

STOCKDALE INTEGRATED BANKING PROJECT

Final Environmental Impact Report
SCH #: 2013091076

Prepared for
Rosedale-Rio Bravo
Water Storage District and
Irvine Ranch Water District

November 2015



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626 Wilshire Boulevard
Suite 1100
Los Angeles, CA 90017
213.599.4300
www.esassoc.com

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CHAPTER 8

Introduction to Response to Comments

This Final Environmental Impact Report (Final EIR) has been prepared in accordance with the California Environmental Quality Act (CEQA) as amended (Public Resources Code Section 21000 et seq.) and *CEQA Guidelines* (California Administrative Code Section 15000 et seq.). The Final EIR incorporates, by reference, the Draft EIR (State Clearinghouse No. 2013091076) prepared by Rosedale Rio-Bravo Water Storage District (Rosedale) in consultation with the Irvine Ranch Water District (IRWD) for the Stockdale Integrated Banking Project (proposed project), as it was originally published and the following chapters, which include revisions made to the Draft EIR.

8.1 CEQA Requirements

Before Rosedale may approve the project, it must certify that the Final EIR: a) has been completed in compliance with CEQA; b) was presented to the Rosedale Board of Directors who reviewed and considered it prior to approving the project; and c) reflects Rosedale's independent judgment and analysis.

CEQA Guidelines Section 15132 specifies that the Final EIR shall consist of the following:

- the Draft EIR or a revision of that draft;
- comments and recommendations received on the Draft EIR;
- a list of persons, organizations, and public agencies commenting on the Draft EIR;
- the response of the Lead Agency to significant environmental points raised in the review and consultation process; and
- any other information added by the Lead Agency.

This Final EIR for the Stockdale Integrated Banking Project presents the following chapters as a continuation of those included in the Draft EIR:

- Chapter 8: Introduction and CEQA process
- Chapter 9: A list of persons, organizations, and public agencies commenting on the Draft EIR, and the written comments received on the Draft EIR
- Chapter 10: Written responses to each comment identified in Chapter 9

- Chapter 11: Revisions made to the Draft EIR in response to comments received or initiated by the Lead Agency

8.2 CEQA Process

Public Participation Process

Notice of Preparation and Public Scoping

In accordance with Section 15082 of the *CEQA Guidelines*, a Notice of Preparation (NOP) of an EIR was prepared and circulated for review by applicable local, state and federal agencies and the public. The 30-day project scoping period, which began with the distribution of the NOP, remained open through October 24, 2013. Two public scoping meetings were held on October 15, 2013 at the IRWD office and October 16, 2013 at the Rosedale office. The NOP provided the public and interested public agencies with the opportunity to review the proposed project and to provide comments or concerns on the scope and content of the environmental review document including: the range of actions; alternatives; mitigation measures, and significant effects to be analyzed in depth in the EIR.

Notice of Availability of the Draft EIR

The Notice of Availability (NOA) of the Draft EIR was posted on April 28, 2015 with the County Clerks in Kern County and Orange County. The Draft EIR was circulated to federal, state, and local agencies and interested parties requesting a copy of the Draft EIR. Copies of the Draft EIR were made available to the public at the following locations:

- Rosedale-Rio Bravo Water Storage District Web Site (<http://www.rrbwsd.com>)
- Irvine Ranch Water District Web Site (<http://www.irwd.com>)
- Beale Memorial Library, 701 Truxtun Ave, Bakersfield CA 93301
- Heritage Park Regional Library, 14361 Yale Ave, Irvine CA 92604

The Draft EIR was circulated for public review from April 28, 2015 through June 12, 2015. During this period, Rosedale and IRWD held two public meetings to provide interested persons with an opportunity to comment orally or in writing on the Draft EIR and the project. The public meetings were held at the Rosedale office in Bakersfield on May 12, 2015, and the IRWD office in Irvine on May 13, 2015. No comments were offered from the audience at either public meeting.

Evaluation and Response to Comments

CEQA Guidelines Section 15088 requires Rosedale, as the Lead Agency, to evaluate comments on environmental issues received from parties that have reviewed the Draft EIR and to prepare a written response. The written responses to commenting public agencies shall be provided at least ten (10) days prior to the certification of the Draft EIR (*CEQA Guidelines* §15088(b)).

Final EIR Certification and Approval

As the Lead Agency, Rosedale has the option to make the Final EIR available for public review prior to considering the project for approval (*CEQA Guidelines* §15089(b)). Prior to considering the project for approval, Rosedale, as the Lead Agency, will review and consider the information presented in the Final EIR and will certify that the Final EIR:

- (a) has been completed in compliance with CEQA;
- (b) has been presented to the Board of Directors as the decision-making body for the Lead Agency, which reviewed and considered it prior to approving the project; and
- (c) reflects Rosedale's independent judgment and analysis.

Once the Final EIR is certified, Rosedale's Board of Directors may proceed to consider project approval (*CEQA Guidelines* §15090). Prior to approving the proposed project, Rosedale must make written findings and adopt statements of overriding considerations for each unmitigated significant environmental effect identified in the Final EIR in accordance with Sections 15091 and 15093 of the *CEQA Guidelines*.

Notice of Determination

Pursuant to Section 15094 of the *CEQA Guidelines*, Rosedale will file a Notice of Determination (NOD) with the Office of Planning and Research and Kern County Clerk within five working days of project approval.

CHAPTER 9

Comment Letters

The Draft EIR for the Stockdale Integrated Banking Project (proposed project) was circulated for public review for 45 days (April 28, 2015 through June 12, 2015) in accordance with the requirements of *CEQA Guidelines* Section 15105(a). Rosedale received five comment letters during the public review period, which are listed in **Table 9-1** and included within this chapter. The letters have been marked with brackets that delineate comments pertaining to environmental issues and the information and analysis contained in the Draft EIR. Responses to such comments are provided in Chapter 10.

TABLE 9-1 – COMMENT LETTERS RECEIVED

Comment No.	Commenting Agency	Date of Comment
1	Department of Conservation's Division of Land Resource Protection	June 2, 2015
2	San Joaquin Valley Air Pollution Control District	June 9, 2015
3	Kern Water Bank Authority	June 12, 2015
4	Kern County Water Agency	June 12, 2015
5	City of Bakersfield	June 12, 2015

Letter Number 1

NATURAL RESOURCES AGENCY

EDMUND G. BROWN JR., GOVERNOR



DEPARTMENT OF CONSERVATION

DIVISION OF LAND RESOURCE PROTECTION

801 K STREET • MS 18-01 • SACRAMENTO, CALIFORNIA 95814

PHONE 916 / 324-0850 • FAX 916 / 327-3430 • TDD 916 / 324-2555 • WEB SITE conservation.ca.gov

June 2, 2015

VIA EMAIL: EAVERETT@RRBWSD.COM

Mr. Eric Averett, General Manager
Rosedale-Rio Bravo Water Storage District
849 Allen Road
P.O. Box 20820
Bakersfield, CA 93390-0820

Dear Mr. Averett:

**STOCKDALE INTEGRATED BANKING PROJECT DRAFT
ENVIRONMENTAL IMPACT REPORT - SCH# 2013091076**

The Department of Conservation's (Department) Division of Land Resource Protection (Division) has reviewed the Draft Environmental Impact Report (DEIR) submitted by Rosedale-Rio Bravo Water Storage District. The Division monitors farmland conversion on a statewide basis and administers the California Land Conservation (Williamson) Act and other agricultural land conservation programs. We offer the following comments and recommendations with respect to the proposed project's potential impacts on agricultural land and resources.

Project Description

The proposed project includes the development of groundwater banking facilities, including recharge basins, groundwater production wells, a new Central Intake Pipeline Conveyance System, and new turnouts along the Cross Valley Canal (CVC), on two sites. These sites would allow both the Rosedale and Irvine Ranch Water Districts to more effectively utilize available storage in the San Joaquin Valley Groundwater Basin. The two sites--Stockdale East and Stockdale West--collectively total approximately 553 acres. They are located in western Kern County, approximately six miles west of the City of Bakersfield.

The Stockdale East property is specifically located north of the CVC, on the east side of Highway 43, and is separated from Stockdale West parcel by the Strand Ranch Integrated Banking Project (another water banking project). Stockdale East consists of approximately 230 acres of agricultural land and an active oilfield and is currently in

DOC-1

Mr. Eric Averett, General Manager
 June 2, 2015
 Page 2 of 3

agricultural production (alfalfa). There is also a pilot groundwater banking facility located on the property.

The Stockdale West parcel is specifically located north of the Pioneer Canal and the CVC, on the west side of Highway 43. It consists of approximately 323 acres of agricultural land that has been converted to groundwater recharge basins for Irvine Ranch Water District's Pilot Recharge Project.

Kern County uses an Agricultural Preserve Program to designate all land in the agricultural spectrum within the county. Therefore, the project sites are both located in agricultural preserves, but the project sites are not under Williamson Act contracts. In the Important Farmland Map of 2012, the Farmland Mapping and Monitoring Program classified the projects sites as Prime Farmland.

A third project site is planned to be acquired in the vicinity and the location has yet to be identified, but if and when it is identified, subsequent project-level environmental review will be conducted prior to implementation of the project facilities.

Restrictive Covenant and Equitable Servitude Agreement

Approximately 165 acres of the Stockdale East site is subject to a Restrictive Covenant and Equitable Servitude Agreement for Agricultural Land Preservation (Agreement). This Agreement is between SunEdison and Rosedale as part of SunEdison's effort to mitigate the loss of Important Farmland due to implementation of its Adobe Solar project. To fulfill its mitigation requirement, SunEdison entered into the Agreement with Rosedale to protect the agricultural value of those 165 acres. The Agreement serves conservation purposes in order to retain the productive agricultural use and character of the property, and to prevent the development of land uses that would interfere with the property's agricultural productive capacity and value. The Agreement ensures that Rosedale will retain the right to use the property for agricultural purposes (or permit others to use the property for such purposes), in a manner consistent with the mitigation requirement that the agricultural qualities of the land are not impaired.

In addition, Kern County states that water recharge facilities may be compatible with agricultural use under specified circumstances in its Agricultural Preserve Standard Uniform Rules, under the compatible uses section:

(15) Water recharge facilities, as defined in Section 51201(b)¹, Government Code, when either:

(a) The affected land will continue to be used for commercial agricultural purposes for a minimum of seven (7) months out of each twelve (12) month period; or,

¹ Government Code Section 51201 defines agricultural use under the Williamson Act.

Mr. Eric Averett, General Manager
June 2, 2015
Page 3 of 3

(b) The Land Use Contract is amended by the Board of Supervisors to allow water recharge as the primary purpose of an "open space" contract, as provided for in Section 51201, Government Code. (Included by Board of Supervisors Resolution 2007-017)

↑
DOC-2

Department Comments

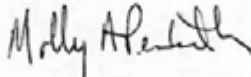
The Department suggest that the DEIR specifically state, in addition to utilizing the project site for water recharge or water management purposes, that the parcels shall meet the requirements of Kern County's Agricultural Preserve Standard Uniform Rules 15(a)². The DEIR should also address how the Rosedale-Rio Bravo Water Storage District will document that the mitigation-restricted land is being used in a manner that is consistent with both its mitigation function and its water recharge function. This step is necessary to be certain that the mitigation for the Adobe Solar Project is not put at risk.

↑
DOC-3

Thank you for giving us the opportunity to comment on the DEIR for the Stockdale Integrated Banking Project. Please provide this Department with notices of any future hearing dates as well as any staff reports pertaining to this project. If you have any questions regarding our comments, please contact Farl Grundy, Environmental Planner at (916) 324-7347 or via email at Farl.Grundy@conservation.ca.gov.

↑
DOC-4

Sincerely,



Molly A. Penberth, Manager
Division of Land Resource Protection
Conservation Support Unit

cc: State Clearinghouse

² The affected land will continue to be used for commercial agricultural purposes for a minimum of seven (7) months out of each twelve (12) month period.

Letter Number 2



JUN 09 2015

Eric Averett
Rosedale-Rio Bravo Water Storage District
P.O. Box 20820
Bakersfield, CA, 93390-0820

Project: Draft Environmental Impact Report for Stockdale Integrated Banking Project (SCH # 2013091076)

District CEQA Reference No: 20150368

Dear Mr. Averett:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the project referenced above consisting of development of groundwater banking facilities on up to three properties located approximately six miles west of the city of Bakersfield. The District has previously commented on this project and has no additional comments at this time.

APCD-1

District staff is available to meet with you and/or the applicant to further discuss the regulatory requirements that are associated with this project. If you have any questions or require further information, please call Eric McLaughlin at (559) 230-5808.

Sincerely,

Arnaud Marjollet
Director of Permit Services

for

Chay Thao
Program Manager

AM: em

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-8400 FAX: (209) 557-8475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-8000 FAX: (559) 230-8061

Southern Region
34946 Flyover Court
Bakersfield, CA 93308 9725
Tel: 661-392-5500 FAX: 661-392-5585

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KERN WATER BANK AUTHORITY

Via Email and U.S. Mail

June 12, 2015

Rosedale-Rio Bravo Water Storage District
Attn: Eric Averett, General Manager
P.O. Box 20820
Bakersfield, CA 93390-0820

Re: Stockdale Integrated Banking Project Draft EIR (April 2015)

Dear Mr. Averett:

The Kern Water Bank Authority ("KWBA" or "Authority") has reviewed the Draft Environmental Impact Report, dated April 2015 ("Draft EIR" or "DEIR"), prepared for the Stockdale Integrated Banking Project (the "Project") proposed by the Rosedale-Rio Bravo Water Storage District ("Rosedale") as the Lead Agency, in consultation with the Irvine Ranch Water District ("IRWD") as a Responsible Agency, pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.). As you know, KWBA owns and operates the Kern Water Bank groundwater banking and recovery project ("KWB") adjacent to and immediately south of the proposed banking Project facilities, and Rosedale and the KWB overlie a common, inter-connected groundwater basin. As such, KWB facilities and operations may be affected adversely by Project recharge and recovery operations. These comments¹ are provided for your consideration in conjunction with the Draft EIR and any Project approvals.

KWBA-1

Project Description

- CEQA defines a "project" as the "whole of the action" (State CEQA Guidelines ("Guidelines")², § 15378(a)), and requires that an EIR's project description be accurate, stable, consistent and finite. (E.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) "Project" is given a broad interpretation in order to maximize environmental protection, and an improperly curtailed or distorted project description violates CEQA. (*Id.*; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*

KWBA-2

¹ These comments are submitted on behalf of KWBA and its member entities, Dudley Ridge Water District, Kern County Water Agency, Improvement District No. 4, Semitropic Water Storage District, Wheeler Ridge-Maricopa Water Storage District, Tejon-Castac Water District, and Westside Mutual Water Company, although the member entities may also submit their own respective comments. In addition, KWBA and its member entities reserve the right to submit further comments as appropriate under CEQA.

² California Code of Regulations, Title 14, Chapter 3, § 15000, et seq.

(1994) 27 Cal.App.4th 713, 729-30.) An EIR must contain sufficient information about the project to allow for an evaluation and review of its environmental impacts by the public and relevant agencies. (*Id.*; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1055; *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20.) When the project description is inadequate, as here, the EIR’s analyses cannot be relied upon to provide a full disclosure of potential impacts, or adequate analysis of alternatives or mitigation measures.

KWBA-2

- The Project Scope Should Be Broadened to Include, and the DEIR Must Also Analyze the Impacts of, Integrated Operations With Other Existing Extraction and Recharge Facilities. The Project is titled the “Stockdale Integrated Banking Project,” and, as this title suggests, the EIR states that Project facilities will be “integrated” into and operated in “coordination” with banking and recovery facilities, including: (a) “other recharge basins located offsite within Rosedale’s service area,” and (b) other extraction facilities including “Strand Ranch Project onsite and offsite facilities” (which offsite facilities include approximately 9 “joint-use wells” currently being constructed in Rosedale, according to the DEIR). (E.g., DEIR, S-4, 1-17, 2-5, 2-12, 2-21.) If the Project will be integrated into and operated in conjunction with other existing non-Project facilities, then the Project Description must be consistently defined broadly to including the “whole of the action” and provide the details of all integrated operations. Moreover, the impacts of the “whole of the action,” including the integrated operation, must be studied and mitigated (as appropriate).³ However, the EIR does not appear to do that. For example:

KWBA-3

- The DEIR’s groundwater impacts analysis only looks at the impacts of operating five extraction wells on baseline groundwater levels for about 10 months. (DEIR, 3.9-23 through 29; Appendix E, pp. 12-13.)
- Also, the DEIR’s groundwater impacts analysis assumes that Project extraction wells only operate one-year (actually 10-months) at a time, and assumes groundwater levels will rebound before extraction wells are operated again. (Appendix E, p. 15.) However, the Project Description contains no such express limitation, and particularly during droughts (like now) water extractions do and can occur for multiple year periods. The EIR is deficient for failing to evaluate the groundwater (and other) impacts resulting from multiple and consecutive years of extraction operations.

