIM_Review.pdf
[iii] A Strategic Review of CALSIM II and Its Use for Water Planning in Central California. California Bay-Delta Authority Science Program, December 2004., p 4
http://calwater.ca.gov/Programs/Science/adobe_pdf/CALSIM_Review.pdf
[iv] Final State Water Project Delivery Reliability Report 2002. Department of Water Resources, B-1.
http://swpdelivery.water.ca.gov/SWP%20Delivery%20Reliability.final.2002.pdf
[v] A Strategic Review of CALSIM II and Its Use for Water Planning in Central California. California Bay-Delta Authority Science Program, December 2004., p 26
http://calwater.ca.gov/Programs/Science/adobe_pdf/CALSIM_Review.pdf
[vi] A Strategic Review of CALSIM II and Its Use for Water Planning in Central California. California Bay-Delta Authority Science Program, December 2004., p 5
http://calwater.ca.gov/Programs/Science/adobe_pdf/CALSIM_Review.pdf
[vii] April 7, 2005 Public Review Draft of the California Water Plan Update, Vol. 4, page 4-27
[viii] April 7, 2005 Public Review Draft of the California Water Plan Update, Vol. 4, page 4-28
[ix] Los Angeles Department of Water & Power Draft 2005 Urban Water Management Plan, page 102

Attachment B

Mary Lou Cotton
Water Resources Manager
Castaic Lake Water Agency
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Santa Clarita, CA 91350
(661) 297-1600

August 16, 2004

Dear Ms. Cotton:

This letter provides comments on the Draft EIR entitled *Supplemental Water Project Transfer of 41,000 Acre-Feet of State Water Project Table A Amount*, on behalf of the Planning and Conservation League (PCL) and the Citizens Planning Association of Santa Barbara County (CPA). If finalized, that transfer would be the largest permanent agriculture-to-urban transfer under article 53 of the Monterey Amendments, with major implications for water resources and land use planning in Southern California. The environmental impacts of these amendments, including the instant transfer, remain to be addressed in DWR's pending "Monterey Plus" EIR review. The scoping comments submitted for that review (attached as Exhibit 1), including those of PCL, should be studied in connection with the present EIR review.

PCL and CPA were among the plaintiffs whose successful CEQA challenge set aside the Central Coast Water Authority's original 1995 Monterey Program EIR. That ruling led to decertification of the predecessor EIR for Castaic's transfer, which unlawfully relied upon that defective analysis.

The instant Draft EIR, prepared by the same firm (SAIC) as the decertified Monterey EIR, provides a case of history repeating itself. It is legally insufficient in process and substance, failing Castaic's duty under CEQA to properly inform decision-makers and the public of the project's environmental consequences. The Draft EIR cannot be reconciled with the Monterey Amendments court decision (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892) and the settlement agreement later reached in that case. (The full Settlement Agreement appears on DWR's website at http://www.montereyamendments.water.ca.gov/.)

PROCESS ISSUES:

Failure to Address Comments

PCL and CPA submitted a comment letter on August 22, 2004. This letter, attached as exhibit 1, addressed both the instant transfer and a related proposal to transfer 16,000 acre-feet of Table A amounts from another of the Kern County Water Agency's member districts. PCL urged Castaic that it should "refrain from moving forward with these separate project reviews, which are premature and likely to operate at cross-purposes with DWR's statewide review" of the project referenced in the Monterey Amendments case settlement. PCL and CPA advised Castaic that if it prematurely attempted to proceed with separate EIRs on these permanent transfers, it would "lack the institutional authority and statewide accountability" to serve as CEQA lead agency. The Draft EIR simply ignores PCL's comments, and sidesteps similar ones made by other organizations.

PCL filed similar comment letters on several local projects contesting Castaic's improper and premature reliance on the 41,000 acre-feet transfer as an integral part of its reliable water supply. These comments (addressing, respectively, the West Creek Project, the River Village Project, and the Riverpark project) are attached as exhibits 2-4. They raise important questions affecting the adequacy of this EIS, as well as the prospect of possible cumulative impacts not addressed in Castaic's draft.

Inconsistency with DWR's "Monterey Plus" Review

Castaic's so-called "stand-alone" Draft EIR is fraught with potential for inconsistency with DWR's upcoming environmental review and decision on the "Monterey Plus" project. That review will address the identical transfer from a statewide perspective, with an integrated analysis of that project in its entirety. Castaic lacks the expertise and authority to proceed based upon its isolated assessment of project impacts, alternatives, and mitigation, each of which may well be undermined by DWR's subsequent analysis and decision.

Two recent Second District Court of Appeals cases reinforce the point that Castaic Lake Water Agency (CLWA) should not pursue its own independent EIR on the 41,000 acre foot transfer in advance of the

completion of DWR's tier-one "Monterey Plus" EIR.

In *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, the Second District court of appeal ordered the decertification of the previous EIR Castaic prepared to support the instant transfer. The Friends group and other environmental organizations opposed the project decision on that Kern/Castaic transfer, citing environmental consequences in the Santa Clara River area and association with numerous sprawl development projects. In its CEQA assessment, the court recognized that the proposed 41,000 acre-feet transfer "is part of an overall larger scheme, analyzed on a programmatic basis in the Monterey Agreement EIR." (*Id.* at 1384.)

Another recent Second District appellate decision, *Santa Clarita Organization for Planning and the Environment (SCOPE) v, County of Los Angeles* (2003) 106 Cal.App.4th 715, critically addressed Castaic's characterization of the 41,000 acre-feet transfer. In that case, the County of Los Angeles violated CEQA in its review of the West Creek development project that erroneously assumed that 100 per cent of Castaic's purported 41,000 acre-feet would be available in wet years and 50 per cent in drought years. Drawing on *Planning and Conservation League's* assessment of the historic disparity between Table A amounts and deliverable water, the court concluded that the EIR failed to undertake a "serious and detailed analysis" of State Water Project supplies, and observed that "[t]he dream of water entitlements for the incomplete State Water Project is no substitute for the reality of actual water the SWP can deliver." (*Id.* at pp. 723, 717.)

Inconsistency with the "Lead Agency" Principle

The Courts have also emphasized that DWR must act as lead agency in performing Tier 1 environmental studies. If Castaic continues with its separate environmental reviews without awaiting DWR's assessment in the "Monterey Plus" EIR, it would violate CEQA's lead agency requirement based upon the well-established standards set forth in *Planning and Conservation League v. Department of Water Resources*. The court in that case could hardly have been clearer that *DWR* is the "state agency charged with the statewide responsibility to build, maintain, and operate" the State Water Project. (*Id.* at p. 906.; see also Wat. Code, §12930, *et seq.*) Finding that DWR was the only entity with the requisite statewide perspective and expertise to serve as lead agency, the court found it "incongruous to assert that any of the regional contractors" could "assume

DWR's principal responsibility for managing the SWP." (*Id.*)

The court-approved settlement agreement in *Planning and Conservation League* recognizes DWR's duty as "the State agency responsible for administration and operation of the SWP," as well as its continuing obligation to comply with applicable requirements of CEQA and the Water Code. (Settlement Agreement, Section X.B.) The transfer guidelines disclosed to contractors under the settlement agreement also recognize the continuing need to comply with all existing legal requirements, including CEQA, and to honor the lead agency principles identified in the Third District's decision in the Monterey Amendments case (see http://ceres.ca.gov/ceqa/cases/2000/PCLvDWR-2000.html).

These principles apply clearly to the proposed permanent transfers of the Table A amounts referenced in the state project contracts, which require DWR's approval and presuppose the application of Monterey. They also concededly require changes in the amount of supplies available to several water agencies, the location and timing of project deliveries, and changed utilization of the project's conveyance and storage facilities. The transfers, which may require the fallowing of farmland in agricultural areas outside the jurisdiction of CLWA and are associated with proposed annexations linked to some of the more controversial development projects in California, demand the statewide authority and experience that only DWR can provide.

Improper Hypothetical Assessment of Non-Monterey Transfer

Lastly, Castaic's hypothetical "non-Monterey" analysis of the transfers in the Draft EIR cannot substitute for DWR's new assessment of the Monterey changes. In *Friends*, Castaic unsuccessfully attempted to portray its transfer EIR as capable of standing alone, outside the Monterey Amendments program. Although transfers were available under Article 41 of the pre-Monterey State Water Project contracts subject to express DWR approval, DWR has neither reviewed nor conferred approval on the present transfer under Article 41. Moreover, it is highly speculative whether agriculture-to-urban transfers such as the 41,000 acre foot transfer would even have taken place without the Monterey Amendments, since those Table A amounts would have been subject to "agriculture first" cutbacks under pre-Monterey article 18(a). Read in context, such maneuvers would amount to little more than the "straw man" argument considered and rejected in the *Friends* appeal. (95 Cal.App. 4th at p. 1387.)

SUBSTANTIVE ISSUES

Mischaracterization of Settlement Agreement

The instant Draft EIR, includes glaring errors. A piecemeal and startlingly inaccurate description of the Monterey case Settlement Agreement (ES 2-4) fails even to inform the reader that DWR's statewide review of the "Monterey Plus" project could affect the future of this transfer or of the Monterey Amendments themselves.

The "Settlement Agreement underscores the non-finality of the 41,000 acre-feet transfer and the need for DWR's statewide review. For example:

- Section III.D refers to a list of transfers listed in attachment E to the agreement, which the settling parties, without specifically endorsing or opposing them, recognize as "final" and agree not to challenge. This transfer is *not* included in that list.

- Further evidence of the non-finality of the Castaic transfer is that section III.E singles out this transfer for a special acknowledgment recognizing that it is the subject of pending litigation in this Court.[1]

- Section III.C.4 recognizes DWR's commitment to provide in its forthcoming statewide programmatic EIR an "[a]nalysis of the potential environmental effects" relating to "the Kern-Castaic Transfer," identifying it as one of the actions "that relate to the potential environmental impacts of approving the Monterey Amendments."

DWR has recently confirmed that this transfer remains subject to the Settlement Agreement and its future "Monterey Plus" EIR. As DWR Director Lester Snow wrote on June 17, 2004 to *Friends* case lead counsel

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[1] The Draft EIR erroneously attempts to recast this provision as a "specific exclusion" of this transfer from "any prohibitions against transfers of Table A amounts by the Settlement Agreement." That is simply wrong. Section III.E recognizes that this transfer is "subject to pending litigation in the Los Angeles Superior Court following remand from the Second District Court of Appeal." It reflects a recognition that "jurisdiction with respect to that litigation should remain in the [Los Angeles] court," and the settling parties' concurrence that "nothing in this settlement agreement is intended to predispose the remedies or other actions that may occur in that pending litigation."

