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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.

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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).

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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)."

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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.



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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’s 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 Monterey 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

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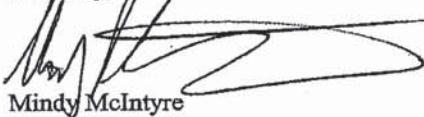
reported in the DWR's Draft Reliability Report. If the SWP deliveries are cut back by 1 million acre feet, NCWD would not receive the water relied on for the Gate King project.

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

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A. Madman

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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 41,000 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's dismissal of the Writ of Mandate, they will not approve any new project or



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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.



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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



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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,

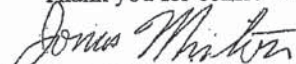
The Planning & Conservation League, a proponent of open process and of the California Environmental Quality Act, strongly urges the Newhall County Water District Board members to reject the proposed addendum to include the Gate-King Project in the previous project EIR. Approving this addendum would endanger 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

CC: Newhall Water District Board Members
Attachments



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PLANNING AND CONSERVATION LEAGUE

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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 221 for 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's 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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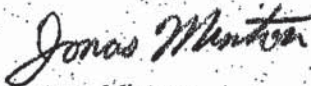


This is not merely a technical requirement or hoop that must be jumped through. There is a very substantive reason that water districts must assure reliable water supplies. If you commit to serve new development based on not final water supplies you put all of your existing customers at risk of shortage.

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

Senior Project Manager

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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 DeJores 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

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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's 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 in 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, 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

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- 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
27234 Bouquet Canyon Road
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

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 III C4 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

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Continue attachment to
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Jeff Hogan from PCL.

- Mindy McIntyre
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Date:	<u>May 2, 2006</u>		
Pages	<u>3</u> (including cover sheet)		
Re:	<u>Comments on the Additional Information Document for Gates/King Project</u>		