KWBA-4

An EIR is clearly deficient if the project description differs from or is broader than the activities, including operations, it evaluates for impacts and potential mitigation. (*E.g.*, *County of Inyo, supra*; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645.)

KWBA-5

³ To our knowledge, integrated operation of so-called Project and non-Project recharge and recovery facilities has never been evaluated in any CEQA document.

- The Project Description is deficient, incomplete, vague and lacking on critical details about the Project.** An EIR must contain a project description that is sufficient to allow an adequate evaluation of the project’s environmental impacts. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 27.) The DEIR’s Project Description, however, lacks critical details necessary to evaluate all environmental impacts. For example, the DEIR states that “proposed facilities would be integrated with Rosedale’s existing Conjunctive Use Program,” but the details about the Project’s integrated operations are missing. (DEIR, 2-1, 2-3.) This leaves many important but unanswered questions. For example: Will integrated project operations allow Rosedale, Irvine Ranch or some other entity (such as Castaic Lake Water Agency) to implement unbalanced recharge and recovery operations, e.g., extract water from Project wells (near the KWB) which water was previously banked in recharge facilities elsewhere in Rosedale (for example, the distant West and/or Allen Road and/or Superior recharge basins)? Obviously, the groundwater impacts may or will be greater under those type of circumstances, where recharge and recovery are unbalanced, but the details are not set forth in the DEIR and the potential impacts have not been studied. This is an especially important issue for the KWBA due to the KWB’s close proximity to a large number of existing and proposed Project extraction facilities.

KWBA-6

- Potential Third Recharge Site Segmentation/Deferral of Project-Level Review.** The Draft EIR states the Project includes a “third Stockdale project site,” which has yet to be identified, and includes following commitments with respect to future project-level CEQA review of such site:

“If and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c).”

KWBA-7

Since the groundwater impacts of this third site – including extraction impacts – have *not* been evaluated in the DEIR (including the THC Appendix E groundwater impact analysis), the KWBA assumes, based on the above cited-commitments, that the future project-level CEQA review of the third site will include an evaluation and study of the impacts of the operation of all facilities, including additional extraction and recharge associated with the third site, on groundwater hydrology and water quality, *and* that evaluation and study will be circulated for public review and comment by KWBA. If these assumptions are incorrect, please advise KWBA and provide clarification.

- Memorandum of Understanding (“MOU”).** The Draft EIR provides, on page 1-12 and elsewhere, that the Project is subject to two MOUs executed by Rosedale and adjoining entities in the Kern Fan; specifically, that this EIR “satisf[ies] the CEQA requirements as indicated in the MOUs.” Are the terms and conditions of the MOUs elements of the Project or are these conditions intended to be mitigation measures? Rosedale should clarify this.

KWBA-8

- Long Term Operations Plan. The DEIR states Rosedale has developed a *Long Term Project Recovery Operations Plan Regarding Rosedale-Rio Bravo Water Storage District Projects* (“Long Term Operations Plan”), which the DEIR states implements MOU provisions. (DEIR, 1-13.) The DEIR states further that the “proposed project” will be operated in accordance with the Long Term Operations Plan. (*Id.*; see also, DEIR, 2-23.) Because the Project Description is unclear, it is also unclear whether this plan will apply to just operation of the three project sites and five extraction wells, or will the plan also apply to operation of other Rosedale and/or IRWD recharge and recovery facilities. The final EIR should clearly state all projects (sales and banking) and all extraction wells and other facilities that will be operated in accordance with the Long Term Operations Plan, and all areas that will be benefitted by its provisions and mitigation measures.

KWBA-9

Environmental Setting, Impacts, and Mitigation Measures

3.9 – Hydrology and Water Quality

- The modeling and DEIR analysis of groundwater impacts is also deficient because they assume – artificially and unrealistically – that *extraction* will only occur for 10 months at a time and, in effect, extraction operations will not resume until the groundwater depression has rebounded. (DEIR, Appendix E, pp. 12-13.) This is contrary to how we understand Rosedale’s and Irvine Ranch’s extraction facilities have been operated in the past, i.e., for multiple years at time during dry periods (for example), and is contrary to the project description in that it may be read to imply that multiple years of extraction may occur and there is no project environmental protection feature (or mitigation measure) limiting the duration of extraction that is consistent with the modeling or other analysis of groundwater impacts. The analysis and modeling appear to understate potential groundwater impacts and do not comply with CEQA. In addition to failing to evaluate all the potential impacts of the Project, this limited analysis neglects to consider short-term, mid-term and long-term project impacts as required by CEQA. (*Smart Rail*, 57 Cal.4th at 455, citing Guidelines § 15126.2(a).) On the other hand, if the Project will not include or permit extraction operations extending beyond 10 months at a time, then this detail and related details (including when extraction operations may resume after the first 10-month interval) should be clarified in the Project description and/or included in a Project mitigation measure.
- The DEIR is similarly deficient because the modeling only considers one-year or 10 months of *recharge* operations - not multiple years as would be expected in consecutive wet years (for example). This is important to KWBA because, for example, Project recharge has the potential to adversely impact nearby KWB recharge as discussed below.
- With respect to HYDRO-2, the DEIR concludes that no mitigation is required because the groundwater modeling indicates that 5 wells will drop groundwater levels to 261 feet

KWBA-10

KWBA-11

KWBA-12

bgs which is still above the lowest typical well of 300 feet bgs. (DEIR, 3.9-25, 26.) Yet, the cumulative impact analysis reached a similar conclusion but imposed the Long Term Operations Plan as Mitigation CUM-2. (DEIR, 4-16.) The DEIR should explain why such mitigation should not also be imposed as a result of the HYDRO-2 analysis.

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KWBA-12

- Also with respect to HYDRO-2, the DEIR concludes that Project recharge near the CVC could significantly affect shallow groundwater levels in the vicinity including neighboring recharge basins. (DEIR, 3.9-29.) However, there is no analysis of what the impacts would be to KWB’s nearby recharge facilities or operations. Just stating that Project recharge mounding “would not preclude operation of neighboring basins” does not mean there will be no significant impact. (*Id.*) Based on experience operating the KWB, KWBA believes that Project recharge and resulting shallower groundwater conditions could significantly affect groundwater levels in proximity to the CVC and, for example, require KWB to curtail recharge, when historically this has never been the case in this area. Project recharge impacts on KWB recharge facilities and operations have not been evaluated as required by CEQA.

↑
KWBA-13

4.0 – Cumulative Impacts

- An EIR shall discuss cumulative impacts of a project when the project’s incremental effect is cumulatively considerable as defined in Guidelines section 15065(a)(3). (Guidelines § 15130(a).) As defined in Guidelines section 15355, a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. (*Id.*, subd. (a)(1).) “Other projects” include past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the lead agency. (*Id.*, subd. (b)(1)(A).) The DEIR’s cumulative impacts analyses do not comply with CEQA, as least with respect to the groundwater impact analysis.

↑
KWBA-14

- With respect to cumulative groundwater impacts, the DEIR includes and refers to two separate “drawdown” analyses prepared by THC. (DEIR, 4-15, 4-16). However, neither these analyses nor the DEIR appears to include a cumulative impacts analysis as required by CEQA. Because the DEIR lacks an analysis of cumulative impacts, the assessment of whether the Project’s contribution to the cumulative impacts is “cumulatively considerable” is also deficient.

↑
KWBA-15

It is also deficient because, as mentioned above, the Project scope has been too narrowly drawn in the EIR and, as a consequence, the assessment of the Project’s contribution to cumulative impacts is necessarily understated and deficient. Also, use of all wells needs to be considered in the cumulative impact analysis, which by our count consists of at least 31 extraction wells including the 5 Project wells.⁴ In addition, use of

↑
KWBA-16
↓

⁴ In addition to the 5 Project wells, we understand there are the following 26 existing wells: 7 Strand Ranch onsite wells; 3 Enns Basin wells; 9 Drought Relief Project wells; and 7 JURP/Allen Road wells.

the wells to be constructed on the third-site need to be considered, as a probable future project feature.

KWBA-16

In addition, the DEIR states that it "incorporates groundwater pumping and recharge for all other existing banking projects and pumpers in the modeled area, including the Strand Ranch Project." (DEIR, 4-16.) However, the DEIR does identify those projects and pumpers, and does not explain *how* and *where* they have been incorporated into the analysis. The DEIR should provide such explanation and identification, including a list of *all* "past, present and probable future projects" considered (Guidelines § 15130(b)(1)(A)), including Rosedale's and others' applicable groundwater-related sales programs.

KWBA-17

Without an adequate cumulative impact analysis, there is no way of knowing whether implementation of Mitigation Measure CUM-2 (Long Term Operations Plan) is adequate. Also, as mentioned above, it is unclear just what facilities and operations will be subject to the mitigation measure. The scope of the mitigation measure needs to be clarified.

KWBA-18

Conclusion

KWBA appreciates the opportunity to review the DEIR and Rosedale's consideration of these comments. Rosedale should address the issues raised by these comments and provide further analysis, information and clarifications in the EIR, before any consideration of approval of the proposed Project. Please feel free to contact me with any questions.

Sincerely,



Jonathan Parker, General Manager
Kern Water Bank Authority

Letter Number 4



Directors:

Ted R. Page
President
Division 1

Bruce Hafenfeld
Division 2

Martin Milobar
Division 3

Michael Radon
Division 4

Charles (Bill) W. Wulff, Jr.
Division 5

Royce Fast
Division 6

Gene A. Lundquist
Vice President
Division 7

James M. Beck
General Manager

Amelia T. Minaberrigarai
General Counsel

June 12, 2016

50 Environmental

Mr. Eric Averett
Rosedale-Rio Bravo Water Storage District
P.O. Box 20820
Bakersfield, CA 93390-0820

Re: Stockdale Integrated Banking Project Draft EIR (April 2015)

Mr. Averett:

The Kern County Water Agency (Agency) has reviewed the Draft Environmental Impact Report, dated April 2015, (Draft EIR) prepared for the Stockdale Integrated Banking Project (Project) proposed by the Rosedale-Rio Bravo Water Storage District (Rosedale) as the Lead Agency, in consultation with the Irvine Ranch Water District (IRWD) as a Responsible Agency, pursuant to the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 et seq.). These comments are provided for your consideration in conjunction with the Draft EIR and any Project approvals.

Executive Summary

- Project Description. Within the Project Description contained in the Executive Summary, it is unclear how many separate sites comprise the Project. The first sentence reads, "The proposed project consists of three sites: Stockdale East, Stockdale West, the Central Intake Pipeline alignment, and a third project site that may be made up of non-contiguous parcels and that has yet to be specifically located." (Emphasis added.) It is, thus, unclear if the Project consists of three – or four – separate sites. Additionally, it is unclear how the Project is comprised of three sites, given that the "third project site" may be made up of multiple non-contiguous parcels. The Agency requests that the Project description be revised for clarity, to accurately reflect the actual Project, including, but not limited to, the accurate number of Project components (three, or four, or more), and the accurate number of Project sites (three, four, or more). Without an accurate and stable Project description, the Draft EIR's analyses cannot be relied upon to provide a full disclosure of potential impacts.

KCWA-1

(661) 634-1400

Mailing Address
P.O. Box 58
Bakersfield, CA 93302-0058

Street Address
3200 Rio Mirada Dr.
Bakersfield, CA 93308

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Type of EIR

- The Draft EIR purports to be both a “project level” EIR and a “program level” EIR. However, it is unclear exactly which aspects of the Project Rosedale is analyzing at a programmatic level. However, program level EIRs are appropriate for analysis of programs, plans, policies, or ordinances only where site-specific analysis is not feasible. Here, Rosedale wishes to invoke program level analysis for one piece of the Project, but gives no reason why detailed analysis cannot be provided at this time. As the Draft EIR admits, Rosedale is required to analyze “the whole of the action.” (See p. 1-2.) If Rosedale wishes for its EIR to act as a Project EIR, the entire Project should be analyzed now. In the alternative, if Rosedale envisioned the EIR as being a program-level EIR with additional analysis being done prior to the implementation of the Project, then the Project elements that are only analyzed at a program-level should be made clear, and Rosedale should impose a requirement that further substantive CEQA review will be done prior to any commitments associated with future project clarifications.

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Additionally, should the EIR be identified as programmatic, Rosedale still has the obligation to analyze – to the fullest extent feasible – the potential impacts of the Project as a whole (including the to-be-identified future 640 acre recharge/recovery facilities). The EIR does not appear to meet this requirement, instead postponing any analysis of the 640-acres until some unknown future date.

Project Objectives

- The project objectives identified in the Draft EIR are vague and hard to understand. They refer to “various programs and facilities” and “existing and future programs,” but it is unclear what programs and facilities are being referred to. The first and second objectives refer to “operational flexibility” and “operating flexibility” but these terms are not explained, and it is unclear what type of flexibility is needed, or what the purposes of such flexibility would be. The third objective refers to “IRWD’s and Rosedale’s respective properties” but it is unclear what properties these is referring to, or whether these are the specific properties upon which this Project will take place, or whether this is in reference to all property owned by these two entities in general.

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Project objectives guide the selection of mitigation measures and alternatives, and provide the rubric against which mitigation measures and otherwise feasible alternatives are rejected. Therefore, project objectives must be clearly written to fulfill CEQA’s requirements. Thus, the Agency requests that the Project objectives be revised for clarity.

Project Description

- Project Location and Description. The Draft EIR states that the Project includes a third recharge site that has yet to be purchased or located. As shown in Figure 2-1 of the Draft EIR, the radius in which the site may be located is fairly large. Please provide a description of the size of the

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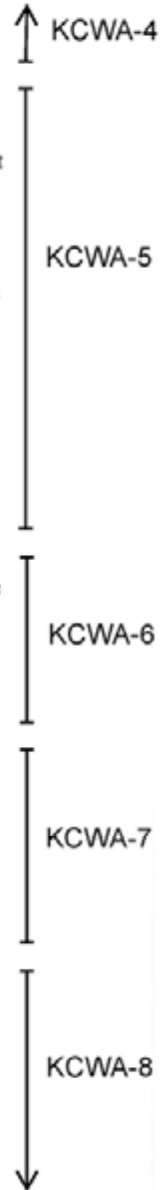
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radius in which the third recharge site may be located and the potential environmental impacts that may result from the third recharge site. Specifically, the Draft EIR states that the third recharge site “would likely be comprised of parcels that may or may not be contiguous up to 640 acres and be characterized by agricultural land use.” Therefore, as drafted, the Draft EIR is insufficient to analyze the potential impacts to environmental resources including hydrologic and agricultural resources. The Draft EIR does not provide adequate analysis of the environmental impacts that may be associated with the third recharge site because that site is yet to be located. Further, once the Project is implemented, the third recharge site may be split into several noncontiguous sites that total 640 acres. The hydrologic impacts associated with the Project may vary greatly depending on the final characteristic of the third recharge site. The location(s) and condition(s) of the third recharge site must be disclosed to allow for informed public comment and informed decision-making on the Project. The failure to fully analyze all reasonably foreseeable impacts wherever they occur and whenever they may occur results in the impermissible deferral of environmental analysis, and the failure to analyze “the whole of the action” as required by CEQA. (State CEQA Guidelines, § 15378.) Here the location of the third Project site is vital to the analysis of the Project’s impact on water quality (will the site be located near an oil field?), noise (will the site be located near a school?), sensitive receptors (will construction emissions occur adjacent to residences or schools?), and other issues. The Draft EIR cannot shirk this requirement simply by stating that additional CEQA review of this portion of the Project will take place at a later date.

If the Draft EIR cannot identify the third recharge site(s) prior to approval of this Project, then the EIR should be revised to provide a worst-case scenario analysis of the impacts of that third recharge site. Also note that if the third recharge site is identified prior to any Project approval, Rosedale and IRWD will be required to recirculate this Draft EIR for further review and comment pursuant to Public Resources Code section 21092.1 in order to ensure full disclosure of the Project’s impacts.