Alyse Lazar, "DWR's treatment of the transfer of Table A amounts from Kern County Water Agency to Castaic Lake Water Agency will be governed by the Settlement Agreement. As provided in Paragraph lllC4 of the Settlement Agreement, the EIR will include an "analysis of the potential environmental impacts relating to (a) the Attachment E transfers, and (b) the Kern-Castaic Transfer, in each case as actions that relate to the potential environmental impacts approving the Monterey Amendments." Section 1(0) of the Settlement Agreement defines the "Kern-Castaic Transfer" as "the transfer of 41,000 AF of water from Kern County Water Agency to the Castaic Lake Water Agency, approved by DWR on March 31, 1999." DWR has not completed any draft or final analysis regarding these transfers." Given both the required state leadership on an ongoing Tier 1 environmental study and the pending litigation, the future of the Castaic transfer and, indeed, the broader Monterey Amendments, cannot be assumed.

The Draft EIR's assertion that the Settlement Agreement "did not change the substance of the Monterey Amendments" is also misleading. Although those amendments are part of the "Monterey Plus" project, the agreement also eliminates misleading references to "entitlements" from the state contracts and adds a new provision to the contracts imposing water reporting requirements. The agreement also imposes a host of other substantive changes in State Water Project operation that should be described in the Final EIR.

Faulty Assessment of the No Project and Project Alternatives

Castaic's refusal to await DWR's "Monterey Plus" EIR would fatally compromise its ability to identify alternatives to the proposed transfer that might maximize its benefits and minimize its environmental impacts statewide prior to rendering the transfer a *fait accompli*. DWR's EIR will programmatically address Castaic's transfer in the context of statewide contract amendments. A major issue requiring assessment in that document will be the possible *alternative* dispositions of the 41,000 acre feet of Table A amounts to serve other uses. To list several possible examples, the alternative uses subject to statewide analysis might include ecological restoration, urban infill development in Los Angeles or San Diego, and relief from cutbacks of Colorado River deliveries in excess of the California's 4.4 million acre-feet in annual entitlement. (See *Arizona v. California* (1964) 376 U.S. 340 (Colorado River); fn. 7, *supra* p. 16).) In short, legally adequate assessment of these issues under CEQA will require

DWR's "statewide perspective" rather than the provincial experience of a local water agency, and demands recognition that this transfer is an overall part of the Monterey program. (*Friends I*, 95 Cal.App.4th at p. 1384.)

Faulty Assessment of Water Reliability

The Draft EIR's water supply assessment (especially in sections 3.15 and Appendix D) make highly problematic assumptions about state water reliability, as well as the availability of "surplus" water under Article 21 of the state project contracts. DWR's record of deliveries to contractors under the SWP figured centrally in the Third District's conclusion that the 1995 EIR must be set aside. (See *PCL v. DWR*, 83 Cal. App. 4th at 908 (noting the "huge gap between what is promised and what can be delivered" and that "actual, reliable water supply" is "in the vicinity of 2 to 2.5 MAF of water annually" rather than the 4.23 MAF of Table A "entitlements"); 83 Cal. App. 4th at 913 (average actual deliveries under the SWP from 1980-1993 "were around 2.0 MAF"). A frank assessment of DWR's record of deliveries is essential to a wide variety of issues addressed in the EIR, including the no project alternative as well as the assessment of hydrologic impacts, land use and planning impacts, growth-inducing impacts, and cumulative impacts. Anticipating the importance of this issue, the Monterey Settlement Agreement required periodic SWP reporting on the reliability of SWP deliveries.

The Draft EIR uses dubious modeling assumptions to claim an average of annual deliveries exceeding the historical record by approximately a million acre-feet. (See DEIR, 3.15-7.) In part, Castaic's EIR relies upon dated studies employing an outmoded model (DWRSIM). To move beyond DWRSIM's obvious deficiencies, the Draft EIR also makes unwarranted extrapolations from DWR's 2003 reliability report.

That report has faced significant controversy regarding its overall conclusions and the computer modeling that underpins its reliability projections. For instance, the reliability report constructs delivery probability charts for the SWP for two years, 2001 and 2021. As noted by several commenters, the median delivery identified in the report (3.297 MAF) is on the order of 50% greater than the actual record of historic deliveries to the SWP as reported by DWR. A detailed analysis by Dennis O'Connor for the California Research Bureau, referenced in the comment

letter of Senator Machado,[2] indicates that the draft reliability report provides no credible explanation for this disparity. O'Connor's analysis concludes that among other problems, the results are inconsistent with previous estimates and models, recent deliveries were lower than the modeled 2001 conditions, and 2021 does not reflect any growth in upstream consumptive use. His assessment also observes that CALSIM II is not calibrated or otherwise verified, and that the draft reliability report does not use the CALSIM II model as designed. Because the draft reliability report appears to overstate the supply reliability of the SWP, O'Connor's analysis warns that DWR's assessments of reliability should not replace the "paper water" problem with a new, simulation-based "cyber water" problem. Other comment letters, notably those of Robert C. Wilkinson, Peter Gleick, and Arve Sjovold, reach similar conclusions. (Please see http://swpdelivery.water.ca.gov/ and comments submitted regarding the instant EIR by Arve Sjovold.)

Controversy over the reliability report, on which this EIR relies, led to review of CALSIM II modeling by an External Review Panel including some of the world's leading experts on water resource systems. Their report, "Strategic Review of CALSIM II and its Use for Water Planning, Management, and Operations in Central California" was released on December 4, 2003. The Panel raised serious concerns regarding the application of the model to predicting reliable deliveries, especially as those deliveries related to particular contractors. Many of the Panel findings agree with concerns we have articulated throughout the Monterey EIR process. Notably, the Panel found that:

- "Examination of the report "CALSIM II Simulation of Historical SWP/CVP Operations,' DWR (2003) indicates that the current formulation of CALSIM II: Overestimates water deliveries to SWP and CVP contractors..." (p. 11)
- "Most successful applications of optimization [CALSIM's type of computer model] ...have calibrated their objective functions...so that the model results correspond to what actually happens or would happen under a particular hydrologic and demand scenario...It does not appear that such a calibration of the objective function weights in CALSIM has yet been completed." (p. 4)

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[2] See Appendix E page E-94 at http://swpdelivery.water.ca.gov/SWP%20Delivery%20Reliability.final.2002.pdf.

- "...currently many users are not sure of the accuracy of the results. A sensitivity and uncertainty prediction capability and analysis is needed" (p. 8)
- "In our opinion, CALSIM II has not yet been calibrated or validated for making absolute predictions values." (p. 9)
- Regardless of how possible it is to match the model closely with observed behavior, statistics on the accuracy of the calibration run should be supplied to users to enable them to gauge the likely errors involved with using the model output. (page 9)
- In CALSIM II, "Groundwater resources are assumed infinite, i.e., there is no upper limit to groundwater pumping." (p. 8)
- "Realistic upper bounds to pumping from any of the aquifers represented in the model need to be developed and implemented." (p. 27)
- "In general, the level of representation of groundwater in CALSIM II is not reasonable from the point of view of the reviewers." (p. 27)
- "In many cases, it appears that water use and other hydrologic data inputs to CALSIM II are based on data collection and analyses that took place during the 1960's when DWRSIM and PROSIM were being constructed. It is important to ensure that data used for CALSIM II are up-to-date and consistent with the best current information." (p. 20).
- In general, it appears that the developers of CALSIM II do not have a clear idea of how to define the scope of CALSIM II use and many of its applications are evolving in a reactionary manner. Model developers should identify clearly the desired uses for CALSIM II and then determine acceptable approaches for satisfying those desires. Developers should seek to improve data accuracy and overcome unrealistic assumptions to improve the confidence in model results. (page 25)

Furthermore, as numerous CEQA cases have consistently held, local agencies such as CLWA have an independent responsibility to adequately assess reliability. Castaic therefore, and cannot rest its analysis solely on its old DWRSIM studies and the DWR Reliability Report.

Faulty Assessment of Growth-Inducing Impacts

Without adequate review, the transfer would place available water in one of the places in California most likely to promote urban sprawl and destroy environmental habitat The Draft EIR's growth inducement section (Chapter 4) fails to appreciate the significance of this transfer as a linchpin of sprawl development. Following the *PCL* decision and through the Monterey EIR, the state has a responsibility and, as noted above is the only entity with the requisite resources and purview, to determine the environmental impacts, particularly including induced growth impacts, of transfers such as the 41,000 acre-foot transfer. Local agency analysis of these impacts prior to the Tier I Monterey EIR impermissibly and imprudently ignore the state's role in considering alternatives to that transfer which would, for example, meet existing shortfalls in developed Southern California dependent on diminishing Colorado River supplies, while avoiding "dumb growth" in the undeveloped frontier at the Los Angeles-Kern County border.

Rather than squarely confronting the scope and mitigation of growth inducement, the Draft EIR improperly defers the issue to subsequent decisions of local agencies on individual projects. A "chicken and egg" problem emerges here. As reflected in PCL's comment letters on specific projects, local agencies are relying upon *Castaic* to inform them of the reliable water available to support specific proposed projects ranging in scope from small developments to Newhall Ranch. The Draft EIR is entirely speculative in its assumption that project-related growth can be mitigated to insignificance. This issue cannot be credibly reviewed in isolation from the statewide Monterey EIR.

Your consideration of these comments is greatly appreciated.

Sincerely,

(signed on original)
Sage Sweetwood
President, PCL

Naomi Kovacs, MPA
Executive Director, CPA

Attachment C

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March 28, 2003

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

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

Dear Ms. Brown:

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

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

The new project described in the settlement agreement includes both the Monterey Amendments and additional contract amendments and other program features described in the agreement. The

NOP's reference to the new project as "Monterey Plus" is therefore accurate. We believe that the new project offers important benefits that will bring greater public accountability and environmental responsibility to the State Water Project (SWP) in comparison to the original version of the Monterey Amendments reviewed in the invalidated 1995 CCWA EIR.

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

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

PCL v. DWR

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

- **Lead agency requirement**

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

- **"No project" alternative**

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

- **"Paper water" problem**

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

- **Validation procedure**

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

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

Settlement Agreement

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

- Specified provisions of the SWP contracts shall be amended to delete the term "entitlement," to be replaced with the "Table A amounts" as referenced in Table A of the contracts. (Attach. A.)

- New Article 58 of the SWP contracts will require DWR to issue biennial reports starting in 2003 to city, county and regional planning agencies, providing information on SWP delivery capabilities under a range of hydrologic conditions, as well as historic delivery figures. DWR will also produce guidelines by January 2004 to municipal and industrial contractors to provide accurate information for land use planning, with plaintiffs' input. (Attach. A, B.)

- DWR will issue guidelines on permanent transfers of Table A amounts. The negotiations will take place in public, CEQA compliance will be required, and the place and purpose of use must be specified. (Attach. C.)

- Future project-wide contract amendments and amendments to transfer Table A amounts will be in public with opportunities for public participation (Attach. D.)

- The agreement specifies in detail DWR's commitment to assess certain specified elements in the new EIR, which will analyze the Monterey Amendments, "attachment A" amendments, and other settlement provisions. (Section III.)

- Funding will be provided to Plumas in an amount totaling $8 million, principally to improve and restore the Feather River watershed, including the establishment of a locally run watershed forum. The goals of the program are water retention and quality, vegetative management, and groundwater storage. (Section IV.)

- The Kern Water Bank will become subject to new land use restrictions that protect 490 acres of additional land from development, beyond the restrictions currently in place in the applicable Habitat Conservation Plan. Transfer, development and operation of the bank will be addressed in the EIR. (Sections V, III.F.)

- Funding to plaintiffs ($5.5 million total) will support a variety of purposes, including watershed restoration projects, technical studies, and follow-up actions arising from the settlement. (Section VII.)

Non-reliance on CCWA's 1995 EIR

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

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

Project Definition

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

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

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

Environmental Baseline

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

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

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

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

- The *contractual* baseline condition must be the pre-Monterey SWP contracts. Any effort to define the baseline as incorporating the Monterey Amendments, or even partial implementation of some of its elements, would make it impossible for the EIR to properly assess the "whole of the action."

- The *hydrologic* baseline condition should not be confined to a single calendar year. Rather, the impacts of water management changes are best addressed under a range of hydrologic circumstances. Constraints on SWP system performance must also be addressed. Anticipating that need, the settlement agreement provides that the new EIR's "environmental setting" section shall analyze "information on water deliveries of the SWP over the relevant historical period (at least 1991-2002), as well as data regarding the deliveries in the last extended drought (at least 1987-1992)." (Section III.C.1.)

- The *regulatory* baseline condition should examine the range of legal and environmental constraints, other than the contracts and hydrologic conditions, that could impact water deliveries to SWP contractors and the environmental impacts of these deliveries. These constraints might include such matters as Delta water quality standards, endangered species requirements, the SWP's coordinated operations agreement with the Central Valley Project (CVP), competing water rights, and elements of the CALFED program. Such constraints should be studied both as they existed before any elements of Monterey were implemented and as they have evolved since that time.

No Project Alternative

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

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

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

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

Project Alternatives

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

Assessment of SWP Reliability

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

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

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

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

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

- Any references to SWP delivery reliability in the EIR should be based upon the portion of full Table A amounts that the project can reliably deliver, not the percentage of contractor "requests" that can be met in any given year. The SWP contractual provisions governing allocations in the event of shortages are based upon Table A amounts, not requests. In *PCL v. DWR*, the court of appeal considered and rejected CCWA's attempt to shift the reliability discussion away from Table A-percentages to the request-percentages. (83 Cal. App. 4th at 913.)

- Any assessment of the reliability of SWP Delta exports in the EIR must be integrated with an assessment of CVP exports. Both projects extract water from the Delta in a coordinated management program that includes pumping, storage, and conveyance. Without integrated study of these projects, it would be impossible to discern whether reliability attributed to the SWP was based on water from the CVP.

- The need for integrated assessment of SWP and CVP exports is corroborated in the Bureau of Reclamation's February 21, 2003 scoping comments, which recognize that many changes have taken place since the 1986 signing of the coordinated operations agreement (COA). Reclamation observes that the operation of the Kern Water Bank and of Metropolitan Water District's Eastside Storage Reservoir "are two prominent influences on SWP operations that were facilitated by the Monterey Amendment" and not considered in the development of the COA. Reclamation also expresses concern about "current and future CVP access to SWP Delta pumping capacity," noting that Monterey Amendment implementation may have influenced these. Reclamation appropriately requests that the EIR "examine in detail how the proposed action would affect CVP access to SWP Delta export capacity both from a historical and future condition perspective. In addition, should the proposed action affect CVP use of SWP Delta export capacity, the EIR should address the environmental and socio-economic effects of these changes."

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

Changes in SWP Operations and Deliveries

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

Kern Fan Element Transfer

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

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

The EIR should also analyze an alternative that would allow the Kern Water Bank to remain in local control, subject to operational and financial criteria designed to maximize environmental benefits. One such alternative would require the bank to store environmental water in time of surplus and make it available at no cost to the state in time of drought, as part of the consideration for allowing the asset to operate the rest of the time for local purposes. In sum, a variety of operating and financial arrangements must be explored to maximize the bank's contributions to the State's environment.

Transfers of Table A Amounts Under the Monterey Amendments

The settling parties recognize the finality of certain transfers of table A amounts from agricultural to urban contractors, listed in attachment E of the agreement. (Section III.D) That list does not include as "final" a single transfer of 41,000 acre-feet of table A amount from Kern County Water Agency to Castaic Lake Water Agency, since that transfer remains the subject of active litigation. (Section

III.E; see *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2000) 95 Cal. App. 4th 1373 (ordering the EIR for that transfer set aside due to unlawful "tiering" from the invalidated 1995 Monterey EIR)). Nonetheless, since each of these transfers directly relies on the Monterey Amendments, the settlement agreement provides that DWR's new EIR shall study the potential environmental effects of both the attachment E transfers and the Kern- Castaic transfer. (Section III.C.4.)

Growth-Inducing Impacts

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

Conclusion

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

Respectfully,

Roger B. Moore

Antonio Rossmann

PLANNING AND CONSERVATION LEAGUE

Newhall County Water District
PO Box 220970
Newhall, Ca. 91322

FAX 661 259-9673

Water Service Application for Gates/King Industrial Park Project and Spring Canyon Project

The Planning and Conservation League recommends that you defer action on the water service applications for Gate/King Industrial Park Project and Spring Canyon projects.

As your district knows, the requirements under Senate Bill 610 for a water supply assessment early in the project development process are less rigorous than the requirements under Senate Bill 221for a water supply verification when final approvals are considered.

The most recent Stetson water report prepared for Newhall County Water District included water supplies that have not yet been finally realized, such as the proposed transfer of 41,000 acre feet of water to Castaic Lake Water Agency.

The Planning and Conservation League was one of the plaintiffs in the Monterey Amendments lawsuit. Therefore we bring to your attention the Monterey Settlement Agreement, to which Castaic Lake Water Agency is a signatory. This Agreement precludes reliance on the 41,000AF transfer and on projects approved after March 26, 2001 until the new Monterey agreement EIR is completed.

Per the Court Order filed June 6th, 2003, item 4:

> As part of the Settlement Agreement, DWR and the SWP Contractors who are signatories to the settlement agreement have agreed that, pending DWR's filing of a return in satisfaction of the Writ of Mandate and this Court" dismissal of the Writ of Mandate, they will not approve any new project or activity (as defined in Section VII.A of the Settlement Agreement) in reliance on the 1995 Environmental Impact Report for the Implementation of the Monterey Agreement.

Castaic Lake Water Agency has purported to prepare a new EIR for that transfer, but that EIR is legally inadequate, and both the Court of Appeals' decision in the Monterey Amendments litigation and the Monterey Settlement Agreement preclude Castaic Lake Water Agency serving as the lead agency for the new EIR for the 41,000 AF transfer. It is indisputable that DWR's new Monterey Amendments EIR is not complete. Therefore, the transfer cannot be relied upon as a water source, and that water supply does not meet the legal test found in Senate Bill 221 (Government Code Section 66473.7 (d).

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This is not merely a technical requirement or hoop that must be jumped through. There is a very substantive reason that water districts must assure reliable water supplies. If you commit to serve new development based on not final water supplies you put all of your existing customers at risk of shortage.

In addition to being bad public policy, it is also possible that your district would be at significant financial risk. If existing customers suffer shortages, they may seek damages for lost landscapes, income, property values. Although to the best of our knowledge that exact case has not been litigated, there are other recent "takings" cases that suggest water suppliers are being held liable when their actions result in damages to their customers. Lack of compliance by your district with the requirements of SB 221 would certainly be raised to establish the basis for damages.

If you have any questions, please contact me at (916) 313-4516.

Sincerely yours

Jonas Minton

Jonas Minton

Senior Project Manager

December 6, 2004

Board of Directors
Newhall County Water District
PO Box 220970
Newhall, Ca. 91322
Fax 661 259 9673

Re: Approval and use of the Stetson Report

Dear Sirs and Madames:

We have reviewed the sections of the Stetson report relating to the State Water Project. Our detailed comments are attached.

We note that the Regional Urban Water Management Plan called for 90% reliability and your own Resolution 2004-3 called for 80% reliability. We believe that at least 80% reliability is required to ensure against economic setback for your community during a drought period.

The Stetson report identifies a "normal" year supply as an amount with only 66% reliability of delivery. This would be all right if the Santa Clarita Valley had ground water to back up its SWP supply, but it is our understanding that your ground water supply currently has some severe pollution problems and that your wells in the river are not reliable due to excessive pumping above sustainable levels. The State Water Reliability report assumes unlimited ground water. Since your district does not have this, it would be imprudent to base future water assessments on the "normal" year yield from the State Water Project. We believe that the Stetson report should clearly state these facts.

Further, as you are well aware, the State Water Reliability Report did not account for the currently observed phenomena of global warming. This will reduce availability of state water supply due to early snowmelt and inadequate snow pack. It is therefore imperative to use a higher reliability factor.

For the above reasons, we find the statement on page 82:

"Sufficient water supply appears to be available to meet projected demands over the next 20 years of purveyors in the Santa Clarita Valley, including NCWD."

particularly troubling. Even ignoring the problem of reliability, it is obvious from your charts that a multiyear drought would preclude the ability to store additional water in the Semitropic ground water storage facility. Without additional stored amounts, the Santa Clarita Valley would suffer severe cutbacks.