The Draft EIR’s description of the Project is also unclear in scope. For example, on page 2-5, the text states that the Project “may” include construction of embankments and/or additional transfer structures, yet it is unclear if these embankments and/or additional structures are considered in this Draft EIR’s impact analyses. The text goes on to state that these embankments and additional structures that “may” be constructed would divide existing basins into smaller impoundments, yet it is unclear if this was taken into account as part of this Draft EIR’s analyses, specifically, analyses of hydrology and agricultural impacts.

The Draft EIR also states that “[t]he basins at all three Stockdale property sites would be managed to allow agricultural land uses to continue, such as annual farming or grazing.” (Draft EIR, p. 2-6.) First, it is unclear how agricultural uses are compatible with recharge basins which will be full of water much of the year and will require routine scarification to ensure infiltration of spread of water. Second, it is unclear if water used for farming purposes will be deducted from Rosedale’s share of the banked water or if water will be from the “basin.” Third, farming on banking lands could increase the risk of groundwater contamination because the Project sites have high permeability with a low surface runoff potential that would allow nitrates and other



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fertilizer commonly used in farming operations to permeate the soil and enter the groundwater. Those potential impacts must be identified in the EIR. Fourth, to the extent that Rosedale decides to remove the option for continued farming, then the Draft EIR should revise the analysis to identify what impacts may result to agricultural practices and agricultural lands.

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 KCWA-8

- **Recharge Water Supplies.** While the Draft EIR mentions the 2014 drought and ongoing drought conditions, it does not provide enough detail to adequately inform the Draft EIR’s impact analyses. For example, on pages 2-8 through 2-10 the discussion of Recharge Water Supplies, and the discussion of Central Valley Project and State Water Project water deliveries in particular, includes no information about the effects of the ongoing drought on the availability of these water sources. The Project may exacerbate the drought, particularly as the Project proposes to use severely restricted SWP water. Moreover, given the ongoing drought and decreased SWP reliability, the Project’s potential use of Kern River water (including pre-1914, post-1914 and high flow) is questionable as it would result in the net export of native surface water. The Draft EIR should lay out these issues and Rosedale’s conclusions in more detail. Otherwise, a reader is not fully apprised of the nature of the Project, the nature and reliability of the Project’s recharge water sources, and, as a necessary result, the true nature of the Project’s impacts.

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- **Recovery Facilities.** The Draft EIR indicates that the Project proposes constructing three wells on Stockdale West and two wells on Stockdale East, and that existing agricultural wells on both sites may be used as production wells to “contribute to operational flexibility by providing additional recovery capacity.” (See, p. 2-10.) However, the information and analyses presented in Section 3.9 (Hydrology and Water Quality) and Appendix E do not include impacts associated with additional recovery from existing agricultural wells. Further, Section 3.9 indicates that the Project’s proposed annual recovery needs for the Stockdale West and East sites can be met by the proposed new wells. (See, p. 3.9-23.) Therefore, it is unclear why additional recovery capacity from existing wells is needed. If the existing wells are intended to provide supplemental or redundant capacity should the new wells not perform adequately or fail, the EIR should state that. However, if the use of existing wells is for additional capacity, as stated, the use of existing wells should be analyzed.

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- **Recovery Scenarios.** The Draft EIR indicates that “Rosedale would recover water from the proposed project as needed to meet existing or future commitments.” (See, p. 2-22.) This description does not contain sufficient information to determine the Project’s maximum recovery operations from the Stockdale West and East sites, and the yet to be identified third site. Further, the information and analyses in Section 3.9 and Appendix E include impacts from construction of new Project wells, but not the use of existing agricultural wells. Without a defined maximum annual recovery for the Project sites, and the Project as a whole, it is impossible to determine the extent of potential impacts from recovery operations.

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- **Reciprocal Use.** The Draft EIR indicates that the Project will operate as a “two for one” program similar to the Strand Ranch Project. Like the Strand Ranch Project, whatever stored water is not used by Rosedale would be made available for additional exchange partners, in this case IRWD.

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Given this, the EIR should explain why there would still be a “net benefit” to the aquifer as the EIR asserts. Further, the Draft EIR admits that the “terms and conditions” for reciprocal use at the unidentified third Stockdale Property site “have yet to be determined and would be subject to Rosedale and IRWD developing mutually agreeable terms and conditions.” (DEIR, p. 2-22.) Without these terms, or at least worst case scenario hypothetical terms, it is impossible to even determine whether the Project will benefit water levels in the aquifer, as claimed by the EIR. (See, e.g., p. 3.6-16.)

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- Memorandum of Understanding (“MOU”). The Draft EIR provides, on page 1-12 and elsewhere, that the Project is subject to two MOUs executed by Rosedale and adjoining entities in the Kern Fan; specifically, that this EIR “satisf[ies] the CEQA requirements as indicated in the MOUs.” Are the terms and conditions of the MOUs elements of the Project or are these conditions intended to be mitigation measures? Rosedale should clarify this. Please also see the comments below regarding reliance on the MOU.

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3.2 – Agriculture and Forestry Resources

- Groundwater Contamination. Both threshold discussion sections contemplate the use of the banking sites for farming, which may significantly increase the risk of groundwater contamination. These impacts should be analyzed not only in the Draft EIR’s hydrology and water quality analyses (see our comments to section 3.9 Hydrology and Water Quality below), but also in the agricultural impacts analysis because the danger of groundwater contamination will determine whether farming operations are even feasible on the Stockdale sites, as this analysis assumes. The conclusions that the Project would not convert prime farmland should be reevaluated to the extent that Rosedale determines that farming is restricted on the Project Sites, if impacts to agricultural lands are found to be significant, the EIR should discuss the feasibility of agricultural easements as mitigation for those impacts.

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3.6 – Geology, Soils, and Seismicity

- Regarding soil erosion, the Draft EIR states that during periods of non-recharge, the recharge basins would be subject to wind erosion, yet there is no estimate provided of how often and for what duration these periods of non-recharge would take place. Further, the Draft EIR concludes that “plant cover at the project site would minimize wind erosion” yet there is no information provided regarding to what plant cover this refers. Is the Draft EIR relying on the Project to install planting? If so, what types, and where? In the alternative, is the Draft EIR relying on existing plant cover to provide wind erosion cover? If so, this should also be disclosed, and an explanation of how existing plant cover will remain in place sufficient to protect against wind erosion should be provided.
- There is also no discussion of how the conversion of the project site(s) from agricultural use to basin use will impact soil cover, loss of topsoil, and soil erosion.

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3.8 – Hazards

- The discussion under Impact HAZ-2 states that the oilfield near the Stockdale East site has “resulted in spillage, releases, and disposal of oil, oil and water, and inert debris associated with oilfield production and storage.” Further, “[t]he oilfields would remain active during Project implementation and operation, and proposed recharge basins, production wells, and conveyance structures would avoid the oilfield areas.” The Project also intends to accommodate future drill islands. Please explain how the Project and the production wells and spreading basins will avoid the contaminated areas? What steps will be taken to ensure that the contamination will not spread to the groundwater as a result of the Project? Mitigation Measure HAZ-1 requires that samples of soils at the Stockdale East property are analyzed and removed appropriately if soils contain hazardous quantities of contaminants. Due to the Stockdale East’s close proximity to existing oil wells, the Project should also incorporate soil samples and removal when the Project is operational to prevent future migration of contaminants onto the Project site and to safeguard against groundwater contamination.
- Further this section states that “Mitigation Measure HAZ-3 would require the completion of a Phase I ESA to ensure hazards and appropriate mitigation measures are identified for the third Stockdale site and Central Intake prior to construction. Implementation of these mitigation measures would reduce impacts to a less than significant level.” Again, this is the impermissible deferral of the analysis and identification of impacts at a later time. The location of the third Project site is unknown and the environmental conditions that exist on that site are unknown. A Phase I ESA has yet to be prepared and the specific mitigation measures that the Phase I would suggest are not been identified. Therefore, there is no substantial evidence that Mitigation Measure HAZ-3 would be effective at reducing potential impacts from the future basin.

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3.9 – Hydrology and Water Quality

- The Draft EIR states that “[r]echarge and recovery activities will generally increase the gradient during the early period of a recharge event due to the effective mounding of the groundwater table and decrease, flatten, or even reverse during a recovery period.” (Draft EIR, p. 3.9-4.) There is no support or citation given for the contentions made in this section. Given that the Project has impacts due to water mounding, please provide citation and further explanation for this conclusion.
- The Draft EIR states that “[a]quitards at depth can impede recharge efforts; however on the Kern Fan and in the Project area, these layers impede but do not prevent recharge and recovery operations.” (Draft EIR, p. 3.9-7.) There is no explanation or citation to explain how aquitards specifically impact the Project area, or how Rosedale knows that the layers impede, but do not prevent recovery. Further explanation is needed, especially in light of the fact that the third recharge site has not been identified in the Draft EIR. How does the Draft EIR account for the recharge characteristics of the Project site that has yet to be identified?

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- Considering that the third recharge site is unidentified and the proposed radius of the third Project site is large per Figure 2-1, please further explain why Corcoran clay is not located anywhere in the radius of the yet unidentified third recharge site. Corcoran clay restricts vertical groundwater flow between the overlying unconfined aquifer and the underlying confined aquifer. If the third Project site is located within an area with a high percentage of Corcoran clay, the Project site may create a source of storm water runoff if the site is unable to properly absorb water. Additionally, such a condition would result in the over-estimation of the amount of recharge that is actually occurring. Subsequent recovery would then worsen drawdown impacts in the basin beyond the impacts predicted by the EIR.

KCWA-21

- The Draft EIR states that groundwater samples were only taken from two wells on the Stockdale East and Stockdale West sites for analysis of drinking water standards. The Draft EIR improperly assumes that these two wells reflect the water quality of the yet to be identified third recharge site. It is important for the Draft EIR to examine the water quality of the third Project site, because if the site is contaminated as a result of an existing oil well or some other source (such as the Hondo Chemical plant), placing a recharge project in such a location could lead to further contamination of groundwater. Moreover, the Draft EIR admits that the depth of the two sample wells is unknown. The Draft EIR should be based on a broader range of well samples from various wells at various depths across the recharge and recovery area before it attempts to draw conclusions about water quality within the entire radius shown on Figure 2-1. Further, the Draft EIR allows for farming on banking lands which may significantly increase the risk of groundwater contamination. This potential impact should be analyzed or the Project should not allow farming on its banking lands.

KCWA-22

When discussing Impact HYDRO-1, the Draft EIR states that water quality for wells tested for the Project exceed or are at the maximum contaminant level for gross Alpha. However, the Project would introduce water into the CVC, which also delivers water to ID4. Rosedale should notify ID4 of water introduced into the CVC that exceeds the maximum contaminant level for gross Alpha, even if such water is diluted in the CVC. The EIR should also analyze whether the introduction of such water will result in the need for treatment or other mitigation as a result of this increased gross alpha level.

KCWA-23

- A project's baseline is the standard by which the project's impacts, mitigation, and project alternatives are measured. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320-23.) State CEQA Guidelines section 15125(a) notes that the physical environmental conditions in the vicinity of the project at the time the Notice of Preparation is published will normally constitute the baseline conditions which the lead agency uses to determine whether an impact is significant. However, in *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, the California Supreme Court recently set forth the standard public agencies must follow if they elect to instead utilize future conditions as the baseline. The Court held that, to be legally adequate, two conditions must be met: (1) the agency must lay out the substantial evidence showing that the use of conditions at the time of publication of the Notice of Preparation "would detract from an EIR's

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effectiveness as an informational document” and be uninformative or affirmatively misleading, and (2) the agency’s selection of the future baseline conditions must be supported by substantial evidence. (*Id.* at 451-52.)

Here, the Draft EIR’s baseline discussion is unclear. The EIR seems to confirm that NOP conditions were not used as the baseline, and (instead) that historical conditions dating back as much as 10 years were used as the baseline. (See Draft EIR p. 3.9-22 [confirming that historical conditions from 2004 were used in the baseline].) The EIR, however, then goes on to compare Project impacts to projected future baseline conditions that may occur 10 years from now. Ultimately, it appears that Rosedale has relied upon conditions that existed 10 years ago, or may exist 10 years from now, but never actually discloses what the current, NOP conditions are as required under CEQA. Accordingly, Rosedale should clarify the EIR to specifically lay out what baseline(s) it is using for the analysis, and to explain (consistent with the *Neighbors for Smart Rail* decision) whether those conditions differ from the NOP conditions and why the use of such conditions is supported by substantial evidence.

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- The portion of the Draft EIR discussing Impact HYDRO-5 indicates that the groundwater beneath the Project site meets or exceeds the maximum contaminant level for gross Alpha. As was the case with Impact HYDRO-1, this analysis was based on just two wells and may not reflect the actual water quality beneath the yet to be located third Project site. Without conducting further water quality studies, the conclusion that “[t]he introduction of surface water into the shallow zone will improve water quality” is not based on substantial evidence. (Draft EIR, p. 3.9-22.) Further, the Stockdale East site is located less than a ½ mile from Hondo Chemical. The Agency has previously commented to Rosedale that recharge and recovery operations in proximity to Hondo Chemical have the potential to influence the migration of known contaminants. Therefore, the analysis of water quality should also consider the extent to which water quality will be impacted by the migration of known contaminants as a result of the Project.

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The proposed use of a geotechnical engineer to determine at a later date whether conditions might pose a risk to subsurface structures is the deferral of analysis. First, the EIR should identify why it is infeasible to do this analysis now. Second, this mitigation measure should specifically state how and under what circumstances subsurface structures will be determined to be at risk through the use of performance standards. Third, this mitigation measure does not state how or who will determine that a threat no longer exists before the Project may continue operation. Presumably, a geotechnical engineer will make this determination, however the mitigation measure should include specific performance standards that must be met in order for the Project to safely resume operations. Without the inclusion of specific performance standards for the geotechnical engineer to follow, this mitigation measure is likely not enforceable.

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Further, there is no discussion as to the impact of continuing agricultural operations on the location of the basins. The groundwater contamination potential of continuing agricultural operations must be analyzed and the impacts disclosed.

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- Impacts related to HYDRO-1 and HYDRO-2 are subject to the terms and conditions of an MOU entered into by Rosedale and adjacent entities within the Kern Fan which Rosedale proposes to amend as part of this Project. (Draft EIR pp. 3.9-21 through 3.9-26.) However, Rosedale has previously challenged the Agency’s use of similar MOUs for the Agency’s banking projects claiming the MOU was insufficiently specific and lacked enforceable performance standards. Specifically, Rosedale has argued that the use of such an MOU in an EIR constituted the improper deferral of mitigation measures. As Rosedale knows, the Court – at least at this point – has agreed with some of Rosedale’s claims. (*Rosedale v. DWR* (2014) Case No 34-2010-80000703.) Therefore, Rosedale should clarify why it now believes that the MOU for this proposed Project meets CEQA’s requirements and does not constitute a deferral of mitigation, given that Rosedale has previously asserted that a similar MOU did not meet CEQA’s requirements.

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Further, if the MOU is not a mitigation measure, but only a Project feature, Rosedale should clarify how Rosedale intends to comply with the MOU’s requirements. Rosedale has previously asserted that a similar MOU provided only non-binding “goals,” and not requirements. Under Rosedale’s argument, then, the EIR should be clarified to identify the worst-case scenario impacts assuming that the “goals” may not necessarily be met.

KCWA-29

- Appendix E includes the analysis of potential groundwater level changes as a result of the Project. However, the Project area for the purposes of Appendix E is specifically identified as (and limited to) the “Stockdale West and Stockdale East Facilities.” (See also, Appendix E, Figure 2.) Therefore, the modeling results do not appear to address any impacts from the operation of the third Project recharge/recovery location. Because the location of this third site has not been identified or analyzed, it is unclear how the analysis can be supported by substantial evidence. The EIR should clarify how the impacts of the third Project site are accounted for.

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3.10 – Land Use and Planning

- This section indicates that the Kern River and floodplain is located approximately 2.5 miles south and east of the Project sites. (Draft EIR, p. 3.10-1.) Please clarify if this includes the radius of the unidentified third Project site? Does the third Project site have the potential to be within the floodplain of the Kern River such that there could be a possibility of drawing river water into the basin via the third site’s recharge basin? If the floodplain extends into the site radius for the third Stockdale site, a figure should be included that indicates where within the radius the floodplain is located.

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- Little information is provided on the zoning of the land within the unidentified third Project site. The text states that the majority of land within the third Project site is zoned for agricultural uses in the County general plan but that does not address whether the third site is actually being used for agricultural purposes (regardless of its zoning) or whether the applicable general plan indicates a land use designation different from the zoning. Further, the EIR does not address how the Project’s basins conform or conflict with any applicable habitat conservation plans, such as

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the Metropolitan Bakersfield Habitat Conservation Plan. The EIR should address these issues and explain whether the Project's uses are consistent with the zoning, the general plan land use designations, and the uses that are actually occurring on the Project sites. Even if the location of the third Stockdale site is unknown at this time, information on the agricultural use within the site radius is not unknown, and should be provided in the Draft EIR.

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- Figure 3.10-1 and 3.10-2 show the land use designations for the entire radius of the unidentified third Project site. However, the unidentified third Project site could eventually be located on the border of the radius shown on Figure 3.10-1 and 3.10-2. Accordingly, these figures should also include the land use designations for the property directly adjacent to the outside boarder of the radius for the unidentified third Project site. The discussion of surrounding land use should also consider the uses on properties adjacent to the outside boarder of the radius for the unidentified third Project site. The discussion under Impact 2 for the third Project site does not take these variables into account. The conclusion that the Project does not conflict with applicable land use plans does not appear to be supported without discussion of the applicable land use plans and zoning requirements adjacent to the radius of the unidentified third Project site.

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- The discussion of surrounding land uses states that light industrial, commercial use and mineral extraction use exist within the Project area. Please identify these uses and whether the Project features will interfere with them. (Draft EIR, p. 3.10-6.)

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- The discussion under Impact 1 does not take into account the unidentified third Project site. The radius of the unidentified third Project site includes residential uses. Could the third Project site eventually be located in or nearby the residential area as shown on figure 3.10-1? The analysis should be updated to explain whether the Project would divide an established community.

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3.14 – Utilities and Energy

- As discussed above, the Draft EIR indicates that a discretionary approval may be required from the Agency for the use and modifications required to the CVC. This requirement should be analyzed under Impact UTIL-1 as to whether the Project could require new or expanded water supply resources or entitlements. Would modifications to the Canal impair service/use of the Canal? If so, for how long? What mitigation will Rosedale provide to address those impacts? Does the Canal have sufficient capacity to accommodate the Project? The EIR does not appear to address these issues in any detail, but the Agency can discuss these issues with Rosedale upon request.

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6.0 – Alternatives Analysis

- The alternatives analysis should be revised to review each alternative and explain why it meets or doesn't meet each of the Project objectives. CEQA provides that a lead agency must approve any feasible alternative that reduces impacts and which meets most of the Project's basic objectives. To the extent the Project Proponents wishes to reject the alternatives in favor of the Project, a

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more detailed discussion is needed. Additionally, the alternatives analysis should be revisited after revisions of the EIR are made per the comments above. New, significant impacts seem likely once the EIR is updated, and the alternatives analysis should explain how/whether each alternate reduces those significant impacts.

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KCWA-37

- For the alternatives that are rejected, the Draft EIR focuses almost entirely on the reasons why the costs associated with the alternative makes the alternative infeasible. Though cost considerations can be relevant, Rosedale must provide details regarding available funding sources and budget constraints before rejecting an alternative on economic grounds.

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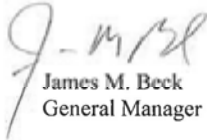
Conclusion

Thank you for the opportunity to review the Draft EIR and for considering the Agency's comments. Until such time as these issues are addressed in the manner required by CEQA, the Agency must object to Rosedale's approval of the proposed Project and urge that Rosedale provide further analysis or clarifications in the EIR.

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If you have any questions, please contact Holly Melton of my staff at (661) 634-1400.

Sincerely,


James M. Beck
General Manager

Letter Number 5

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COLIN L. PEARCE
DIRECT DIAL: +1 415 957 3015
PERSONAL FAX: +1 415 704 3098
E-MAIL: clpearce@duanemorris.com

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VIA FEDEX AND E-MAIL

Eric Averett
General Manager
Rosedale-Rio Bravo Water Storage District
P.O. Box 20820
Bakersfield, CA 93390-0820

849 Allen Road
Bakersfield, CA 93314
eaverett@rrbwsd.com

Re: City of Bakersfield's Comments on Draft Environmental Impact Report for Stockdale Integrated Banking Project

Dear Mr. Averett:

On behalf of the City of Bakersfield ("City"), we submit the following comments to the April 2015 Draft Environmental Impact Report ("DEIR") for the "Stockdale Integrated Banking Project" ("Project") prepared for the Rosedale-Rio Bravo Water Storage District ("Rosedale") and Irvine Ranch Water District ("Irvine").

City-1

As stated in the City's October 23, 2013 comments to the Notice of Preparation ("NOP") for the Project, the City generally supports the goals and purposes of the Project, as the City supports Rosedale's efforts to increase its "operational flexibility" and to otherwise efficiently and effectively manage its use of local water resources.

The City still has significant practical, substantive and legal concerns with regard to the Project. The City is particularly concerned that the Project will involve the transfer of local water supplies, including the waters of the Kern River, out of Kern County, to Irvine.

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DUANE MORRIS LLP

SPEAR TOWER, ONE MARKET PLAZA, SUITE 2200
SAN FRANCISCO, CA 94105-1127

PHONE: +1 415 957 3000 FAX: +1 415 957 3001

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The City believes it is highly questionable and suspect that Rosedale would propose to implement a project which involves the transfer of local water supplies, including Kern River supplies, to a large Southern California urban water district, at a time when the local region is suffering through a critical drought, local water supplies, including the Kern River, are drastically depleted, and groundwater levels are rapidly declining. The City is concerned that the “out-of-county” water sales or transfers proposed through the Project could cause substantial harm to the local environment, the local groundwater basin, the City’s water resources and supplies, the Kern River, and the water resources of the entire southern San Joaquin Valley.

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The City also has significant concerns with regard to the DEIR. As explained herein, the City maintains that the DEIR does not comply with the policy, purpose or specific requirements of CEQA. The DEIR omits or obscures critical, necessary details of the Project, and consequently fails to properly disclose and assess all potential impacts of the Project on the local environment and water resources. The DEIR also fails to properly consider reasonable, feasible alternatives for the Project, including the “no project” alternative.

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The fundamental purpose of an EIR is “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.” (Public Resources Code § 21061.) Full and candid disclosure, and an honest assessment of the environmental consequences of governmental action, is the foundation of the CEQA process. The foremost principle under CEQA is that the Legislature intended the act “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

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In contrast to the underlying purpose and principles of CEQA, Rosedale has attempted, through the DEIR, to obscure and hide the details of the Project, to avoid addressing the actual goals and purpose of the Project, and to avoid or minimize any real analysis of the Project’s impact on the environment. The lack of candor and accurate information is particularly troubling because the Project will involve the transfer of local water supplies, including valuable Kern River water, out of the area, to Irvine, a large Southern California urban water supplier. Kern County is again faced with a potential repeat of the events that occurred in the Owens Valley in the early part of the last century, as powerful Los Angeles interests are apparently again attempting to remove a valuable natural resource before the public becomes aware of the threatened loss.

The City has the following comments, questions, concerns and objections with regard to the Project, and the DEIR.

1. COMMENTS REGARDING THE PROJECT

The City’s October 23, 2013, comments to Rosedale’s NOP set forth the City’s initial concerns with the Project. The City attaches a copy of the October 23, 2013 comments to the NOP as Exhibit A, and incorporates and refers to such comments as part of the City’s comments

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to the DEIR. (See *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 712, noting that comments to an NOP were preserved for a later challenge to an EIR.) The City attaches and incorporates its comments to the NOP because Rosedale has not adequately addressed or responded to the concerns and questions raised by the City in those comments.

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The City's concerns with and objections with regard to the Project, include, but are not limited to, the following:

A. Violation of City Policy

Sales and transfers of local water supplies out of the county are directly contrary to the policies and interests of the City. The City has a long standing policy, most recently confirmed in 2001, that Kern River water shall not be utilized outside the boundaries of the San Joaquin Valley Portion of Kern County.

City-6

The DEIR indicates that Irvine is a California water district that provides a water supply to municipal and industrial customers within an 115,531-acre service area in Orange County, California. (DEIR, p. S-3.) The DEIR indicates that one of the objectives of the Project is to increase Irvine's water supply. In particular, one of the stated "Project Objectives" is to develop Irvine's "groundwater recharge, storage and recovery capacity" so as to provide "increased water supply reliability" for Irvine's "customers." (DEIR, p. 2-3.) The Project would allow Irvine to maintain and utilize up to 88,000 acre feet from Kern County water storage facilities "for its own use." (Id.)

City-7

Development of a water supply for Irvine within Kern County would necessarily and logically involve the exportation or transfer of local water supplies out of the County to Orange County. The Project will therefore directly violate the City's policy, and is contrary to the best interests of residents of the City, and will negatively impact the entire region.

B. Lack of Legal Authority for Project

The DEIR indicates that the Kern River water used by Rosedale and Irvine in the Project will consist of (1) Kern River water sold to Rosedale by the City, and the Buena Vista Water Storage District ("Buena Vista"), "through water service agreements," and (2) Kern River water released from Isabella Reservoir during wet years "for flood control purposes." (DEIR, p. 2-9.)

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Rosedale does not have the legal authority, however, to utilize those sources of Kern River water. As explained in more detail herein, Rosedale can only use water obtained through the City's agreement within its boundaries. Any attempt by Rosedale to transfer Kern River water to Irvine, including Kern River water recharged and banked prior to recapture and transfer to Irvine, would violate that agreement.

In addition, the California State Water Resources Control Board ("SWRCB") has determined that certain Kern River flood flows are "by definition" unappropriated water, and Rosedale therefore does not have a right or permit to divert and use such waters. Any attempt by

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Rosedale, or Irvine, to divert and use such "flood flows" would violate applicable provisions of California law, including Water Code Section 1052.

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C. Adverse Impacts on the City

The boundaries of Rosedale overlap with the boundaries of the City. Rosedale and the City spread and extract water from a shared groundwater basin. Rosedale, and the Project site, are located adjacent to the City's primary recharge facility, the 2800 Acre Recharge Facility ("2800 Acres"), and the Kern River, the City's primary water source. The City directly and indirectly provides water for individuals living within the overlapping City and Rosedale boundaries, and the City's Kern River water supply indirectly benefits landowners within the remaining portion of Rosedale. Given this close relationship between the two entities, the Project will necessarily have significant impacts on the City and its water supply.

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The City's water supplies and ability to provide drinking water to over 367,000 residents are currently threatened and jeopardized by the ongoing drought conditions, rapid and increasing depletion of groundwater supplies by local agricultural districts, and increasing regional demands on local water supplies. The implementation of a large groundwater recharge and extraction project by Rosedale, in conjunction with a large Southern California urban water supplier, and the proposed transfer of Kern River water supplies to Southern California, will likely exacerbate the current adverse water conditions faced by the City, to the detriment of the City and its residents.

D. Significant Adverse Groundwater Impacts

The City is also concerned that Rosedale is proposing to implement a new project which will involve the further extraction of already depleted and threatened local groundwater resources. As the Governor recognized in his April 1, 2015 Executive Order, attached hereto as Exhibit B:

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California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins.

The State of California recently adopted the Sustainable Groundwater Management Act to attempt to address and alleviate adverse and threatened groundwater conditions in the State. That Act calls for the sustainable management of groundwater resources, which it defines as "the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results." (Water Code § 10721(u).)

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The California Department of Water Resources ("DWR") has identified the Kern County sub-basin as being in a critical condition of overdraft. (DWR Bulletin 118-80, pp. 3, 47-48.)

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The City relies on the local groundwater basin as one of its primary sources of drinking water. The City has undertaken extensive and ongoing efforts to recharge and replenish the basin, to increase and restore groundwater levels, and to actively and effectively manage the basin, all for the benefit of local residents. The unreasonable and unsustainable pumping of groundwater in the region threatens and undermines those efforts, and threatens the quantity and quality of the City's drinking water supply.

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The City is concerned that a number of local water districts have reacted to recent drought conditions by pumping excessive and increasingly voluminous quantities of water from the local groundwater basin at a rapid and unsustainable rate. Such excessive pumping has dramatically lowered groundwater levels in the basin, negatively impacted City wells, and significantly accelerated overdraft conditions in the basin.

The City has experienced rapidly declining water levels in the 2800 Acres, very close to the Project. The City has had to lower well screens in a number of areas to keep wells operational, and the City has seen other water supply wells in the vicinity of Rosedale go dry, and out of operation.

Although the DEIR claims that the Project will only pump water that has been spread, experience and practical conditions indicate otherwise. Increased pumping associated with water banking has created demands and stresses on basins which practically have not been offset or alleviated by prior spreading. Increased pumping within water banks typically does not take into account pumping by other individuals and entities in the project area, as well as migration of the spread water out of the project area. Other entities and individuals typically do not spread water, but take advantage of short term increases in groundwater levels created by spreading to increase their pumping and consumption of local groundwater supplies, prior to extraction of the water by the banking project operator. As a result, water banks often are merely pumping native groundwater and putting stresses on already overdrafted basins instead of extracting water actually banked, stored and still available for extraction.

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Rosedale has made many of these same claims in a prior lawsuit alleging that a nearby water bank had lowered groundwater levels and negatively impacted surrounding wells and banking projects, notwithstanding claims by the water bank that it was only pumping water it had spread and banked.

In 2010, Rosedale filed a lawsuit against the Kern Water Bank Authority ("KWBA"), the Kern County Water Agency, the California Department of Water Resources ("DWR") and other Kern County water districts challenging the extent and level of CEQA review for the Kern Water Bank ("KWB"), and the use and operation of the KWB.

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Among other things, Rosedale alleged that the use and operation of the KWB "has actually and will potentially (i) adversely impact the quality and quantity of groundwater within the region; (ii) lower the groundwater table to dangerous and unacceptable levels; (iii) continue

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and exacerbate an unprecedented and improper reversal of hydraulic gradients within the Kern River alluvial fan area; (iv) cause existing wells to go dry; (v) result in substantial health and safety issues associated with the loss of wells serving municipal and domestic purposes; and (vi) cause subsidence.” (Petition, p. 4, ¶ 12; a copy of the petition is attached hereto as Exhibit C.)

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Rosedale further alleged that “KWB’s past, current and future extraction of groundwater has and will potentially substantially and significantly affect groundwater levels underlying lands within the boundaries of Petitioners and underlying other public projects in which Petitioners participate; the amount of groundwater available to and recoverable by Petitioners; the cost of such recovery; the quality of groundwater available to Petitioners; the historical hydraulic gradients within the Kern River alluvial fan area; and the environment of the region.” (Petition, p. 5-6, ¶ 15.)

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Rosedale filed a second lawsuit in 2010 against KWBA, alleging that KWBA breached an agreement regarding the operation of the Kern Water Bank. Among other things, Rosedale alleged that it and other petitioners had lost the right to use KWB for the recharge and/or recovery of water in the KWB as a result of the breach of the agreement, which breach had resulted in “significant groundwater impacts within the boundaries of Plaintiffs.” (Complaint, paragraph 8(b); a copy of the complaint is attached hereto as Exhibit D.)

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The City does not understand how Rosedale can make those allegations against an adjacent, similar banking project, and then claim that its own nearly identical banking project will not have negative or adverse environmental impacts. At the very least, those prior allegations demonstrate that Rosedale has failed to comply with CEQA by failing to disclose and explain baseline conditions, based on its prior allegations involving basin conditions, and by failing to accurately or properly assess the impacts of its own banking and extraction program.

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It also seems apparent that the current drought conditions, and dramatically increased groundwater pumping in and around Rosedale, would only have intensified and exacerbated the conditions described in Rosedale’s prior complaint. Rosedale’s failure to disclose and account for its prior description of local groundwater conditions calls into question the accuracy and veracity of the description of baseline conditions and impacts, as well as the entire DEIR.

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E. Insufficient Justification for Project

The DEIR fails to provide any clear or convincing justification for the Project. The Project Objectives contained in the DEIR do not justify the development of a large scale, intensive water banking and extraction program involving the transfer of local water supplies to Southern California.

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Absent compelling or convincing information regarding an actual need for the Project, it seems apparent that the Project is primarily a money making venture for Rosedale, as Rosedale seems poised to market and sell valuable local water resources for profit to Southern California urban interests.

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2. COMMENTS TO THE DEIR

The City has the following general and specific comments, questions, and concerns regarding the DEIR, and Rosedale's compliance with CEQA in connection with the DEIR and the Project.