PLANNING AND CONSERVATION LEAGUE

Lastly, we object to the continued reliance on the 41,000 AF Monterey Agreement Transfer for planning purposes as described on pg. 65. The Monterey Settlement Agreement, to which Castaic Lake Water Agency is a signatory, precludes reliance on this transfer until the new Monterey agreement EIR is completed. Since the environmental work for this transfer is not complete, the District may not rely on it as an "existing" source of water under section 10910(d)(2) and this report will not comply with state legislation regarding water assessments for new projects.

We urge you to not accept this report until corrections addressing these issues are made. However, if you do so, we urge you to complete these four actions:

1. Clearly distinguish the availability of water under the SB610 criteria from the availability of water under the more rigorous SB221 requirements. In summary, under SB610 it is acceptable to consider water that is planned for, but not yet developed. Under SB221 water must currently be available, or if it is planned for water, all approvals must be complete (Government Code Section 66473.7(d)).

   For instance, the environmental review of the Castaic Lake Water Agency's 41,000 acre-feet transfer proposal has not been completed. Therefore until the environmental review is complete, that transfer cannot be considered an existing supply for an SB 221 Water Supply Verification.

2. Commit to completing analyses to resolve the uncertainties indicated in the attached comments.

3. Annually update Water Supply Assessments for SB 610 purposes and Water Supply Verifications for SB 221 purposes.

Sincerely,

Mindy McIntyre
Water Policy Specialist
Planning & Conservation League

Attachment

Comments on Stetson Report dated November 29, 2004

A. Questions regarding the report:

1. Did the report analyze whether recycling 17,000 acre feet of reclaimed water would reduce recharge of the aquifers?

2. Did the report analyze the effect of additional impervious surfaces associated with new development on recharge of the aquifers?

3. Did Stetson Engineers do a computer analysis of combined surface and ground water use using the period of record to determine how often NCWD and others would have to pump how much water from the two aquifers? This is needed to show how much groundwater pumping would have to be done how often to make up for deficiencies in water from Castaic Water Agency. Such an analysis is necessary to show there would not be a long term groundwater overdraft.

4. What are the implications and risks of the statement on page 60 that "... the water quality impacts of increasing Saugus Formation pumping to substantially above 15,000 AFY have not been extensively studied. Additional studies to analyze potential water quality impacts due to periodically increased pumping in the Saugus Formation are recommended."

5. Pg 61 – What is the basis for the statement, "Based on available data and information, perchlorate contamination in the Whittaker-Bermite property currently appears to have minimal effects on production wells in the Alluvial aquifer."? Also what is the significance of the qualifier, "currently"? The history of perchlorate contamination in other areas is that it continues to spread. What is the basis for believing it will not do so in this case?

6. Page 65 – The EIR for the transfer of 41,000 acre feet is not complete. While it can be counted for purposes of SB 610, it does not meet the test for SB 221 until all approvals, including the EIR are complete. What is the available supply from Castaic Lake Water Agency under SB 221 until all approvals are complete?

7. Page 82, Santa Clarita Valley Water Supplies in 2005 –This states that, "Single dry year and multiple dry year water demands require withdrawals between 7,080 AF to 24,210 AF, at least, from groundwater banked in Semitropic in order to meet demands." However on page 77 the reports states that "Over the next 8 to 10 years, CLWA can withdraws up to 50,870 of this stored water to meet demands when required." That would only be two years of drought supplemental supply. On page 89 at footnote 9 it states that a drought planning period is 2 to 4 years. What would happen if that supply were exhausted?

8. Page 89, Table 36. Footnote 10 appears to be incorrectly placed. Newhall Ranch/Semitropic is not the 1,607 of Nickel water.

B. SB 221 versus 610 findings

Under SB 610 it is permissible to include water from projects that are still in the planning stage. However under SB 221 for new water supplies to be counted Government Code Section 66473.7 requires that all of the following must be complete:

(A) Written contracts or other proof of entitlement to an identified water supply.
(B) Copies of a capital outlay program for financing the delivery of a water supply that has been adopted by the public water system.
(C) Federal, state, and local permits for construction of necessary infrastructure associated with delivering the water supply.
(D) Any necessary regulatory approvals that are required in order to be able to convey or deliver the water supply.

The Stetson report does not differentiate the water supply that can be counted under SB 610 versus the supply that can be counted for SB 221 purposes. In this case that is very important because the report counts on significant new supplies that do not meet the SB 221 requirements.

C. Recommended additional work.

At the same time NCWD identifies the water supplies available for SB 610 and SB 221 purposes it should also identify uncertainties and its plans and schedule for improving the quality of water supply information. This includes:

1. Analysis of impacts on water quality of groundwater in the Saugus formation if pumping is increased.

2. Potential movement of perchlorate in both the Alluvial and Saugus aquifers.

3. Analysis of whether there is any relationship between groundwater pumping by NCWD and impacts on private wells.

4. Operations study showing how much groundwater would have to be pumped how often to make up for shortages in State Water Project supplies.

5. Review information from the State Water Project's Delivery Reliability Report.

6. Review Castaic lake Water Agency's progress in developing the water supplies outlined in the Stetson Report.

7. Annually update NCWD's water supply assessment and verification.

PLANNING AND CONSERVATION LEAGUE

December 22, 2005

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Bay Delta Office Chief
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California Department of Water Resources
SWP Delivery Reliability Report – Attn: Johnnie Young-Craig
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via email to: Comments-on-2005DRR@water.ca.gov

Re: Comments on Public Review Draft of the State Water Project Delivery Reliability Report 2005

Ms. Kelly:

The Planning and Conservation League (PCL), a strong advocate for accurate and realistic water supply planning, submits the following comments on DWR's Public Review Draft of the State Water Project Delivery Reliability Report (Draft Reliability Report). As one of the signatories to the court-approved settlement agreement requiring DWR to prepare these biennial reliability reports, PCL seeks to ensure that the final report lives up to the rigorous reporting requirements specified in that agreement. Serious deficiencies are present in the Draft Report that, if left uncorrected, would dangerously overestimate DWR's future ability to deliver water and compound the risk that local planning decisions will be predicated on "paper" rather than deliverable water.

The Reliability Report Should Accurately Disclose its Foundation in the Settlement Agreement and the State Water Project Contracts

The present Draft fails to inform local decision-makers and the public of the context and history behind DWR's reporting requirement. DWR's legal duty to prepare biennial reliability reports arises from the court-approved settlement agreement executed by PCL, DWR, state water contractors and other entities in the wake of the Third District Court of Appeal's ruling in the "Monterey Amendments" case, *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal. App. 4th 892.

In *Planning & Conservation League*, the decision invalidating the Monterey Amendments EIR, the court bluntly addressed the "huge gap" between the 4.23 million

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acre-feet of SWP entitlements referenced in Table A of the SWP contracts and the half or less of that amount the state can reliably deliver. Recognizing the practical consequences of paper water for local development decisions, that court vindicated "the commonsense notion that land use decisions are predicated at some level on assumptions about available water supply. The Court also recognized that reliance on "paper water in local development decisions can produce excessive groundwater pumping and a host of other detrimental environmental consequences. " (83 Cal. App. 4th at p. 915.)

In the settlement decision following that ruling, DWR expressly agreed to add a rigorous new set of reporting requirements. In a new provision (Article 58) of the SWP contract, DWR committed to the following:

> 1.Commencing in 2003, and every two years thereafter, the Department Water of Resources (DWR) shall prepare and deliver to all State Water Project (SWP) contractors, all city and county planning departments, and all regional and metropolitan planning departments within the project service area a report which accurately sets forth, under a range of hydrologic conditions, the then existing overall delivery capability of the project facilities and the allocation of that capacity to each contractor. The range of hydrologic conditions shall include the historic extended dry cycle and long-term average. The biennial report shall also disclose, for each of the ten years immediately preceding the report, the total amount of project water delivered and the amount of project water delivered to each contractor. The information presented in each report shall be presented in a manner readily understandable by the public. (Settlement Agreement Attachment B)

The Settlement Agreement further states:

> 3. DWR shall provide assistance to enable all Municipal and Industrial Contractors to provide complete and accurate information to relevant land-use planning agencies to assure that local land-use decisions reflect accurate information on the availability of water from state, local, and other sources. (Settlement Agreement Attachment B)

The Draft Reliability Report does not fulfill these requirements. As detailed in the remaining sections of these comments, the Draft omits important information and misinterprets data, which would mislead both the public and local water agencies. Accordingly, it lacks the accuracy that the settlement agreement requires. In order to help DWR meet the commitments made under the settlement agreement, we submit the following comments for inclusion in the final 2005 Reliability Report.

2

Excerpts of the Reliability Report should not have been privately shared with the State Water Contractors, but denied to PCL and the public

We are aware that DWR provided an earlier draft chapter of the Draft Reliability Report to State Water Project contractors in May 2005 ("Excerpts from Working Draft 2005 SWP Delivery Reliability Report") and further recommended that local agencies incorporate information provided in that draft chapter in their Urban Water Management Plans (UWMPs). Castaic Lake Water Agency has acknowledged relying on that document in reviewing other projects, and other contractors may have done so as well. However, DWR did not provide that draft chapter to PCL or the public, even though PCL staff requested the opportunity to review the draft. After followup requests, we were informed that the draft chapter would be posted to a web page for contractor announcements. There was no public announcement informing interested parties of the availability of the draft chapter.

DWR's decision to circulate part of the report to the contractors, while denying that same document to PCL and members of the public, represents an unfortunate throwback to the defective process singled out for criticism in *Planning and Conservation League*, where the court took notice of the interested parties and members of the public who were "not invited to the table." (83 Cal. App. 4th at 905.)

The draft and final Reliability Reports should be available to the public prior to deadlines for local agency Urban Water Management Plans

The most important purpose of the Reliability Report is to provide local water agencies and the public with accurate and realistic information on the reliability of SWP deliveries. Those local agencies should be able to use that information in planning documents and to inform land use decisions. Unfortunately, the timing of this report significantly compromises its utility. DWR did not release its draft to the public until just weeks prior to the state mandated deadline for local water agencies to complete and submit their 2005 Urban Water Management Plans.

DWR's decision to provide a single draft chapter prior to release of the full draft significantly compromises the information now included in many UWMPs. Without the complete report and the benefit of public review, decision-makers, planners and the public were denied the opportunity to evaluate and confirm the credibility of the information included in the draft chapter and now included in the UWMPs. Releasing the draft chapter and significantly delaying the release of this report is functionally equivalent to eliminating public oversight and transparency.

Water supply information from one chapter of a draft report also does not provide an adequate level of certainty or rigorous review required to determine the reliability of future water supplies for millions of Californians. To avoid damaging that review, water

agencies and the public were supposed to have the complete final report, not just a preliminary part of it.