A. Project Description

The Project Description section of the DEIR is incomplete, vague, and misleading. Rosedale fails to describe or disclose necessary, essential and required details of the Project. Most importantly, the DEIR omits and fails to sufficiently describe necessary and required details regarding the sources of water that will be utilized in the Project.

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An accurate, finite project description "is indispensable to an informative, legally adequate EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192.) Without an accurate description on which to base the EIR's analysis, CEQA's objective of furthering public disclosure and informed environmental decision making are stymied. "An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed project." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.)

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An EIR's project description must provide "enough information to ascertain the project's environmentally significant effects, assess ways of mitigating them, and consider project alternatives." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533.) California courts have frequently stated that "only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance" and that "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*County of Inyo*, 71 Cal.App.3d at 192-193; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830.)

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If a project description is incomplete or inadequate, the environmental analysis will necessarily be incomplete and inadequate. (*Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal.3d 376, 399-400; *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 729.) In *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, for example, the court found that an EIR for a water supply project was deficient for not providing information on historic water release schedules from storage lakes, so that parties could determine if the project would alter the historic "baseline" pattern of water releases. An accurate and complete description of a project is required under CEQA to allow for "an intelligent evaluation of the potential environmental effects of a proposed activity." (*McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136,

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1143, in which the court stated that the term "project" under CEQA "is given a broad interpretation in order to maximize protection of the environment.")

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(i) Water supplies used in Project

In the section of the Project Description chapter of the DEIR (Section 2.4.2), Rosedale states: "Recharge water for the proposed project would be secured and acquired by Rosedale and IRWD from various sources, potentially including federal, state, and local supplies through transfers, balanced and unbalanced exchange agreements, purchase or temporary transfers, or other means as available. Sources could include the Central Valley Project (CVP), the State Water Project (SWP), high-flow Kern River water depending on annual availability and appropriative (pre-1914 and post-1914) water rights." (DEIR, p. 2-8.)

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The DEIR provides very little additional information regarding the potential sources of water for the Project. The DEIR fails to provide any details regarding the quantity of water available from the identified sources, present and past uses of the water sources, the circumstances under which Rosedale or Irvine would acquire water from the sources, and projected future use of water utilized in the Project. It is also not clear whether Rosedale or Irvine would acquire water from the referenced sources, or whether the water will ultimately be used within Rosedale or Irvine.

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The DEIR only contains a brief, general paragraph describing CVP water supplies. (DEIR, p. 2-8.) The DEIR states that "excess non-storable CVP Section 215 flood water" could be delivered to the Project, and that "Rosedale is a fourth priority non-CVP South of Delta Contractor that can take CVP water under certain conditions." (Id.) The DEIR does not provide any further information regarding potential CVP water supplies for the Project. The DEIR does not define or explain the meaning of the various terms used in that section. The general public, for example, would likely have no idea what "CVP Section 215 flood water" is, or what it means to be a "fourth priority" CVP contractor. This section of the DEIR further does not identify the quantity of CVP water that might be available to the Project, current or alternate uses of such water, quantities of CVP water delivered to Rosedale in the past, any restrictions or limitations on the use of such water, and the likelihood that CVP water will be available for use in the Project, and actually used in the Project, in future years.

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The discussion of SWP water potentially available to the Project is similarly vague, general and incomplete. The DEIR uses terms in connection with the SWP such as "Table A allocation," "Article 21 water," and "exchange State Water Contractor" without providing any, or any detailed, explanation or definition. (DEIR pp. 2-8 – 2-9.) As with the potential CVP water supplies, the DEIR does not identify or discuss the quantity of SWP water that might be available to the Project, current or alternate uses of such water, quantities of SWP water delivered to Rosedale in the past, any restrictions or limitation s on the use of such water, and whether SWP water would ultimately be used within Rosedale or Irvine.

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The DEIR cannot assume that the public has any understanding of, or familiarity with, the terms and concepts used in the document. Rather, “[a]n EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Laurel Heights Improvement Assn.*, 47 Cal.3d at 405.) Absent further explanation and definition of the primary terms and concepts used in the DEIR, the document fails as an informational document.

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Courts have previously invalidated EIRs that did not contain sufficient information and details about SWP supplies proposed for use in a project, and which did not adequately discuss uncertainties associated with SWP supplies. (*See e.g., Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 908, fn. 5, noting that State Water Project entitlements represent nothing more than “hopes, expectations, water futures or, as the parties refer to them, ‘paper water’”; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722, holding that an EIR’s water supply discussion was inadequate because of its assumption that 100 percent of a party’s SWP entitlement would be available; *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1238–1239, 1244, in which the court rejected an EIR for an industrial park because the water supply analysis relied, without adequate consideration of the uncertainties of SWP supplies, on the party’s purchase of 41,000 af in imported SWP water.)

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The DEIR further indicates that Irvine could acquire some quantity of water from the Metropolitan Water District of Southern California (“MWD”) for use in the Project. The DEIR provides no details, however, regarding the quantity, availability, and current use of water potentially available from MWD.

The DEIR only describes the method of delivery of the water, and then states that delivery to Rosedale for the Project “would be subject to supply and conveyance capacity availability and approval by MWD and KCWA.” (DEIR, p. 2-9.) The DEIR further states that Irvine “could also purchase surplus water supplies when approved and available from MWD through the Municipal Water District of Orange County for delivery to the proposed project.” (Id.) The DEIR accordingly fails to provide necessary details about the source, past uses, current uses, quantities, or availability of this potential water supply. The statement that water purchased from MWD “would be subject to supply and conveyance capacity availability” provides no helpful, relevant or useful information regarding this water supply. (Id.)

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The City notes that even a cursory review of MWD’s web site (<http://www.mwdh2o.com/>) provides significant, detailed information regarding the sources of MWD’s water supply, quantities of water transferred, and other information regarding the availability and transfer of water from MWD. The failure to include such readily available information in the DEIR directly violates, and is contrary to, CEQA’s requirements and policies.

The DEIR’s description of “Appropriative Water Rights” potentially available for and intended for use in the Project, at pages 2-9 – 2-10, is even more incomplete, vague, and

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deficient. The discussion of appropriative water rights also contains significant omissions and errors. Since "appropriative water rights," specifically, Kern River water rights, will apparently be the primary water source for the Project, the lack of details and information regarding this water source is particularly problematic.

The DEIR states: "Rosedale currently receives Kern River water when it is available for groundwater recharge through water service agreements with the City of Bakersfield and from Buena Vista Water Storage District and other Kern River interests through banking and temporary water service agreements." (DEIR, p. 2-10.) The DEIR provides few other details regarding the Kern River water supplies for the Project. The DEIR, for example, does not provide any details regarding the "water service agreements" referenced in that section. There is no information regarding the duration, or term, of the agreements, current or alternate uses of the water, place and method of delivery, and priority and pricing information. There is also no information regarding the circumstances under which Kern River water would be "available" pursuant to the referenced agreements, the quantity of water available, when water would be available, how it would be available, and why it would be available.

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The failure to disclose anything more than vague, general information is surprising, since Rosedale could have presumably provided some additional information regarding Kern River water supplies proposed for use in the Project. Rosedale, for example, could have provided some information on the quantities of Kern River water historically transferred to it by the City and by Buena Vista Water Storage District. Rosedale could have also discussed how it presently uses and has used Kern River water transferred by the City and Buena Vista, how that use will change, whether Rosedale will obtain replacement water supplies, and related issues. All of that information presumably could have provided some additional information regarding the use of Kern River water in the Project, beyond the general statement that Kern River water may be used in the Project "when it is available."

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The City, of course, is familiar with the terms and conditions of its own agreement for the delivery of a portion of the City's Kern River water supply to Rosedale ("Kern River Water Service Agreement," dated August 31, 1961, as amended by Agreement 76-80, dated June 30, 1976, a copy of which is attached hereto as Exhibit E) That agreement states that Kern River water sold by the City pursuant to the agreement can only be used within the boundaries of Rosedale. It appears the Project would violate that provision by allowing or calling for the transfer of Kern River water outside the boundaries of Rosedale, and outside Kern County, to Irvine. Kern River water stored and banked in the ground pursuant to the Project would retain its character as Kern River water, and would still be subject to the restrictions in the City's agreement with Rosedale. The failure of the DEIR to identify and discuss the "Kern River Water Service Agreement," and the restrictions and limitation on the use of water transferred by the City to Rosedale, violates CEQA disclosure requirements, and fails to provide an accurate, complete and proper description of the Project.

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The DEIR further states that “Kern River water is also available during wet years when the U.S. Army Corps of Engineers (USACE) mandates release of water from Isabella Reservoir for flood control purposes,” and “[d]uring periods of mandatory release, releases from the Isabella Reservoir may be available for diversion.” (DEIR, pp. 2-10 – 2-11.) The DEIR fails to provide any further details or information regarding the quantity, extent, and timing of water “released” from Isabella Reservoir, or the circumstances, timing and conditions under which the water could be available to Rosedale, and the Project. Once again, the omission of any actual details, facts and other information regarding a potential water source for the Project constitutes a clear violation of CEQA.

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The DEIR also fails to disclose that the SWRCB has determined that the Kern River is no longer “fully appropriated,” and that the water released from Lake Isabella for “flood control purposes” or under “mandatory release” conditions is unappropriated water. In Order WR-2010-0010, the SWRCB, in *“In the Matter of the Petitions to Revise the Declaration of Fully Appropriated Streams to Allow Processing of Applications to Appropriate Water from the Kern River,”* found that the Kern River system was no longer “fully appropriated” based, in part, on evidence presented by various petitions that “in some years there are periods of flows exceeding recognized rights in the Kern River.” (Order WR-2010-10, p. 4; a copy of Order WR-2010-10 is attached hereto as Exhibit F.) The SWRCB explained that petitioners had presented evidence that in certain years high flow, “flood waters,” had been diverted into the Kern River/California Aqueduct Intertie (“Intertie”) when “all Kern River water right claims had already been satisfied.” (Id., p. 5.) The SWRCB accordingly held: “This water is, by definition, unappropriated water.” (Id.)

The SWRCB later issued Order WR-2010-0016 in the same proceeding in response to petitions for reconsideration filed by several Kern County water districts. In that Order, the SWRCB confirmed that Kern River “flood flows” historically diverted into the Intertie constitutes unappropriated water. The SWRCB further explained that “[r]evising the FAS declaration allows for the filing of applications to obtain rights to put to beneficial use high flows initially diverted for flood control purposes pursuant to the statutory appropriative rights procedures.” (Order WR-2010-16, p. 11; a copy of Order WR-2010-16 is attached hereto as Exhibit G.)

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The DEIR also fails to disclose that Rosedale has filed an application with the SWRCB to appropriate these Kern River “flood flows.” (A copy of the application is attached hereto as Exhibit H, along with a February 20, 2010, letter to the City describing Rosedale’s intentions with regard to the application, a copy of which is attached hereto as Exhibit I.) The City can only assume that the water released from Isabella Reservoir, as described in the DEIR, is the same unappropriated water that is the subject of Rosedale’s application to appropriate. Rosedale’s failure to disclose the fact that it does not hold rights, but has applied to acquire rights, to a significant portion of the water it seeks to utilize in connection with the Project violates the intent and specific requirements of CEQA.

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Rosedale's failure to disclose its application to appropriate Kern River flood flows, by itself, establishes that the Project Description is incomplete and inaccurate. The Project Description section of the DEIR should have indicated that SWRCB approval of Rosedale's application to appropriate is a necessary component of, or prerequisite for, the Project.

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The DEIR also fails to disclose that several other parties, including the City, have filed applications with the SWRCB to appropriate any unappropriated Kern River water, including water released from Isabella Reservoir. If one of the other parties obtains rights to unappropriated Kern River water, including "mandatory release" water from Isabella reservoir, the water will not be available for use in the Project.

Rosedale's failure to address potential impacts and uncertainties with regard to the water supply for the Project is in direct violation of CEQA statutes and related authority. In *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 864, 881, for example, the court held that a water agency violated CEQA by certifying an EIR which did not properly analyze the environmental impacts of a project increasing the agency's withdrawal of water from the Russian River. The agency abused its discretion by, among other things, failing to discuss a separate federal proceeding which would have reduced the flow of water in the Russian River, and hence affected the supply of water for the project. (*Id.*, at 881.)

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In *California Oak Foundation*, 133 Cal.App.4th at 1226, the court held that although an EIR for a development project acknowledged that water entitlements could fluctuate from year-to-year, it did not present a reasoned analysis or discussion of the issue and thus did not comply with CEQA. Although the EIR acknowledged that water supply "could potentially be limited" by ongoing legal challenges, without a detailed discussion of the nature of the challenges, "it is impossible to know the contours of the potential limitation on the water supplies." (*Id.*, at 1239.)

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The DEIR provides no other information regarding Kern River water supplies potentially available or intended for use in the Project. Rosedale's failure to disclose any additional information regarding Kern River water, the apparent primary water source for the Project, renders the DEIR essentially useless as a public informational document, in direct contravention of the requirements, intent and purpose of CEQA. It is inconceivable that in a lengthy, voluminous DEIR for a significant water supply project in Kern County, in an overdrafted basin, in the middle of the worst drought in recorded history, and where water is recognized as a critical and valuable commodity, that there would be no further description or details regarding the primary water supply for the Project.

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The brief, general and vague description of the water supplies to be used in the Project clearly and blatantly violates requirements for the description of water supplies in an EIR. In *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432, the court explained that "future water supplies" identified and analyzed in an EIR "must bear a likelihood of actually proving available; speculative sources and unrealistic allocations ("paper water") are insufficient bases for decisionmaking under CEQA." The court

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further explained that an EIR for a land use project “must address the impacts of likely future water sources, and the EIR’s discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water’s availability”. (*Id.*, citing *California Oak Foundation*, 133 Cal.App.4th at 1244.)

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Pursuant to *Vineyard* and related cases, the DEIR does not provide necessary and required details regarding the water supply for the Project. As the court in *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, explained, in *Vineyard*:

The California Supreme Court identified four “principles for analytical adequacy under CEQA.” (*Vineyard*, at p. 430.) First, an EIR is inadequate if it “simply ignores or assumes a solution to the problem of supplying water to a proposed land use project. Decision makers must, under the law, be presented with sufficient facts to ‘evaluate the pros and cons of supplying the amount of water that the [project] will need.’ ” (*Vineyard*, at pp. 430–431, quoting *Santiago*, supra, 118 Cal.App.3d at p. 829.) Second, “future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis. An EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project.” (*Vineyard*, at p. 431.) “Third, the future water supplies identified and analyzed must bear a likelihood of actually proving available; speculative sources and unrealistic allocations (‘paper water’) are insufficient bases for decisionmaking under CEQA. [Citation.] An EIR for a land use project must address the impacts of likely future water sources, and the EIR’s discussion must include a reasoned analysis of the circumstances affecting the likelihood of the water’s availability. [Citation.]” (*Vineyard*, at p. 432.) “Finally, where, despite a full discussion, it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies. [Citation]

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...

The DEIR fails to comply with those four requirements, based on the lack of any detailed or concrete information regarding potential water sources for the Project. The public, and decisionmakers, are not provided sufficient information to determine (1) the pros and cons of supplying the amounts of water needed for the Project from various sources, (2) long term water demands, and potential supplies, (3) the likelihood that the identified water sources will actually be available, and (4) possible replacement or alternative sources if the identified water sources are not available.

Rosedale cannot avoid providing details regarding future water supplies and sources even if there is some uncertainty regarding the future availability of the potential water sources.

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Pursuant to the holding in *Vineyard*, and related, cases, the DEIR must have included “a reasoned analysis of the circumstances affecting the likelihood of the water’s availability,” and “possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies.” (*Vineyard*, 40 Cal.4th at 432.)

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City-42

(ii) Water supplies extracted and developed from Project

The DEIR also fails to describe the intended or expected use of water developed and extracted through the Project, including where the water will be used, how it will be used, and how much of the water will be used by different entities for various purposes.

City-43

The DEIR indicates that Figure 2-2 “identifies potential and approximate well locations” on the Project property. (DEIR, p. 2-12.) The DEIR then states “Location of wells on all three Stockdale Properties may change during final design.” (Id.)