DWR must ensure that in the future, the public will have ample opportunity to review and comment on Draft Reliability Reports, and that those public comments will be appropriately responded to and incorporated into vetted and substantiated final future reports well before Urban Water Management Plans are due to the State.

The Reliability Report should include DWR's analysis of SWP reliability under anticipated effects of climate change.

The 2005 Draft Reliability Report recognizes that a primary factor in determining reliability of SWP supplies is the availability of water in source areas. Yet the Draft Report fails to discuss and incorporate known and recognized information regarding the substantial adverse impacts climate change will have upon California's water supply. This omission is particularly troubling because DWR previously committed to including such information.

In 2002 DWR's first Reliability Report recognized that climate change could significantly alter availability of water in source areas. The 2002 report stated that information on climate change impacts to California was being developed in the California Water Plan Update process, and that such information would be incorporated into the 2005 reliability report. The California Water Plan Update 2005 is now nearly complete, and it contains information on climate change. The April 7, 2005 draft of the Water Plan Update states:

> California's relies on snowpack as its largest means of annual water storage. Runoff from the Sierra Nevada mountains during April through July of each year averages 14 million acre-feet and comes primarily from snowmelt. Computer modeling of global climate change scenarios predict significant future reductions in the Sierra snowpack. A reduced snowpack will reduce the total water storage for the state. Figure 4-7 (Model simulation of potential changes in snowpack during the 21st Century) shows a 52 percent reduction in the annual April through July runoff for a 2.1 degree C (3.8 F) of warming, well within the 1.4 to 5.8 degree C (2.5–10.4 F) range predicted by global climate models for this century.
>
> Changes in the timing of snowfall and snowmelt, as a result of climate change, may make it more difficult to refill reservoir flood control space during late spring and early summer, potentially reducing the amount of surface water available during the dry season. Changes in reservoir levels also affect lake recreation, hydroelectric power production, and fish habitat by altering water temperatures and quality. Reductions in snowpack may require changes in the operation of California's water systems and

infrastructure, and increase the value of additional flood control space in reservoirs.
(Public Review Draft California Water Plan Update, April 7, 2005, Vol. 4, page 4-27)

Despite the commitments made in the 2002 Reliability Report, this information is not included in the recent draft of the 2005 Delivery Reliability Report.

In addition, the Draft Reliability Report misleads readers by suggesting that information on climate change impacts in California is not available. Since the release of the Draft Reliability Report 2002, a large amount of analysis on potential climate change impacts on water management in California has been published. Yet, the Draft Report 2005 states:

> The studies do not incorporate any modifications to account for changes related to climate change or assess the risk of future seismic or flooding events significantly disrupting SWP deliveries. As tools are developed to address these risks and the resulting studies become available, the information will be incorporated into the assessment of SWP delivery reliability. The results of the CalSim-II studies conducted for this update to *The State Water Project Delivery Reliability Report 2002* (DWR 2003b) represent the best available assessment of the delivery capability of the SWP. (Draft Reliability Report page 17)

However, estimates of the deliveries from the SWP under climate change conditions have been modeled and analyzed. The California Energy Commission recently completed such an analysis in their report, "Predictions of Climate Change Impacts on California Water Resources Using CalSim-II: A Technical Note" (CEC report).

In contrast to the statement included in the Draft Reliability Report, the CEC report provides assessments of SWP delivery capability under several probable climate change scenarios. This work was prepared in response to Executive Order S-3-05 issued by Governor Schwarzenegger, which called for a report on the impacts to California of global warming, including impacts to water supply, public health, agriculture, the coastline, and forestry.

It includes analysis carried out using CalSim-II, some of it performed by DWR staff. It is disappointing that it took the initiative of the Energy Commission to generate climate change scenarios that PCL has been requesting of DWR for over two years. Moreover, DWR cannot credibly represent that such studies are impossible even after they become publicly available. To claim otherwise would fatally compromise the commitment to accuracy that is the hallmark of DWR's reporting requirement.

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The figures below from the CEC Report show that under climate change hydrologies, SWP deliveries at 75% reliability could be as much as 1.9 million acre feet less than the base condition.

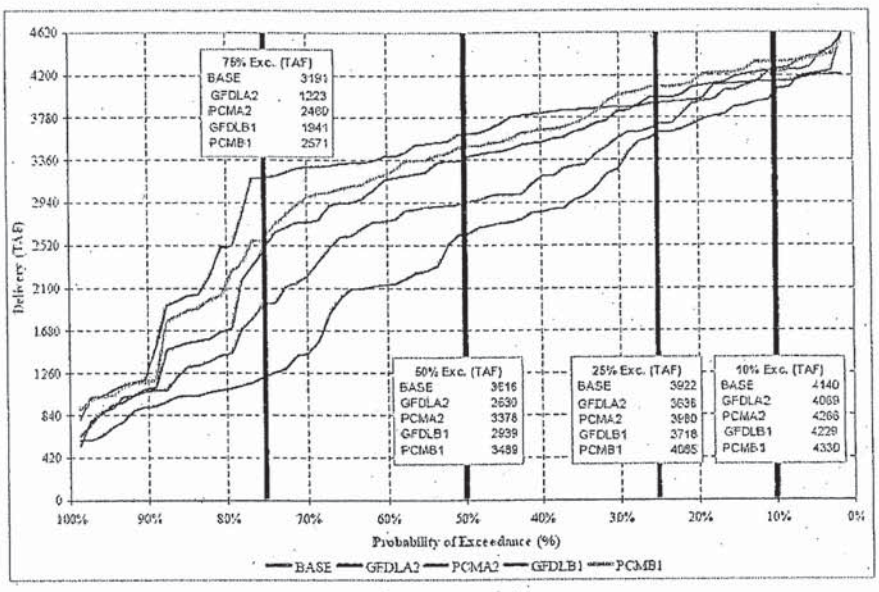

Figure 7. Exceedance probability plot of SWP Annual Deliveries under climate change scenarios PCM B1-A2 and GFDL B1-A2 for 2070-2099

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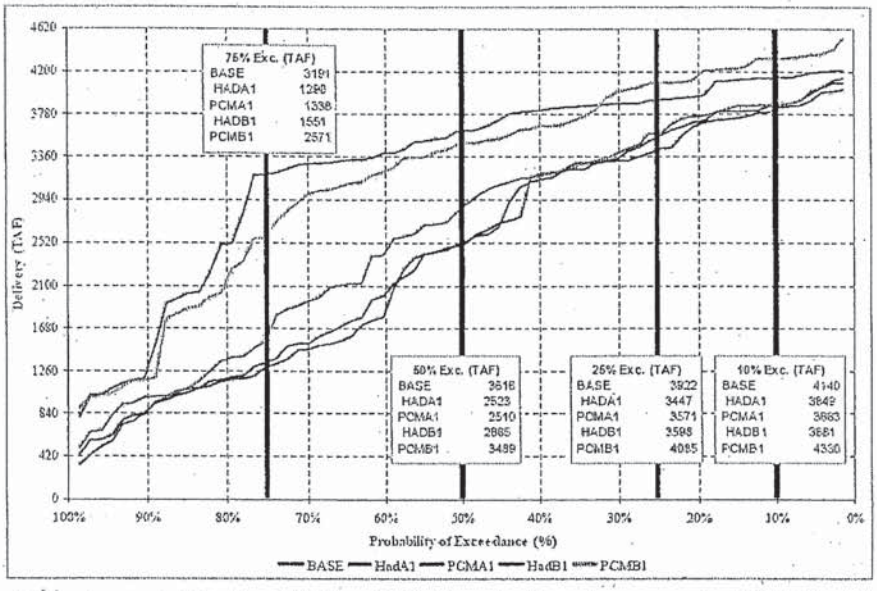

Figure 8. Exceedance probability plot of SWP Annual Deliveries under climate change scenarios PCM B1-A1 and HadCM3 B1-A1 for 2070-2099

(California Energy Commission, draft Predictions of Climate Change Impacts on California Water Resources Using CalSim-II: A Technical Note, December 2005 page 14 & 15 http://www.energy.ca.gov/2005publications/CEC-500-2005-200/CEC-500-2005-200-SD.PDF)

The CEC report concluded that modeling, "results show great negative impacts on California hydrology and water resources associated with most of climate change scenarios analyzed (only one scenario PCM run under B1 emission scenarios show just mild negative impacts)." (page 4)

This information demonstrates the range of outcomes that water managers must be prepared to address. This important assessment of the delivery capability of the SWP should be included in the Draft Reliability Report.

We also understand that DWR may have done its own analysis of the impacts of climate change on SWP deliveries. On the official State of California Climate Change Portal (http://www.climatechange.ca.gov/climate_action_team/reports/index.html) there is a reference to a study done by DWR. However unlike all of the other references, no results are included. The Reliability Report should include the results of DWR's own analysis.

Omission of this information prevents planners and decision makers from preparing for the inevitable implications for their water supplies. If the CEC already is predicting that water availability, and thus SWP deliveries, will be substantially reduced in the near future, water planners must adjust to that reality. DWR must address this problem, and

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will do California an enormous disservice if it continues to pretend that this problem does not exist.

Information in the Reliability Report will be used by local planners to make infrastructure investments and development decisions. The decisions made today about where to place infrastructure and where to approve development are long term commitments that will have impacts for hundreds of years into the future.

For instance, local decision-makers may chose not to place purple pipe in new development on the basis of assumed high level of delivery reliability from the SWP. Instead, decision-makers could choose to invest in new infrastructure to provide traditional supplies, including SWP supplies to new development. Once development is approved, the local area has foregone the opportunity to increase water supply reliability through use of recycled water. Should SWP supplies become significantly lower than predicted in the Reliability Report due to foreseeable impacts of climate change, significant local and statewide investments in infrastructure and housing would be stranded.

If local decisions are predicated on information from DWR that does not fully acknowledge potential constraints on DWR deliveries, they run the risk of producing excessive groundwater pumping and a host of other detrimental environmental consequences " (See *Planning and Conservation League*, 83 Cal. App. 4th at p. 915.)]

The long term nature and the resulting implications for the future of local areas as well as California as a whole, demand that the Reliability Report provide accurate, realistic information that fully discloses foreseeable uncertainty and risks.