City-44

The DEIR does not provide specific, detailed information regarding the recovery and pumping of water in connection with the Project. The DEIR does not indicate, for example, whether Project water will go to Irvine, Rosedale, or some third party. The DEIR instead states, under the heading “Recovery Scenarios”:

Rosedale would recover water from the proposed project as needed to meet existing or future commitments under its Conjunctive Use Program. It is expected that banked supplies would be conveyed to IRWD when needed to return water to its program partners and potentially during times when IRWD’s imported and/or local supplies are interrupted or curtailed. IRWD’s participation in the proposed project recognizes IRWD’s need, in the event of an interruptible or short-term water shortage, for additional storage and recovery capacity to provide for improved reliability and redundancy in its supplies.

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That description is vague and incomplete. Rosedale does not explain what “commitments” it might have that would call for the transfer of water recovered from the Project. The DEIR further does not identify Irvine’s “program partners,” or explain how or why they might receive water from the Program. The omission of such important details regarding the Project does not comply with CEQA requirements, and prevents the DEIR from properly reviewing the impacts of the Project on the environment.

The DEIR also does not indicate how much water will be produced from the Project. The Project Description states that “[r]ecovered water would be designed to extract approximately 11,250 AFY at Stockdale West and approximately 7,500 AFY at Stockdale East,” and that “a third proximate site of up to 640 acres may have recharge capacities of approximately 52,200 AFY and recovery of approximately 22,500 AFY.” (*See also* DEIR, p. 2-10.)

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There is no indication or explanation as to how much water would actually be extracted from the basin on an annual basis, when water would be extracted, and under what

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circumstances. The DEIR does not explain, for example, how much water would have to be first placed in storage before extraction began. The DEIR does not explain how Rosedale will determine how much water to extract each year, or what factors and information will impact or affect that decision.

City-47

The DEIR fails to provide information regarding the use of such water by Rosedale or Irvine, the types of uses, the location of the use, and, consequently, the impact of that use on the environment. The DEIR shows that Irvine's service area (at Figure 1-3) is relatively large and encompasses several cities in Orange County. The DEIR does not disclose where within the boundaries of Irvine water made available through the Project will be used, how it will be used, and what impacts such use will have on the environment.

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Failure to include these components of the Project in the DEIR, and in particular in the Project Description, constitutes improper "piecemealing," in violation of CEQA. The entire project being proposed for approval must be described in the EIR. A complete project description is necessary to ensure that all of the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.) In *County of Inyo*, for example, the court found that an EIR failed to describe or analyze groundwater exports because the EIR improperly sought to characterize expanding groundwater exports as a separate, ongoing project. (71 Cal.App.3d at 193.)

City-49

A lead agency may not split a single large project into small pieces so as to avoid environmental review of the entire project. (*Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Instead, an EIR must examine all components necessary to a project, including those that will have to be approved by another agency. (*Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428.)

(iii) Project objectives

The statement of objectives in an EIR should include the underlying purpose of the project and should be clearly written to guide the selection of alternatives for evaluation in the EIR. (14 Cal. Code Regs. § 15124(b).) Generally, an EIR discloses the requisite analytic route when it provides "sufficient information and analysis to allow the public to discern the basis for the agency's [action]." (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 13.)

City-50

The DEIR's discussion of Project Objectives does not comply with those requirements. (DEIR, p. 2-3.) The Project Objectives are vague, general, and redundant, and contain undefined terms. The four Project Objectives consist initially of two very vague statements regarding "operational flexibility" with regard to Rosedale's existing banking projects. (DEIR, p. 2-3.) The remaining two Project Objectives contain vague, general terms such as "capacities," "redundancy" and "diversification." Rosedale does not define or explain those terms anywhere in the DEIR.

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The DEIR, moreover, does not indicate that there are unmet demands for water in Rosedale, or in Irvine. (DEIR, p. 2-3.) The Project Objectives are also confusing because it is not clear whether the Project Objectives apply to both Rosedale and Irvine, or whether certain objectives only relate to one of the districts.

City-51

(iv) Other deficiencies in Project Description

The Project Description fails to provide important details about the components, operation and purpose of the Project. The Project Description, for example, does not provide sufficient information about Irvine’s intended use of water stored or banked in connection with the Project. There is also very little information in general regarding Irvine’s role and responsibilities in connection with the Project.

City-52

Further, the DEIR does not sufficiently describe the Project area, including all areas that will be impacted by the Project. The DEIR does not describe or contain sufficient details regarding Irvine, Irvine’s use of water from the Project, specific cities and areas within Irvine that will be impacted by the Project, and other areas in the region, and Southern California, that will be impacted by the Project. The DEIR, for example, indicates that MWD will likely be impacted by or involved in the Project, yet the DEIR provides no useful information regarding MWD, its service area, and its water supply.

City-53

A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. (*Laurel Heights Improvement Association*, 47 Cal.3d at 396.) The DEIR violates that requirement by focusing on Rosedale’s involvement in the Project, and by not sufficiently describing Irvine’s role in and portion of the Project.

The Project Description of the DEIR focuses more on construction and implementation of Project facilities, and the practical operation of Project facilities, at the expense of actual details of the Project banking operations from a water supply standpoint.

City-54

The “Project Approvals” section of the Project Description is incomplete and misleading in that it does not disclose that the SWRCB’s approval of Rosedale’s application to appropriate Kern River water is necessary to develop and utilize one of the primary identified water sources for the Project. (DEIR, pp. 2-24 – 2-25.) The general listing of the SWRCB under the heading “Other approvals required may include the following” is not sufficient or proper under CEQA. (Id.) The DEIR should have instead disclosed and discussed the specific approval required from the SWRCB for full implementation of the Project.

City-55

A project description that omits integral components of the project is deficient since it prevents a disclosure and review of the actual impacts of a project. (*Cadiz Land Co. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 92, finding an EIR failed to provide a sufficient description of the environmental setting of a project because it failed to “discuss the volume of

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water contained in an aquifer or the size of the aquifer,” as knowledge of the volume of groundwater that might be affected by the project is “crucial” to determining whether and when the project might deplete groundwater resources; *Santiago County Water District*, 118 Cal.App.3d at 829, finding a project description for a sand and gravel mine inadequate under CEQA for omitting mention and discussion of water pipelines that would serve the project.)

City-56

Similarly, in *San Joaquin Raptor/Wildlife Rescue Center*, the court found that an EIR for a large residential development project was inadequate because it did not disclose the specific location and extent of a riparian habitat adjacent to the project site, inadequately investigated the possibility of wetlands on the site, understated the significance of the project's location adjacent to the San Joaquin River, and failed to discuss a nearby wildlife preserve. (27 Cal.App.4th at 729.) The court found that because the description was deficient, consequently the impact analysis and mitigation findings were legally inadequate. (*Id.*)

City-57

The Project Description in the DEIR is also deficient because Rosedale does not provide required information regarding the “potential third project site” for the Project. Rosedale should have provided more details and explanation regarding the reasons or “triggers” for future development of a third project site. Rosedale should also confirm that it will not develop the third project site without first undertaking additional detailed, proper CEQA review.

City-58

B. Baseline Conditions

The DEIR also fails to comply with CEQA in its description of “baseline” conditions in the Project area, and in areas impacted by the Project.

An EIR must describe the environmental setting for a proposed project, to establish the baseline that a lead agency uses to determine whether project impacts are significant. (14 Cal. Code Regs. § 15125(a).) Specifically, the EIR must describe “the physical environmental conditions in the vicinity of the project.” (*Id.*) The description of the physical environmental conditions must include both a local and regional perspective. (*Id.*)

Establishment of the baseline is critical to a meaningful assessment of the environmental impacts of a project, because the significance of environmental impacts cannot be determined without setting the baseline. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119.) The description should place special emphasis on environmental resources that are rare or unique to the region and that would be affected by the project. (14 Cal. Code Regs. § 15125(c); *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 722.)

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The DEIR fails to meet these standards. The DEIR either fails to provide any information on certain baseline conditions in the Project area, or only provides a brief, general and incomplete description of baseline conditions.

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The DEIR, for example, fails to provide any description of baseline conditions in and around the Kern River. The failure to describe such conditions is glaring, and clearly not in compliance with CEQA, since the DEIR identifies the Kern River as the primary water source for the Project. The Kern River is also the primary source of recharge for groundwater in the Project area. The DEIR nevertheless fails to describe current flow conditions in the Kern River, the environment in and around the river, and the timing and frequency of diversions from the river. Absent such information, the DEIR cannot possibly, properly or completely assess the impact of the Project on the environment, and on local water supplies and sources.

City-60

The DEIR also fails to provide any information regarding the nature, extent and yield of the Kern River water potentially "available" for use in the Project. There is absolutely no discussion of the Kern River water rights held by the City and Buena Vista. The DEIR does not disclose how much water is diverted from the Kern River by the City and Buena Vista, and how much of that water and under what circumstances and conditions some of that water might be transferred to Rosedale.

City-61

The DEIR also fails to provide a detailed or complete description of baseline conditions, including baseline water conditions, within Rosedale and Irvine. The DEIR, for example, provides very little information regarding water rights held and utilized by Rosedale and Irvine, as well as quantities of water historically and currently used, overall water demands, including municipal demands, and available sources of water for both districts.

City-62

The DEIR also fails to disclose the number of wells within Rosedale, including private wells, the location of various wells within Rosedale, and the quantity of water produced by those wells. Absent that information, it is not possible to determine project impacts within Rosedale, and in general. It is also not possible to reasonably determine the impact of the Project on the local environment in connection with existing, baseline, groundwater pumping and use, absent detailed information about current groundwater pumping within Rosedale.

City-63

The DEIR also fails to provide specific information regarding quantities of water used within Irvine, the types of uses, the nature and extent of any rights associated with water utilized by Irvine, and the overall demand for water within Irvine. The failure to provide basic, specific information regarding the use of and demand for water within Irvine by itself establishes a CEQA violation. Since the Project is intended to provide a supplemental water supply for Irvine, the DEIR cannot accurately and properly determine the impacts of the Project without information on existing, baseline water supply conditions within Irvine.

City-64

The DEIR also fails to sufficiently identify current and historic groundwater conditions in the Project area. The DEIR specifically fails to sufficiently identify and describe current groundwater conditions within Rosedale and in and around Rosedale, in the Project area. The DEIR fails to disclose necessary, required information regarding groundwater levels in the Project area, quantities of water spread, pumped and extracted from the basin by Rosedale, and other entities and individuals within Rosedale. The DEIR only provides general information

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without identifying the locations of various water level readings, and variances and differences involving groundwater levels within Project area.

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The Project area, moreover, is surrounded by other water banks and water banking projects. The groundwater basin in the Project area has experienced heavy pumping and extraction of water in recent years. The DEIR, however, fails to identify quantities of water pumped by other banking programs and projects in the Project area, or groundwater levels, quantities of water spread, and water quality conditions within other banking programs and projects. The DEIR provides little if any information regarding baseline conditions in areas that will likely be directly impacted by the Project.

City-66

The DEIR additionally does not contain specific, detailed information regarding the groundwater aquifer, including the nature and extent of basin overdraft conditions. That lack of information is directly contrary to the holding in *Cadiz Land Co.*, in which the court found that the description of the environmental setting for a large landfill was deficient because the EIR did not quantify the size of the aquifer that underlay the proposed landfill site. (83 Cal.App.4th at 92.)

City-67

The DEIR indicates that within the boundaries of Rosedale “about 7,500 acres [are] developed for urban uses.” (DEIR, p. S-3.) The DEIR fails to provide any additional information regarding those urban uses. There is no information on the population within that area, or within Rosedale. There is no information regarding the quantity and source of water used to meet demands associated with those “urban uses.”

City-68

At page S-7, the DEIR states that the No Project Alternative “would forego any environmental benefits to the San Joaquin Valley Groundwater Basin such as correction of overdraft conditions, including those due to groundwater pumping to support irrigated agriculture at the Stockdale East property.” That statement is not supported or explained anywhere in the DEIR. There is no further explanation or indication that the Project will alleviate or correct “overdraft conditions.” There is also no explanation or discussion of the referenced “overdraft conditions.”

City-69

The DEIR also fails to accurately describe baseline conditions involving the legal status of the Kern River. As described above, the DEIR fails to disclose that the Kern River is no longer fully appropriated; that Rosedale has filed an application to appropriate the “Kern River floodwaters” and “high-flow Kern River water” generally referred to and described in the DEIR; that until the SWRCB acts on and approves Rosedale’s application to appropriate it has no right to such water; and that other entities, including the City, have submitted competing applications to appropriate to the SWRCB, which seek all or some of the same Kern River water Rosedale proposes to utilize in the Project.

City-70

Finally, the DEIR’s description and characterization of the City is erroneous and misleading. At several places in the DEIR, Rosedale states that Rosedale is located six miles to

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the west of the City. (See DEIR, pp. 1-1, 2-1, 3.9-8 and 3.10-1.) That statement is not accurate, as the boundaries of the City overlap with Rosedale’s boundaries.

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Several of the maps used in the DEIR are similarly misleading, as they fail to show the actual geographic boundaries of the City. One of the maps (Figure 1-1) purports to show the location of the City through a small dot on the map to the east of Rosedale. That is highly misleading and deceptive, and further demonstrates that the DEIR fails as an informational document.

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City-72

C. Project Impacts

An EIR must describe and analyze the significant environmental effects of a project, and discuss ways of mitigating or avoiding those effects. (14 Cal. Code Regs. § 15362.) Among other things, an EIR must identify direct, indirect and long-term environmental effects, and cumulative impacts. (14 Cal. Code Regs. §§ 15126.2(a), 15130.) An EIR must provide public agencies, and the public in general, with detailed information about the effects a proposed project is likely to have on the environment. (Pub. Res. Code §§ 21060.5, 21061; *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.)

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City-73

An EIR must be prepared with a sufficient degree of analysis to provide decision-makers with the information needed to make an intelligent judgment concerning a project’s environmental impacts. (14 Cal. Code Regs. §15151; *Napa Citizens for Honest Government. v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 356.) An EIR should, when looked at as a whole, provide a reasonable, good faith disclosure and analysis of the project’s environmental impacts. (*Laurel Heights Improvement Assn.*, 47 Cal.3d at 392.)

In contravention of this authority, Rosedale has not made a good faith effort at full disclosure and discussion of the impacts of the Project. Instead, Rosedale has apparently attempted to obscure and hide the details of various elements and components of the Project, so as to avoid or minimize the discussion and disclosure of various impacts from the Project.

As previously indicated, the omission of basic, required information regarding the Project, and baseline conditions in the Project area, prevents the DEIR from making any meaningful, complete analysis of the impacts of the Project on the local environment, as well as on the Kern River, the City, and the local groundwater basin.

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City-74

The DEIR consequently fails to review and analyze the impact of the uses of the potential water sources on the environment, other water users, and local water supplies. The DEIR fails to even come close to satisfying CEQA requirements concerning the identification and discussion of the impacts of a large water supply and storage project, as articulated in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, and related cases.

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The DEIR is also deficient because, to the extent it does attempt to review the impacts of the Project on the environment, it dismisses or minimizes a number of potential impacts to the environment without explanation and based on unsupported or unexplained conclusions. That is not appropriate, as a bare conclusion without an explanation of the factual and legal basis is not a sufficient analysis of an environmental impact. (*Laurel Heights Improvement Assn.*, 47 Cal.3d at 404.) The discussion of environmental impacts must instead contain an explanation of the reasoning supporting the EIR's impact findings, and the supporting evidence. (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383.)

City-76

In addition to the above described CEQA violations in connection with the DEIR, and the Project, the DEIR also fails to properly or sufficiently analyze the impacts of the Project in the following respects.

(i) Kern River impacts

Although the DEIR provides very little detail or meaningful information about the Project, and the components of the Project, the DEIR still reveals that the Project will utilize apparently substantial quantities of Kern River water.

To assess the impacts of a proposed project on the environment, an EIR must examine the changes to the existing environmental conditions that would occur if the project is implemented. (14 Cal. Code Regs. § 15126.2(a); *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 676.)

The DEIR inexplicably fails to provide any analysis, explanation or discussion of the impacts of the Project on the Kern River, including impacts on flows of water in the Kern River, the environment in and around the Kern River, the aquifer underlying the Kern River, and the patterns of diversion and use of water from the River. The section of the DEIR that reviews impacts on water resources (Chapter 3.9) focuses only on impacts on groundwater conditions and supplies within Rosedale. The DEIR does not even acknowledge that the Kern River will be impacted by the Project, let alone review and determine the significance of the Project's impact on the Kern River.

City-77

The DEIR therefore does not discuss or analyze the impact of the Project on the quantity and timing of flows in the Kern River. The DEIR does not review Project impacts on the Kern River environment, including plant and animal life in and around the River. The DEIR further does not describe the impacts of the Project on recharge from operation of the river and groundwater supplies in and around the river channel.