The Report's unreliability also creates financial risks for the state. In many cases bonds will be committed to infrastructure built on expectations generated or encouraged by the Reliability Report. As with any financial investment, the risks associated with these investments must be fully disclosed to those who buy the bonds, those who approved the bonds, and those who invest in that infrastructure or in the developments supported by that infrastructure. As the state has learned in the past with levee liability, there is a potential risk that the State may be held accountable for decisions and investments made by others on the basis of false interpretation of the State's ability to protect and guarantee those investments.

The Reliability Report should include risk analysis and impacts from catastrophic failure in the Bay Delta Estuary from earthquake or flood

The Draft Reliability Report correctly identifies the availability and means of conveyance as a primary factor in determining reliability of SWP supplies. However, like climate change impacts, the Draft Report fails to include analysis or discussion of serious and eminent risks to the Bay Delta Estuary, an essential component of the SWP conveyance

system. Significant risks to the ability of the SWP to export water from the Bay Delta Estuary are posed by the vulnerability of levees to flood, sea level rise and earthquake, as well as environmental degradation and continued declines of important fish species.

Dr. Jeffery Mount from the University of California, Davis, recently completed a risk analysis estimating that there is a 64 percent probability that the Bay Delta Estuary will experience abrupt changes resulting from flooding or seismic activity within the next fifty years. These changes would permanently alter the hydrology, water quality and ecosystem of the Estuary. Furthermore, Dr. Mount found that there is no institutional capacity to address these permanent changes. (Subsidence, Seismicity and Sea Level Rise: Hell AND High Water in the Delta; presented by Dr. Jeffery Mount to the California Bay-Delta Authority October 14, 2004. http://calwater.ca.gov/CBDA/AgendaItems_10-13-14-04/Presentation/Item_13_6_Subsidence_Seismicity_Sea_Level_Rise.pdf)

In recent testimony to a joint committee of the California Legislature, Lester Snow, Director of DWR, outlined the serious risks to SWP water supply availability associated with Bay Delta levee failure. In his presentation, "How a Delta Earthquake Could Devastate California's Economy," Director Snow stated that extended impacts to water availability would include:

> • Using most optimistic projection, levee repairs will require at least 15 months.
> More realistically, the repairs will take much longer.
> • Southern California water agencies are drawing from reserves. Some will last up to 36 months; others will go dry sooner.
> • Extreme water conservation measures enacted
> • Ground water basins drawn dangerously down – may lead to contamination
> • Water conservation and transfer programs enacted
> (Slide 16 of Lester Snow's presentation to the joint legislative committee, November 1, 2005
> http://www.publicaffairs.water.ca.gov/newsreleases/2005/11-01-05DeltaEarthquake.pdf)

Director Snow further indicated that recovery of the conveyance through the Delta could be abandoned. (Slide 19 of Lester Snow's presentation). Director Snow told the Legislature that "... we also need to recognize the Statewide impacts ...if Delta water supplies are reduced or eliminated as a result of a catastrophic failure of our levee system." (Quote taken from DWR Press Release, November 1, 2005, http://www.publicaffairs.water.ca.gov/newsreleases/2005/11-01-05flood.cfm)

Accordingly, the Reliability Report should incorporate Director Snow's recommendation to recognize the risk to SWP reliability from flood, sea level rise and earthquake.

In addition to vulnerable levees, ecosystem degradation poses a significant risk to the ability to convey SWP water reliably through the Bay Delta Estuary. Recently, data from the Department of Fish & Game's Fall Mid Water Trawl signaled that there is a serious ecosystem collapse in the Estuary, with four important pelagic fish populations at historic lows, including the California and Federally Endangered Species Act listed Delta Smelt.

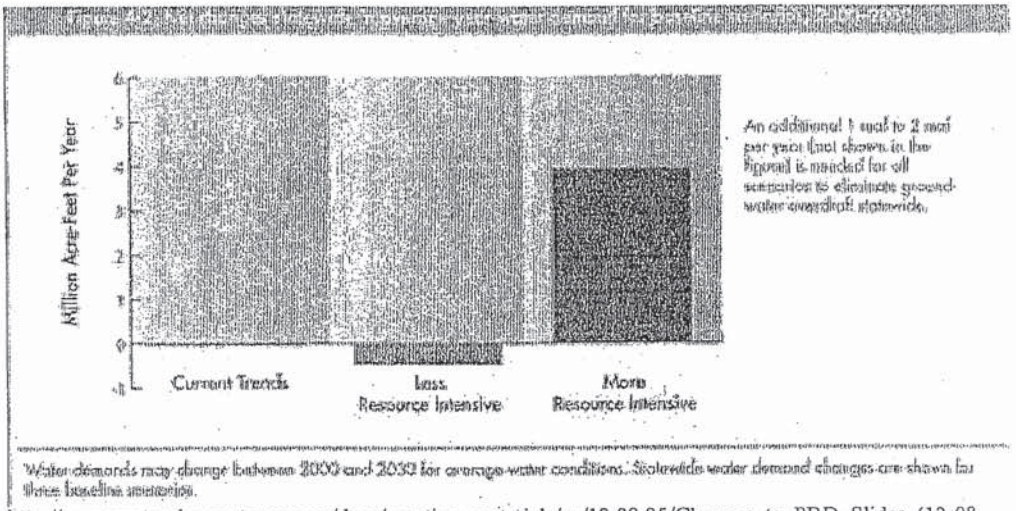
In response, many agencies, including DWR are participating in an emergency science review called the 'Pelagic Organism Decline' (POD) investigation. The most recent report from the POD investigations indicates that increased exports, which increase fish entrainment and decrease available habitat, may be a primary contributor to the fisheries declines ("Interagency Ecological Program Synthesis of 2005 Work to Evaluate the Pelagic Organism Decline (POD) in the Upper San Francisco Estuary," November 2005 http://science.calwater.ca.gov/pdf/workshops/IEP_POD_2005WorkSynthesis-draft_111405.pdf).

The final Reliability Report should acknowledge the current pelagic organism decline and disclose the possibility that decreases in exports may be necessary in order to reverse those declines. Lastly, while the pelagic species decline currently is the most salient of the Bay-Delta Estuary's environmental problems, it is not the only problem that might compel delivery reductions. Bay-Delta water currently does not meet federal or state water quality standards, and many other species are listed as threatened or endangered. The final Reliability Report should acknowledge that fixing these other environmental problems also may require export reductions.

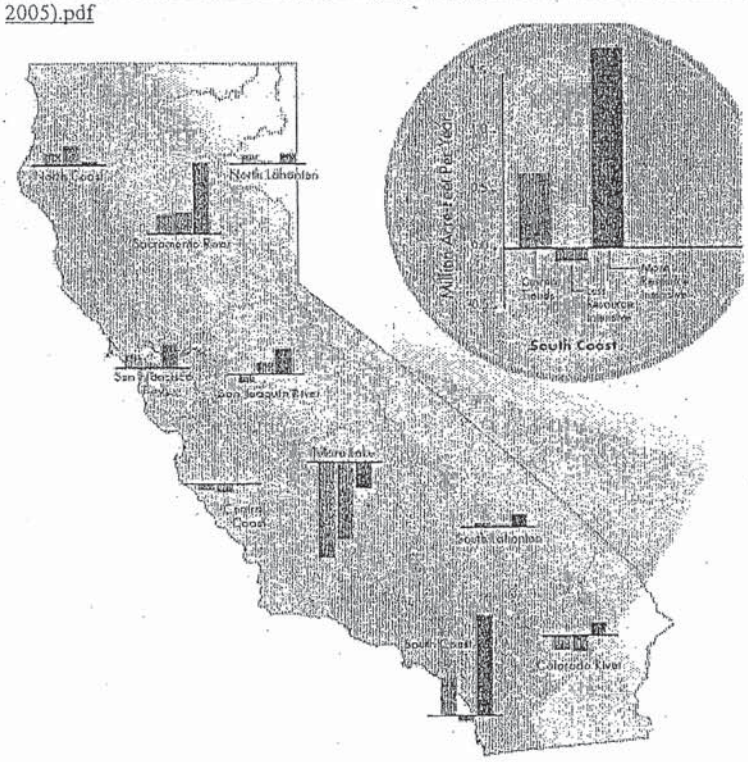
The Reliability Report should evaluate variable levels of demand, utilizing demand modeled in the Draft California Water Plan Update 2005

The Draft Reliability Report identifies the level and pattern of water demand in the delivery service area as the third primary component in determining SWP reliability. However, the Draft Reliability Report does not examine a significantly varied range of possible demand scenarios for the future. That omission is important, for such analysis would likely show that reliability is inversely proportional to California's overall level of demand.

Recent work completed by DWR for the California Water Plan provides a range of demand scenarios that should be included in the Reliability Report. The California Water Plan Update 2005 identifies three plausible demand scenarios: current trends continued; less resource intensive; and more resource intensive. Two of these three scenarios demonstrate that it is plausible that in 2030 California water demands will *decrease*, even with an expected 12 million more residents. The greatest decreases in water demands in every scenario occur in the SWP service area of Tulare Lake.



http://www.waterplan.water.ca.gov/docs/meeting_materials/ac/12.09.05/Changes_to_PRD_Slides_(12-08-2005).pdf



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http://www.waterplan.water.ca.gov/docs/meeting_materials/ac/12.09.05/Changes_to_PRD_Slides_(12-08-2005).pdf

Recently, the California Court of Appeals determined that state and Federal water agencies erred when they failed to adequately assess a range of reasonable scenarios in the CALFED ROD EIR in part because the environmental document did not include an analysis of reduced pumping from the Bay Delta Estuary (*In Re Bay Delta Programmatic Environmental Impact Report Coordinated Cases* (2005) 133 Cal.App.4th 154). Consistent with this finding, and DWR's recent good work on the State Water Plan Update, the Reliability Report should evaluate reliability under the three demand scenarios presented in the California Water Plan Update.

The Reliability Report should be consistent with operations described in environmental reviews

The Draft Reliability Report assumes that SWP deliveries into the future will be much higher than historic averages. In the past, SWP deliveries have averaged about 2 maf per year, while the Draft Reliability Report proposes that future deliveries will average from 2.8 to 3.1 maf annually. The Draft Reliability Report also assumes that an additional maximum of 1.11 maf of water could be delivered under Article 21.

Because CalSim-II is an optimization model that does not necessarily reflect options available to water operators, it may predict these levels of exports. However, federal and state water quality and endangered species laws and regulations probably would prohibit such high export levels for water quality problems and if species impacts were chronic even at historic levels. In light of the recent pelagic organism declines in the Bay Delta Estuary, it is prudent to ensure the Draft Reliability delivery predictions would not violate conditions of the Federal Clean Water Act, the Federal or California Endangered Species Acts, or any other environmental permit condition, regulation, standard, or law.