Rosedale does not hold any appropriative Kern River rights (nor does Irvine). Rosedale's plan to utilize substantial quantities of Kern River water for a new water banking project will necessarily result in changes, and impacts, in the diversion and use of water from the Kern River. Even if Rosedale is only proposing to use Kern River water purchased from the City and Buena Vista, the Project would still likely result in changes in the timing, place of use, manner of use,

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and extent of use of such water. Those changes will necessarily have an impact on the Kern River.

↑ City-78

California courts have frequently rejected or invalidated environmental review documents for failing to properly and adequately review the impact of a project on a local water supply or source. (See *Napa Citizens for Honest Government*, 91 Cal.App.4th at 386, rejecting an EIR for failing to provide sufficient information on the effect a project would have on a region's water supply and the need for treatment of wastewater; *County of Amador*, 76 Cal.App.4th at 948, setting aside an EIR for a new water diversion for failing to "adequately assess the project's impacts on fishery resources and lake levels;" *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, finding an EIR for the acquisition of supplemental state water pursuant to the Monterey Agreement deficient for failing to completely assess the impacts of the water transfer.)

City-79

In *Santiago County Water District*, the court similarly concluded that an EIR did not adequately assess the environmental impact of the delivery of water to a proposed sand and gravel operation. (118 Cal.App.3d at 831.) The court noted that "even if the Water District does have the ability to meet the requirements of the project, the EIR is silent about the effect of that delivery on water service elsewhere in the Water District's jurisdiction." (*Id.*) The court further stated "the conclusion that one of the unavoidable adverse impacts of the project will be the 'increased demand upon water availability from the Santiago County Water District' is only stating the obvious. What is needed is some information about how adverse the adverse impact will be." (*Id.*)

In *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, the court similarly found that an EIR was defective because it did not discuss in sufficient detail the environmental impacts of a pipeline project on the reduction of surface flow in local streams. For the same reasons, the DEIR's failure to discuss the impact of the Project on the Kern River is clearly incomplete and inadequate.

City-80

(ii) Transfers of water to Orange County

The DEIR is also fatally flawed and defective because it fails to assess or discuss the impacts of transfers of water, including valuable, necessary high quality Kern River surface water, out of Rosedale, and out of the County, to Irvine.

The impacts of such out of district transfers of valuable and important local water supplies will necessarily have significant impacts on the local environment, including on the Kern River, other local supplies, including groundwater supplies, and other water users. Transfers of Kern River water outside the County would deprive the region of a limited, high quality source of drinking and irrigation water, and negatively impact flows of water in the Kern River, and the environment in and around the River. Transfers of Kern River water out of the County would also deprive the groundwater basin of necessary recharge, which would negatively

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impact groundwater levels, the quality of water in the basin, and the supply of water available for consumptive use in the County.

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Despite such significant impacts, the EIR is completely devoid of any discussion of the impacts of out of area transfers of Kern River water, or other local water supplies. Again, the section of the DEIR that reviews impacts on water resources, Chapter 3.9, almost exclusively focuses on localized impacts on groundwater resources in the Project area.

The DEIR's failure to disclose and discuss such impacts is particularly glaring and problematic in light of current drought conditions, the depleted water supplies in the region, and the overdrafted local groundwater basin. There is also no review or discussion of replacement water supplies that might be utilized to replace or make up for water lost to Southern California, and no discussion of the impacts associated with the use of such alternate water sources.

City-82

The DEIR, as indicated, fails to provide necessary details and information regarding the transfers of local water supplies out of the area, to Irvine. Absent such information, there is no way that the DEIR could have provided a complete or meaningful discussion of the impacts of such out of area transfers, even if Rosedale had intended to explore, rather than obscure, such impacts.

In any case, the lack of any discussion of impacts from out of area water transfers, by itself, establishes that the DEIR is invalid and not in compliance with CEQA requirements.

(iii) Impact of the Project on the City

The DEIR does not provide any meaningful, accurate or comprehensive discussion of the impacts of the Project on the City. The DEIR similarly provides almost no information about "baseline" conditions within the City, as well as the City's baseline water rights.

City-83

The City will apparently provide one of the primary water sources to the Project through its transfer of Kern River water to Rosedale pursuant to the 1961 agreement. (Exhibit E) The boundaries of the City overlap the boundaries of Rosedale, and the Project would be located immediately adjacent to the City. The operation of the Project, including the transfer of City supplies for use in the Project, and the apparent significant anticipated pumping and extraction of groundwater as a result of the Project, would necessarily impact the City's water supply, and the City's operation of the nearby 2800 Acre recharge and water banking facility.

City-84

The failure to review the impacts of the Project on the City is in direction violation of CEQA requirements. An EIR must consider all impacts of a project on the environment, even if the impacts would be felt by another agency. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713.)

City-85

The DEIR was also required to review the impacts of the Project on the City because the City will provide water to Rosedale for the Project. California courts have rejected or

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invalidated environmental review documents for failing to properly and adequately review the impact of a water transfer on a local water supply or source. (See *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, finding an EIR for the acquisition of supplemental state water pursuant to the Monterey Agreement deficient for failing to completely assess the impacts of the water transfer.)

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City-86

The complete failure to review the impacts of the Project on the City renders the entire DEIR void and invalid.

(iv) Impact of the Project on the groundwater basin

The DEIR does attempt to review and discuss the impact of the Project on the local groundwater basin, and groundwater supplies, but the review is incomplete misleading, and not in compliance with CEQA. The DEIR fails to sufficiently discuss the impact of the Project on groundwater supplies, and the groundwater basin underlying Rosedale, and the City.

City-87

In particular, the DEIR does not sufficiently identify and discuss in any detail the impact of the Project on other banking projects and programs in the area, groundwater levels in the vicinity of the Project, and related impacts on the basin and local water supplies as a result of the extraction of water in connection with the Project, and the transfer of water from the Project out of the region.

At Page 3.2-13, the DEIR claims that the Project would reduce “future overdraft conditions in the underlying groundwater basin.” The DEIR does not provide any details regarding the “overdraft conditions” in the basin, and consequently it is not possible to determine how, and to what extent, the Project would actually impact or affect “overdraft conditions.”

City-88

The claim that the Project “does not require a new water supply” (DEIR, p. 3.14-6.) does not make sense, and is contradicted by the repeated reference to and discussion of water supplies that will be used in the Project.

City-89

The DEIR only reviews very localized impacts on groundwater resources, within Rosedale and the Project area, and in wells immediately adjacent to the Project site. The DEIR does not review longer term impacts of the Project on the groundwater basin, or review the impact of the Project on groundwater levels and quantities farther removed from the Project site.

City-90

The DEIR’s review of Project impacts on groundwater is flawed and incomplete in part because the DEIR does not sufficiently describe the local groundwater basin or consider other uses of and burdens on the basin. The DEIR, for example, does not identify or discuss the entities, besides Rosedale, that pump water from the basin, describe the quantities and timing of groundwater extractions from the basin, or discuss the impacts of the pumping of other parties on the basin in connection with the Project.

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The DEIR also does not assess the actual impact of increased groundwater banking and pumping in the area by other entities. The DEIR only provides very general, vague statements and information about the groundwater basin, other spreading projects, and the extraction of water from the basin.

City-92

The DEIR's reliance on historical groundwater and pumping data additionally is not reasonable in the present situation. In light of the long term drought, rapidly increasing pumping, and the proliferation of new banking projects and facilities, reliance on past, historical data is not helpful and does not accurately assess or disclose the impacts of the Project.

City-93

In light of the limited information regarding groundwater conditions and other baseline conditions, and the other deficiencies and flaws in the DEIR, the conclusion that the Project will have a "less than significant" impact on the environment is not convincing or credible, and is not in compliance with CEQA.

City-94

(v) **Other impacts**

Biological Resources. Many of the areas around Rosedale, including the City's 2800 Acre Recharge Area, have been designated or proposed for designation as "critical habitat" for the Buena Vista Lake Shrew. (A copy of the Final Rule designating critical habitat for the Buena Vista Lake Shrew is attached hereto as Exhibit J.) Rosedale should have disclosed that information in the Biological Resources section of the DEIR, starting at page 3.4-1, and the DEIR should have considered and reviewed the impact of the Project on that species and its critical habitat areas. The DEIR should have also determined and discussed whether the Buena Vista Lake Shrew could be found on the Project site, and what efforts, if any, were undertaken by Rosedale to determine if the Shrew can be found on Project property currently.

City-95

GHG Emissions. The discussion of project impacts on air quality and greenhouse gas ("GHG") emissions in Chapters 3.3 and 3.7, and at page 4-10, is incomplete and does not comply with CEQA.

The DEIR indicates that Project recovery wells could generate up to approximately 6,187,500 kwh/year at Stockdale West and 4,125,000kwh/year at Stockdale East. (DEIR, p. 2-23.) The DEIR does not consider or review the impact that such new pumping would have on the generation of GHG at electric-power generating plants as a result of those increased energy demands. The DEIR additionally fails to quantify or assess the impacts of increased GHG emissions from municipal use of water from the Project within Irvine.

City-96

The DEIR further does not take into account or attempt to assess increased energy consumption and generation, and related increases in GHG emissions, caused by increased pumping and pumping from lower groundwater levels by nearby wells, including wells within neighboring water banking projects, resulting from the Project and the increased demand on an already overdrafted basin as a result of the Project.

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D. Cumulative Impacts

An EIR must evaluate significant cumulative impacts, based on an assessment of the project's incremental effects "viewed in connection with the effects of past projects, the effect of other current projects, and the effects of probable future projects." (14 Cal. Code Regs. §§ 15130(a), 15065(a)(3).)

The EIR's discussion of the cumulative impacts of the Project, in connection with other, similar projects in the region, is inadequate and incomplete.

Although the DEIR identifies other local water banking projects, the DEIR provides no other information regarding other banking projects in and around the Project area. The DEIR does not identify the sources of water for the other banking Projects, quantities of water recharged and later pumped, the extent and rate of pumping, quantities of water pumped, and anticipated and planned changes in the operations of the banking projects.

Absent such information, it is not possible or feasible for the DEIR to properly identify and discuss the cumulative impact of the Project. The DEIR does not disclose for example, whether other banking projects are using, plan on using, or plan on changing their use of, the same water supplies proposed for use in the Project. The DEIR therefore does not and cannot properly determine the cumulative impacts of the Project on local water supplies.

In addition, without more detailed, specific information regarding the operation of other banking projects, including, in particular, adjacent and nearby banking projects, the DEIR does not and cannot accurately or thoroughly assess the cumulative impact of substantial increased pumping in the region as a result of the Project. If other nearby banking projects, for example, were planning on drilling more wells or increasing their pumping and use of water, the cumulative impact of the Project and existing projects would be much different than as described in the DEIR.

The DEIR also fails to provide any discussion or analysis of the cumulative impact of the Project on the Kern River, and other local water supplies and sources. Once again, Rosedale cannot provide a proper or sufficient analysis of the cumulative impacts of the Project on the Kern River, and other local water supplies, because the DEIR fails to provide basic, essential information on baseline conditions in the Kern River, and the impact of the Project on the Kern River.

In *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431, the court stated that "it is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them." The court therein further stated: "A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the

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necessity for mitigation measures, and the appropriateness of project approval.” (*Id.*; see also *Whitman v. Board of Supervisors*, (1979) 88 Cal.App.3d 397, 408, in which the court found that the cumulative impact section of the EIR did not comply with the statutory authority because it “lacks even a minimal degree of specificity or detail.”)

City-102

E. Potential Areas of Controversy

An EIR must identify and summarize “[a]reas of controversy known to the Lead Agency including issues raised by agencies and the public.” (14 Cal. Code Regs. § 15123(b)(2).)

The Introduction section of the DEIR indicates that various “concerns” were raised during the public comment period and scoping session for the Project. (DEIR, p. S-7.) The DEIR further claims that those concerns “have been addressed in Chapters 3 and 4 of this Draft EIR.” (*Id.*)

City-103

The DEIR, however, does not sufficiently identify and summarize all of the “areas of controversy” regarding the Project, including the issues, concerns and objections raised by the City in its comments to the NOP for the Project. Chapters 4 and 5 of the DEIR, in fact, do not address the areas of controversy raised by the City in its comments to the NOP. Chapter 4 of the DEIR addresses purported Project impacts, and Chapter 5 addresses cumulative impacts and mitigation measures. Those chapters do not identify, articulate or “summarize” the City’s concerns, nor do the chapters directly discuss, analyze or respond to the City’s concerns.

City-104

Even if Rosedale disagrees with the City’s objections and complaints about the Project, the environmental documentation must still summarize the main points of disagreement between the City and Rosedale. (14 Cal. Code Regs. § 15151; *Browning-Ferris Indus. v. City Council* (1986) 181 Cal.App.3d 852.) An agency may choose among differing opinions or conclusions as long as the EIR identifies the competing arguments correctly and in a responsive manner. (*Id.*) Rosedale has violated CEQA by failing to sufficiently describing and summarizing the City’s concerns in the DEIR.

City-105

The DEIR additionally fails to identify and discuss a significant area of controversy involving competing claims to, and disputes over, rights to the “floodwaters” historically released from Isabella Reservoir, based on competing applications to appropriate such water filed with the SWRCB.

City-106

F. Mitigation Measures

Pursuant to Public Resources Code Section 21002.1, “Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” An EIR must include a detailed analysis of mitigation measures that will minimize the significant effects of a proposed project on the environment. (Pub. Res. Code § 21100(b)(3).) An EIR specifically must identify and describe “[m]itigation

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measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.” (Id.)

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City-107

The DEIR is deficient because it does not identify, propose or discuss potential measures or programs to mitigate a number of significant environmental impacts that would result from the Project. The DEIR, most significantly, does not identify or propose measures to mitigate or replace the reduced flows of water in the Kern River, and the transfer of local water supplies to Irvine.

Rosedale does propose mitigation measures to address and alleviate the Project’s negative impacts on “groundwater resources,” but the proposed measure lacks sufficient details and explanation, as well as measures, which will actually and practically mitigate negative impacts on groundwater resources.

In the cumulative impact section of the DEIR, Rosedale states that it will implement the “Long Term Operations Plan” (“Plan”) to provide “a framework under which Rosedale would monitor for and identify project-related adverse impacts to neighboring entities.” (DEIR, p. 4-15.) Rosedale further states that the Plan “designates specific measures to be employed to ‘prevent, eliminate or mitigate significant adverse impacts’ resulting from project operation, including effects to neighboring wells.” (Id.)

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City-108

A review of the “primary components” of the Plan, as well as the actual Plan, reveals that the Plan either lacks necessary details, or will not actually address or alleviate adverse groundwater impacts and conditions resulting from the Project.

Most importantly, the primary mitigation measure in the Plan involves Rosedale providing compensation to lower the “well pump” in wells negatively impacted by the Project. The payment of compensation to allow a neighboring well owner to further deplete an already overdrafted, impacted basin will only exacerbate and increase, and not mitigate, adverse Project impacts.

Rosedale has failed to propose a mitigation measure which would actually address and alleviate negative Project impacts, such as a reduction in pumping in connection with the Project when neighboring wells and water levels are negatively impacted. Rosedale also fails to propose even less involved mitigation measures, such as a temporary interruption in pumping, a reduction in the number of Project wells used to extract water, reduced pumping rates, and increased recharge, or conjunctive use measures.

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City-109

The Plan, moreover, would only provide compensation as a mitigation measure for “Agricultural Wells.” The Plan provides for even more problematic mitigation measures for “Domestic Wells.” Rosedale only proposes to mitigate adverse Project impacts on “Domestic Wells” if production from such a well “ceases or is likely to cease.” Rosedale fails to provide any credible explanation for its failure to provide mitigation measures for negative impacts on

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domestic wells that fall short of a complete inability to utilize the pump. The mitigation measure for domestic wells is clearly insufficient and does not comply with CEQA requirements.

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City-109

Following a complete cessation of production from a Domestic Well, Rosedale also proposes proving a connection to “the nearest water service provider,” or the drilling of a new well. It is not reasonable, or understandable, that Rosedale would propose, following a dramatic decline in groundwater levels, to further exacerbate negative impacts on water supplies by increasing domestic water service to a new customer, or further burdening the groundwater basin by drilling a new well.

City-110

Rosedale additionally does not explain how a nearby “water service provider” would have sufficient supplies to serve a new customer, or how the provider could legally or practically provide service to the new customer. The City, for example, would be a potential nearby water service provider, but City ordinances prevent the City from serving customers outside of City limits.