In order to ensure that stated water deliveries would be legally feasible, the Reliability Report must explicitly state whether listed export levels are consistent with those modeled in environmental reviews, including the recently issued biological opinions. For instance, the Reliability Report should state whether the Biological Opinions for OCAP in 2004 accounted for impacts to listed species under a modeling scenario that contemplated deliveries of 1.11 million acre feet of Article 21 water.

The Reliability Report should not recommend that water agencies integrate Article 21 as firm annual supplies in planning documents

Article 21 water is by definition interruptible water; indeed, the word "interruptible" replaces the formerly used "surplus" in the Monterey Amendments. It should not be used as the basis for uninterruptible demands. Yet in chapter 6 of the Draft Reliability Report,

local agencies are encouraged to include Article 21 water in a table of average annual values.

As DWR is aware, water supplies accounted for in the Urban Water Management Plans become the basis for approval of water supply assessments for new development in California. It is not only imprudent, but would provide institutional cover for unreliable planning, to recommend that local decision-makers approve housing that will be dependent on water that is 'interruptible.'

Article 21 water should be removed from the recommended table of average annual deliveries.

Use of CalSim-II as the sole tool to determine reliability is inappropriate given the following significant and yet to be resolved deficiencies

The lack of calibration and other deficiencies of CalSim-II have been made known the DWR in formal comments on the 2002 Draft by several parties, specifically Arve Sjovold and Dennis O'Conner. In addition, a 2003 expert peer review report documented numerous problems in CalSim II, and concluded that its predictions should be treated as "hypotheses." A. Close et al., A Strategic Review of CalSim II and its User for Water Planning, Management and Operations in California 13 (2003). This Draft has not adequately addressed those deficiencies. Some of these previously-highlighted deficiencies are listed below.

- CalSim-II has not been calibrated or validated
- It is unclear whether CalSim-II incorporates limitations to groundwater use in the Sacramento Valley
- The CalSim-II model should not be used to make absolute predictions, such as those incorporated into the Reliability Report
- CalSim-II does not recognize or report uncertainty

Additionally, CalSim-II may produce results not consistent with reality, replacing the problem of paper water with an even greater problem of 'cyber water.' For example, in 2001, California experienced water supply associated with approximately the 75% exceedence level, and the State Water Project was able to deliver 1,607,570 ac-ft. However, the CalSim-II simulations predicted a 75% exceedence level of supply of roughly 2,500,000 ac-ft (as read from Figure 5.1). In other words, CalSim-II overpredicted deliveries by more than 50%. These discrepancies demonstrate the need to use multiple tools to determine reliability, as well as the need to articulate limitations of this particular model. Similarly, they demonstrate that local agencies will take enormous risks if they approve projects in reliance on CalSim II's predictions that future deliveries will be substantially higher than historic deliveries.

The Draft Reliability Report attempts to respond to the recent to the recommendations and conclusions from the recent CBDA Peer Review, *A Strategic Review of CalSim II and its Uses for Water Planning, Management, and Operations in Central California* (Close and others 2003).

The Draft Reliability Report states:

> In *Peer Review Response*, DWR and USBR (2004) conclude the concern about overestimations of south-of-Delta deliveries is unwarranted because the 73-year study referenced by the panel is not designed to mimic historical conditions; rather it is intended to determine the reliability of the SWP when the demand equals the maximum Delta Table A amount (4.133 MAF) every year. The results of the referenced study are documented in *The SWP Delivery Reliability Report 2002* (DWR 2003b) as study 3 (2021B).
>
> A more appropriate method for assessing the ability of CalSim II to accurately model SWP operations is to compare the historical SWP deliveries with the simulated deliveries of the Historical Operations Study. DWR committed to conducting this study in *The SWP Delivery Reliability Report 2002* (DWR 2003b). The study is documented in the November 2003 Technical Memorandum Report *CalSim-II Simulation of Historical SWP/CVP Operations* (DWR 2003a). The Historical Operations Study is designed to assess CalSim II's ability to mimic historical operations of the SWP. In this study, historical input is used where reliable data are available. In situations where reliable historical record is not readily available, reasonable assumptions and estimates are made. (pages 10 & 11)

Before stating that this approach is the most appropriate response to the Peer Review concerns, DWR should reconvene the panel in order to review whether DWR's response satisfies the concerns raised in the original peer review. To verify that this response appropriately satisfies the concerns raised by that panel.

Additional specific comments on uses of CalSim-II in the Draft Reliability Report 2005 are attached in Appendix A.

Conclusion

PCL hopes that these comments assist DWR in arriving at a final version of the Reliability Report that corrects the serious deficiencies identified in the draft,

and provides the additional analysis recommended here. Without these additional efforts, the report would not fulfill DWR's responsibilities under the settlement agreement and the Article 58 of the SWP contracts, and would fail to provide local decision-makers with a credible basis to ensure that development decisions are grounded in an accurate assessment of deliverable SWP supply.

Sincerely,

Mindy McIntyre
Water Program Manager
Planning and Conservation League

Cc:
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Antonio Rossmann, Rossmann & Moore, LLP
Roger Moore, Rossmann & Moore, LLP
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Senator Kehoe
Senator Ducheny
Senator Perata
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Wes Banister, Metropolitan Water District
Debra Man, Metropolitan Water District
Individual SWP contractors

APPENDIX A: **Specific comments on uses of CalSim-II in this Draft Reliability Report are highlighted below.**

Page 7: **"Whatever assumptions are made, every responsible water delivery reliability analysis should expressly state the assumptions, methods and data used to produce its results. It should also be understood that those numbers depend on, and are no better then, the assumptions upon which they must necessarily rest."**

This statement is entirely true. Yet this particular "water delivery reliability analysis" does not measure up to its own standard, because it does not adequately disclose the weaknesses of the key assumptions it makes and the key model upon which it relies. The reliability report should acknowledge that the simulated levels of SWP deliveries reported on the Draft Reliability Report are defined entirely by the explicit and implicit assumptions used in CalSim-II—they are CalSim-II's reliability results and not the results for the physical system itself—and should address the potential weaknesses in the "assumptions, methods and data" used to make those predictions.

Additionally, a statement such as this is so important that it should be made prominently, perhaps in a highlighted text box, rather than at the end of a paragraph in the body of the report.

Page 7: **"For example, the demand 30 years ago for the SWP was not as high as it is currently or expected to be in the future. Because the need for SWP water then was relatively low, less water was exported through the SWP during normal and wet times then could have been if the demand had been higher. Simply put, less water was delivered because less water was needed."**

The implicit assumption in this statement that there was no logic for contractors to take the water they were entitled to under Table A because 1) they had no need for it at that time, and 2) they had no place to store it for later use. If the assumption is that now and into the future the contractors will want to take delivery of their full Table A amounts—in other words, that circumstances have changed—then one or both of two conditions must be true 1) they need it and/or 2) they can store it. The reliability report should substantiate its reasons for assuming such a change in conditions.

On page 15, the Draft Reliability Report states that studies 4 and 5 were developed in discussions with SWP contractors and stakeholders involved with the development of the analysis associated with the environmental documentation for the Monterey Agreement. What analysis of current or future demand patterns and our available storage capacities is used to justify the assumption of a demand for the full Table A allotments? What are the assumptions about population growth, water use rates, availability of non-SWP supplies and available local storage capacity that lead to the conclusion that contractors will consistently ask for full Table A allotments?

Page 7: **"Conversely, the current or projected delivery capability of the a water project would be less if (1) demand for water from a water project was at its maximum level for many years, (2) no new facilities were built, and (3) the supply of**

the main sources of water was recently reduced because another entity with a prior water right increased its use of that source."

This statement is unclear and counterintuitive. The Draft Reliability Report often argues that higher levels of demand will increase the delivery capability not decrease it. DWR should clarify the point it is trying to make here or eliminate this statement altogether.

Page 8: "In the 2002 Reliability Report, the Department committed to conducting a comprehensive sensitivity analysis for assumptions contained in the CalSim-II model studies. This analysis is complete."

While this analysis is reported on in the Draft Reliability Report, DWR has made no attempt to use the results of that analysis to comment on the results of the CalSim-II modeling conducted for the reliability investigation. This seems to defeat the purpose of conducting and reporting on the sensitivity analysis. An attempt to consider the implications of the sensitivity analysis is included later in these comments.

Page 11: "The simulated deliveries in Figure 3-1 were adjusted for any differences between the historical and simulated carry-over storage in the SWP system reservoirs, Lake Oroville and SWP's portion of San Luis Reservoir."
Page 74 "(in Appendix E dealing with the Historical SWP/CVP Operations Simulation Technical Memorandum: Simulations of historically wet years, when the system was not supply constrained, may therefore be a poor indicator of the model's ability to accurately simulate future levels of development. Particular interest is therefore place on model results during the six-year drought of 1987-1992."

The Draft Reliability Report appears to offers up the Technical Memorandum Report entitled *CalSim-II Simulation of Historical SWP/CVP Operations* in order to support the legitimacy of the using CalSim-II to conduct the reliability analysis. If this is the goal then these two statements are problematic.

While the Draft Reliability Report gives no clear indication about what the adjustments referred to on page 11 entail, the fact that adjustments had to be made to generate the claimed correspondence shown in Figure 3-1 cannot stand without further explanation. The goal of the *CalSim-II Simulation of Historical SWP/CVP Operations* Technical Memorandum should have been to see if CalSim-II could be used to faithfully reproduce all aspects of system operations, not simply the SWP exports during the 1987-1992 drought. If the storage levels in SWP reservoirs were not faithfully reproduced and had to be adjusted in some unexplained way to generate the results in Figure 3-1, then the Technical Memorandum should not be used to build the creditability of the CalSim-II.

In the same way, the comment in Appendix E that only the results for drought periods are critical for reliability analysis is not valid. The Technical Memorandum is being offered as support for the use of CalSim-II, not as a part of the reliability analysis itself. The

claim that is being made is that the model faithfully replicated history and therefore has creditability in terms of simulating future conditions. The apparent recognition that the model did not do particularly well in normal and wet periods calls into question the validity of this claim.

In addition, even if CalSim II did accurately simulate deliveries in one past drought, that does not mean it can accurately simulate deliveries in a future drought, for constraints on the system are likely to be different. Water quality standards and endangered species protections have changed substantially since the 1987-02 drought, largely because the standards in place during that drought proved insufficiently protective. If the same drought conditions were to recur in the future, those heightened protections would likely prevent the SWP from exercising the same delivery capacity. CalSim II's predictions that those past diversions would be repeated therefore may prove the model's inadequacy rather than its credibility.

In keeping with the first comment, the inconclusive and somewhat opaque presentation of the *CalSim-II Simulation of Historical SWP/CVP Operations* Technical Memorandum results suggest that this report is about the reliability of SWP deliveries in the CalSim-II model and that the CalSim-II model is not a fully faithful representation of the how the system has been or presumably will be operated. Once again, it is fair to point out that if one wants to imagine future conditions then one must use some sort of model but the reader should not be left with the assumption that CalSim-II is a fully faithful representation of the system.

As an aside, Table 4 of the *CalSim-II Simulation of Historical SWP/CVP Operations* Technical Memorandum offers the most real, albeit limited, assessment of the reliability of the actual system if one is to assume that at some point in the future SWP contractors will consistently request their full Table A allotments. In 2001, contractors requested 4,124,126 ac-ft of SWP water and were allotted 1,607,570 ac-ft of supply. In 2003, contractors requested 4,126,929 ac-ft of SWP water and were allotted 3,714,233 ac-ft supply. These are two points on the exceedence curve of the real system reliability, certainly not enough to develop a robust reliability assessment. It is interesting to point out, however, that these delivery levels fall at roughly the 85% and 8% exceedence levels on the results for Study 4 that are meant to approximate current levels of development and demand (Figure 5.1). In terms of the hydrologic conditions 2001 and 2003 fall at approximately the 77% and 42% exceedence levels in terms of the Sacramento Valley water year index values for the period from 1922 to 1994 period simulated in CalSim-II. While far from a perfect metric for evaluating the performance of CalSim-II, this points out how the operations of the real system under roughly current conditions when nearly the full Table A amount was requested by the contractors compare with the simulated results.

In terms of system reliability during dry periods, the most interesting conclusion to draw from this comparison is that actual operations in 2001, which benefited from a water

claim that is being made is that the model faithfully replicated history and therefore has creditability in terms of simulating future conditions. The apparent recognition that the model did not do particularly well in normal and wet periods calls into question the validity of this claim.

In addition, even if CalSim II did accurately simulate deliveries in one past drought, that does not mean it can accurately simulate deliveries in a future drought, for constraints on the system are likely to be different. Water quality standards and endangered species protections have changed substantially since the 1987-02 drought, largely because the standards in place during that drought proved insufficiently protective. If the same drought conditions were to recur in the future, those heightened protections would likely prevent the SWP from exercising the same delivery capacity. CalSim II's predictions that those past diversions would be repeated therefore may prove the model's inadequacy rather than its credibility.

In keeping with the first comment, the inconclusive and somewhat opaque presentation of the *CalSim-II Simulation of Historical SWP/CVP Operations* Technical Memorandum results suggest that this report is about the reliability of SWP deliveries in the CalSim-II model and that the CalSim-II model is not a fully faithful representation of the how the system has been or presumably will be operated. Once again, it is fair to point out that if one wants to imagine future conditions then one must use some sort of model but the reader should not be left with the assumption that CalSim-II is a fully faithful representation of the system.

As an aside, Table 4 of the *CalSim-II Simulation of Historical SWP/CVP Operations* Technical Memorandum offers the most real, albeit limited, assessment of the reliability of the actual system if one is to assume that at some point in the future SWP contractors will consistently request their full Table A allotments. In 2001, contractors requested 4,124,126 ac-ft of SWP water and were allotted 1,607,570 ac-ft of supply. In 2003, contractors requested 4,126,929 ac-ft of SWP water and were allotted 3,714,233 ac-ft supply. These are two points on the exceedence curve of the real system reliability, certainly not enough to develop a robust reliability assessment. It is interesting to point out, however, that these delivery levels fall at roughly the 85% and 8% exceedence levels on the results for Study 4 that are meant to approximate current levels of development and demand (Figure 5.1). In terms of the hydrologic conditions 2001 and 2003 fall at approximately the 77% and 42% exceedence levels in terms of the Sacramento Valley water year index values for the period from 1922 to 1994 period simulated in CalSim-II. While far from a perfect metric for evaluating the performance of CalSim-II, this points out how the operations of the real system under roughly current conditions when nearly the full Table A amount was requested by the contractors compare with the simulated results.

In terms of system reliability during dry periods, the most interesting conclusion to draw from this comparison is that actual operations in 2001, which benefited from a water

supply associated with approximately the 75% exceedence level, provided a level of service of only 1,607,570 ac-ft while the CalSim-II simulations yielded a 75% exceedence level of supply of roughly 2,500,000 ac-ft (as read from Figure 5.1).

Page 16: "The Article 21 demand in the updated studies (4 and 5) is higher than the earlier studies for the December through March period."

It does not appear that DWR makes any attempt to explain why these higher levels were assumed. They are used in CalSim-II to prompt an export of water to SWP contractors when conditions warrant. While the Draft Reliability Report fairly comments on page 17 that "Incorporating supplies received under Article 21 into the assessment of water supply reliability is a local decision based on specific local circumstances, facts and level of water supply reliability required", including these numbers that are driven by a somewhat unjustified level of assumed Article 21 demand is not the clearest manner in which to present reliability analysis.

Page 25: "By referencing the curve for Study 5 in Figure 5-2, the following can be deduced":

- *In 75 percent of the years, the annuall delivery of the SWP is estimated to be at of above 2.7 maf per year (65 % of 4.13 maf).*

There is nothing special about the 75, 50 and 25% thresholds used in providing a narrative description of Figure 5.2 In fact it is equally valid to open and close the list of bullets with statements like:

- The maximum amount of water that can be delivered in response to full Table A demands with 100 percent reliability, in the CalSim-II model, is 187,000 ac-ft.
- Under the least supply constricted conditions the SWP will be able to deliver, in the CalSim-II model, the full Table A allotments.

Without even worrying about whether or not the assumptions used in the CalSim-II model are valid or not, these two statements are as valid as the three offered by DWR and they create a much different impression of SWP reliability.

Even if 100% reliability is not a valid standard, water utility plans for a system that will fail 25% of the time, as is the corollary of the 75% exceedence, are no more valid. Municipal utilities are often looking for, 90-95% reliability. According to these standards, Figure 5-2 suggests that the reliability of the system is between 1.4 maf and 0.8 maf. These numbers, which are no more or less valid than those reported by DWR, are perhaps more useful for water managers in assessing the reliability of a water supply.

Page 26: "In the case of 1977, it is reasonable to assume that up to 500 taf of 1976 allocated Table A water could be carried over to 1977."

This sort of conditional post-processing of model output, which could have ripple effect across the rest of the simulation with potential changes in model results, is not valid and

this whole section should be removed. To its credit DWR does not try and use any of this after the fact hand waving in the Table and Figures published in the Draft Reliability Report. Nonetheless, by including this narrative DWR is attempting to argue both that the model can be trusted and that the model cannot be trusted. This is not legitimate model interpretation.

Page 49: "The estimate could be viewed as too low because the Department of Water Resources (DWR) is planning to have facilities in place by 2025 that will increase the reliability of the SWP. The estimate could be viewed as too high because there is the potential for exports to be required to be reduced to protect endangered fish species."

It is inappropriate to speculate on what deliveries could be with new facilities when the information is to be used under the provisions of Senate Bill 221 to verify that water supplies are available for new developments.

Page 78: "Table E-1 Summary of the Expected Elasticity Index (EI) and Sensitivity Index (SI) for Selected Variables."

These very interesting results are included in the Draft Reliability Report and are then ignored completely interpreting the results of the reliability analysis. Let us for example attempt to recast the statement offered above:

- The maximum amount of water that can be delivered in response to full Table A demands with 100 percent reliability, according to the CalSim-II model, is 187,000 ac-ft.

If the sensitivity analysis is valid, it is legitimate to make the following statements.

- If the assumed levels of Banks Pumping vary by ±10% relative to the base level assumed in the CalSim-II simulation, then the maximum amount of water that be delivered in response to full Table A demands with 100 percent reliability, in the CalSim-II model, will very between 184,195 and 189,805 ac-ft.
- If the assumed levels of Oroville inflows vary by ±10% relative to the base level assumed in the CalSim-II simulation, then the maximum amount of water that can be delivered in response to full Table A demands with 100 percent reliability, according to the CalSim-II model, will very between 182,138 and 191,862 ac-ft.

DWR should either make these sorts of statements or they should not attempt to use the results of the sensitivity analysis to assert the legitimacy of the use of CalSim-II for SWP reliability analysis.

PLANNING AND CONSERVATION LEAGUE

May 8, 2006

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Re: Gates/King Additional Information Document

Dear Santa Clarita Planning Commission:

The Planning and Conservation League submits the following comments on the Draft Additional Analysis for the Final Environmental Impact Report for the Gate-King Industrial Park SCH. #2001021121.

In *California Oak Foundation v. City of Santa Clarita*, 133 Cal. App. 4th 1219 (2005) the Court of Appeal, to which the Planning and Conservation League submitted an amicus brief, found that the previous Environmental Impact Report for the Gate King Industrial Park was deficient due to its defective assessment of water supplies supporting the project. Noting that the EIR must serve as "an informative document to make government transparent," the court warned that "[t]ransparency is impossible without a clear and complete explanation of the circumstances surrounding the reliability of the water supply. " *Id.* at 1237.

Unfortunately, the new Draft Additional Analysis repeats the deficiencies of the original analysis and relies on the same unreliable water supplies included in the original analysis. The Draft Additional Analysis relies centrally on a legally deficient SB 610 Water Supply Assessment (WSA) from Newhall County Water District. That WSA relies on highly uncertain "paper" water amounts that may not be available from the State Water Project, including a controversial, non-final and legally contested Monterey Amendments-based transfer of 41,000 acre feet of water allocation amounts from the Kern County Water Agency to the Castaic Lake Water Agency. Like the WSA, the Draft Additional Analysis fails to establish the reliability of water from this contested transfer to support final approval of this project, and fails to identify and analyze reliable water to support the project in its absence. PCL previously submitted letters to your commission and to the Newhall County Water District outlining the deficiencies of the SB 610 Water Supply Assessment for the Gate King Project. PCL submits those comments to your commission in full as attachments to this letter.

The Draft Additional Analysis and the SB 610 WSA also repeatedly rely on the Castaic Lake Water Agency's 2005 Urban Water Management Plan, which is now in litigation, and the 2005 Draft State

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