G. Alternatives

An EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (14 Cal. Code Regs. § 15126.6(a).) It must contain “sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” (14 Cal. Code Regs. § 15126.6(d).)

An EIR must “describe a range of reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives.” (*San Joaquin Valley Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 735.) Even if a project proponent has rejected various alternatives, an EIR must explain why each suggested alternative either does not satisfy the goals of the proposed project, does not offer substantial environmental advantages, or cannot be accomplished.” (*Id.*, at 737.)

City-111

The discussion of alternatives in the DEIR is highly flawed and inadequate, primarily because the stated Project Objectives are vague, incomplete and self-serving. As previously indicated, when stripped of its vague, generic conclusions, the Project Objectives indicate that Rosedale is undertaking the Project to provide “operational flexibility” for its existing “programs and facilities,” and Irvine is undertaking the Project to take advantage of “recharge and recovery capacity” in Kern County and to obtain a supplemental water supply. (DEIR, p. 2-3.)

The discussion of alternatives available to Rosedale only considers slightly alternative variations on different versions of a water banking project, consisting of (1) the same project at a different location within Rosedale, and (2) the use of injection wells. The DEIR does not consider any other alternatives for Rosedale that might improve its operational flexibility.

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The DEIR is deficient, and flawed, for not considering other viable, practical alternatives available to Rosedale. Rosedale fails to consider other water supplies and sources, including conservation, use of recycled water, or purchases and transfers of water from sources other than the Kern River. Rosedale also fails to consider other alternatives which could achieve “flexibility,” including use of other existing banking facilities, such as the Pioneer Project or Kern Water Bank, expansion of existing Rosedale banking projects, changes in the management and operation of its existing banking projects, water transfers and exchanges with local water districts and purveyors, restrictions on groundwater pumping within Rosedale, and fallowing of fields.

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 City-112

The alternatives analysis is also deficient because Rosedale fails to consider any alternative to out of County sales of local water to Irvine. Rosedale should have at least considered alternatives to the Project involving local districts, instead of an Orange County urban water district.

City-113

The DEIR separately considers alternatives for Irvine, consisting of (1) water storage facilities in Orange County, (2) conservation, and (3) recycled water. The discussion of these alternatives is similarly incomplete and not in compliance with CEQA. The DEIR does not provide sufficient explanation for the rejection of these alternatives, and fails to consider other reasonable, feasible alternatives.

City-114

The DEIR improperly rejects alternate storage and supply options, for example, simply because it states that it is “not partnering with individual retail water agencies to develop groundwater banking programs at this time.” (DEIR, p. 6-5.) The DEIR fails to explain why Irvine is not partnering with other agencies at this time, or why that would not be a viable alternative. The DEIR does not identify any impediment to Irvine changing its position or policy in that regard. The DEIR also fails to explain why Irvine elected to develop a groundwater banking program with Rosedale, as opposed to any other agency. The DEIR also fails to provide a valid excuse or justification for rejection of any alternatives involving storage or supply projects with MWD.

City-115

The DEIR also fails to provide a valid explanation for the rejection of the alternatives involving conservation and recycled water. The discussion of these alternatives fails to explain how much water these alternatives could produce. This discussion also reveals and highlights one of the major flaws in the DEIR – the DEIR does not explain how much of a supplemental water supply Irvine needs. Since Irvine has not identified an amount of water it needs, it is of course very easy for Irvine to reject alternate supplies.

City-116

The City further points out that Irvine’s claim that conservation cannot produce enough water to meet the objectives of the Program lacks credibility in light of the recent declaration by the Governor of the State of California calling for all water users in the state to reduce water consumption by 25%.

City-117

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The DEIR also fails to mention or consider a number of other potential, viable alternatives for Irvine, including exchanges and transfers, acquisition of additional supplies from MWD or other member agencies, transfers and exchanges with other entities outside of MWD, desalination, increased groundwater pumping, and other operational changes.

City-118

It certainly appears possible, and reasonable, that a combination of additional recycled water supplies, water conservation, more efficient irrigation methods, operational changes, and additional alternate water supplies would serve as a complete, viable and environmentally superior alternative to the Project for both Rosedale and Irvine. The DEIR's failure to even consider such alternatives constitutes a direct and clear violation of CEQA. (*See e.g. Laurel Heights Improvement Assn.*, 47 Cal.3d at 403, in which the court stated that an EIR was inadequate because the consideration of alternatives was "cursory at best.")

City-119

In *Vineyard Area Citizens for Responsible Growth*, the court stated that when "it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies." (40 Cal.4th at 432; *see also Napa Citizens for Honest Government*, 91 Cal.App.4th 342, holding that an EIR's discussion of possible alternative water sources did not comply with CEQA requirements because the EIR cannot simply label the possibility that other water sources will not materialize as "speculative" and decline to address such water sources.)

City-120

Finally, an EIR must contain a discussion and evaluation of the "no project" alternative. (14 Cal. Code Regs. § 15126.6(e).) The CEQA Guidelines explain that "[t]he purpose of describing and analyzing a no project alternative is to allow decision makers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project." (14 Cal. Code Regs. § 15126.6(e)(1).) Among other things, the EIR must discuss "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. § 15126.6(e)(2).) The no project alternative is a fact based forecast of the environmental effects of maintaining the status quo. (*Planning and Conservation League*, 180 Cal.App.4th at 247.)

City-121

Rosedale failed to comply with this authority, and fails to properly consider the no project alternative. It is not surprising that Rosedale rejects the no project alternative because the goals of the project are all self-serving, and tied to the Project. An actual, reasonable consideration of the no project alternative would have demonstrated that, without the Project, Irvine would not have a supplemental, back up water supply, and Rosedale would not have "operational flexibility." Neither of those results appears too problematic, particularly in comparison to the actual adverse impacts that would result from the Project, including the significant adverse impacts on the Kern River, the groundwater basin, the City and local water supplies.

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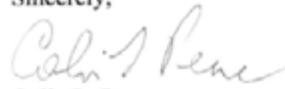
3. CONCLUSION

Based on the City's significant and serious concerns with the Project, and with the EIR, the City urges Rosedale, and Irvine, to comply with applicable California law and not implement or carry out the Project. In the alternative, if Rosedale or Irvine attempt to continue with the Project, they must prepare a new, more comprehensive and complete EIR which complies with CEQA requirements.

City-122

We thank you for your consideration of these comments. Please let us know if you have any questions with regard to the City's comments and the matters stated herein.

Sincerely,



Colin L. Pearce
for DUANE MORRIS LLP

cc: Art Chianello, Water Resources Manager, City of Bakersfield
Virginia Gennaro, City Attorney, City of Bakersfield

Enclosures

EXHIBIT A



FIRM and AFFILIATE OFFICES

- NEW YORK
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- SINGAPORE
- PHILADELPHIA
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- BOCA RATON
- LAKE TAHOE
- MUSCAT, OMAN
- *A GCC REPRESENTATIVE OFFICE OF DUANE MORRIS*
- MEXICO CITY
- ALLIANCE WITH MIRANDA & ESTAVILLO

COLIN L. PEARCE
 DIRECT DIAL: +1 415 957 3015
 PERSONAL FAX: +1 415 704 3098
 E-MAIL: clpearce@duanemorris.com
 www.duanemorris.com

October 23, 2013

VIA EMAIL

Eric Averett
 General Manager
 Rosedale-Rio Bravo Water Storage
 District
 P.O. Box 20820
 Bakersfield, CA 93390-0820

**Re: City of Bakersfield's Comments to Notice of Preparation of an
 Environmental Impact Report for Stockdale Integrated Banking Project.**

Dear Mr. Averett:

On behalf of the City of Bakersfield ("City"), we submit the following comments to the Notice of Preparation ("NOP") of an Environmental Impact Report ("EIR") for Stockdale Integrated Banking Project ("Project") issued by the Rosedale-Rio Bravo Water Storage District ("Rosedale") on September 24, 2013.

City NOP-1

The City generally supports the goals and purposes of the Project, as the City supports Rosedale's efforts to increase its "operational flexibility" and to otherwise efficiently and effectively manage its use of local water resources. The City still has a number of concerns with regard to the Project, the NOP, and the potential scope and contents of the EIR.

The City is particularly concerned that the Project will involve the transfer or sale of local water supplies, including the waters of the Kern River, out of Kern County to the Irvine Ranch Water District ("Irvine").

City NOP-2

As indicated in the NOP, Irvine is a California Water District that provides a water supply to municipal and industrial customers within an 115,531 acre service area in Orange County, California. The NOP indicates that one of the primary purposes and goals of the Project is to increase Irvine's water supply. In particular, one of the "Project Objectives" is to "develop"

DUANE MORRIS LLP

SPEAR TOWER, ONE MARKET PLAZA, SUITE 2200
 SAN FRANCISCO, CA 94105-1127

PHONE: +1 415 957 3000 FAX: +1 415 957 3001

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Irvine's "groundwater recharge, storage and recovery capacity" to provide "increased water supply reliability" for Irvine's "customers." (NOP, p. A-2.) The Project specifically would allow Irvine to maintain and utilize up to 88,000 acre feet of water in storage in Kern County "for its own use." (Id.)

The NOP further states that the Project "would enhance water supply reliability for [Irvine] by providing contingency storage to augment supplies during dry-year periods when other supply sources may be limited or unavailable." (NOP, p. A-2.) The NOP then states that the Project would "augment" Irvine's "contingency storage," allowing it to achieve its storage goals to provide the desired amount of reliability for its water supply portfolio." (Id.)

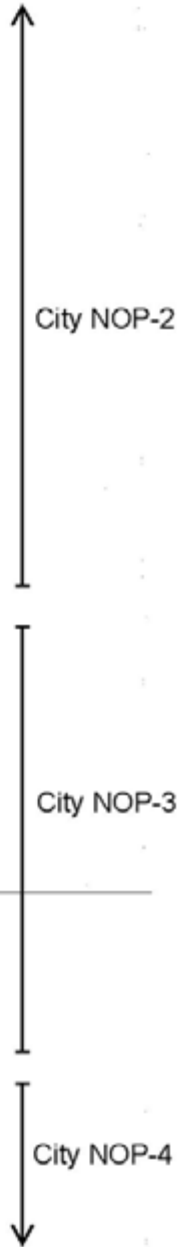
Sales and transfers of local water supplies out of the county are directly contrary to the policies and interests of the City. The City has a long standing policy, most recently confirmed in 2001, that Kern River water shall not be utilized outside the boundaries of the San Joaquin Valley Portion of Kern County.

The City is concerned that the Project would violate that policy. Development of a water supply for Irvine within Kern County would seem to necessarily and logically involve the importation or transfer of local water supplies out of the County to Orange County. The NOP, moreover, confirms that the Project could involve the storage and eventual transfer of Kern River water out of the County to Irvine.

The NOP states that water supplies used for recharge under the Project "would be secured and acquired by Rosedale and [Irvine] from various sources, including federal, state and local suppliers." (NOP, p. A-4.) The NOP further states: "Specifically water supply sources could include, but are not limited to, the State Water Project (SWP), the Kern River, and Central Valley Project (CVP)." (Id., emphasis added.)

The City believes it is highly questionable and suspect that Rosedale would propose to implement a project which involves the transfer of local water supplies, including Kern River supplies, to "out of county" entities, specifically to a large Southern California urban water district, at a time when the local region is suffering through a critical drought, local water supplies, including the Kern River, are drastically depleted, and groundwater levels are rapidly declining. The City is concerned that the "out-of-county" water sales or transfers proposed through the Project could cause substantial harm to the local environment, the local groundwater basin, the City's water resources and supplies, the Kern River, and the water resources of the entire southern San Joaquin Valley.

The City is additionally concerned about the Project, and the potential impacts of the Project, because the boundaries of Rosedale overlap with the boundaries of the City. Rosedale and the City spread and extract water from a shared groundwater basin. The City directly and indirectly provides water for individuals living within the overlapping City and Rosedale boundaries, and the City's Kern River water supply indirectly benefits landowners within the



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remaining portion of Rosedale. Accordingly, the EIR for the Project should accurately, honestly and completely review the wide ranging potential impacts of the Project on the City, the environment in and around the City, and the City's water supply. The EIR should also completely and comprehensively review the impact of the proposed transfer of local water supplies, including Kern River water, out of the area, to Southern California.

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City NOP-4

The City has the following additional comments, questions, and concerns regarding the NOP and the Project. These comments do not constitute or represent all of the City's objections to and concerns with the Project, or to the adequacy of Rosedale's, or Irvine's, compliance with CEQA. The City reserves the right to supplement these comments, in the future, and the City reserves the right to submit substantive objections to the Project.

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City NOP-5

The "Project Description" in the NOP is deficient, as it is incomplete, vague and lacking in critical details about the Project. The Project Description fails to provide important details about the physical features of the Project and the infrastructure necessary for and related to the Project. The Project Description also lacks required information about Irvine's intended use of water stored or banked in connection with the Project.

The NOP also uses vague, general phrases to represent the objectives and goals of the Project. The NOP states, for example, that the Project will "integrate" Project facilities with existing Rosedale facilities, and will "coordinate" Project operations "to provide for maximum operational flexibility between the various programs and facilities." (NOP, p. A-2.) The NOP further states that the Project will "provide operating flexibility for Rosedale's existing and future programs." (Id.) The NOP, however, does not provide further description or definition regarding the phrases "integrate," "coordinate," and "operational flexibility." The NOP does not actually describe how the Project will achieve these goals, or how the Project will actually function in connection, or "coordination," with Rosedale's existing projects and operations. The NOP therefore does not sufficiently summarize or state the actual goals and objectives of the Project.

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City NOP-6

An NOP must contain "sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response." (14 Cal. Code Regs. § 15082(a)(1).) Without a more specific and detailed description of the Project's objectives and goals, the City cannot make a meaningful response to the NOP.

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City NOP-7

The City questions why Rosedale, and not Irvine, is designated as the Lead Agency for the Project. The primary goal of the Project, according to the NOP, is to create or provide a water supply for Irvine and its customers. Although the Project would be located within the boundaries of Rosedale, the Project appears to only provide secondary, ancillary benefits to Rosedale. As indicated, Rosedale only refers to vague, general benefits for the Project in connection with the goals and purposes of the Project, such as increasing operational "flexibility." It does not appear, however, that Rosedale, will actually obtain or utilize a new or increased water supply in connection with the Project.

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City NOP-8
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Since the Project is a water supply project for Irvine, Irvine should be lead agency for CEQA purposes. The fact that the Project is located within Rosedale does not preclude Irvine from acting as lead agency. (14 Cal. Code Regs. § 15051(a).) Irvine would appear to have “principal responsibility” for implementing the Project, since it will acquire and store water for its later use in connection with the Project. In contrast, Rosedale would appear only to have a secondary role as the operator of the Project facilities.

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 City NOP-8

The description of “Water Supplies” in the NOP is deficient. The NOP indicates that water used for recharge in the Project would be secured and acquired from “various sources, including federal, state and local suppliers.” (NOP, p. A-4.) The NOP later states that water sources for the Project “could” include the State Water Project, the Kern River and the Central Valley Project.

Instead of providing important and necessary information about the source of water to be used in the Project, as required under CEQA, the NOP simply claims that water could come from any potential source, under any potential scenario or circumstances. That section clearly does not present “sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a meaningful response.”(14 Cal. Code Regs. § 15082(a)(1).)

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 City NOP-9

It is irresponsible, and not in compliance with CEQA, for the NOP to indicate that the Project will use each and every potential available source of water, without limitation or consideration of the practical or legal consequences and impacts. The NOP should provide more specific information regarding water sources so that the EIR can properly and sufficiently analyze the impacts of the project on water supplies proposed for use in the Project.

The NOP does not indicate that the EIR will examine the impacts of the Project on other entities, such as the City, that may currently use some of the water proposed for use in the Project. The NOP further does not identify or describe the current use of the water which would be utilized in the Project, and does not describe or predict how, when and to what extent the water will be available for use in the Project.

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 City NOP-10

An EIR must consider all impacts of a project on the environment, even if the impacts would be felt by another agency. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713.) The NOP should therefore indicate that the EIR will assess the impact of the Project on the City, other water users in the region, and the Kern River.

The EIR should review the impacts of the Project on other water supply and banking projects in the area, including banking and recharge projects operated by the City, such as the Kern River channel and the 2800 Acre recharge facility. The California Supreme Court has recognized that “the future water sources for a large land use project and the impacts of exploiting those sources are not the type of information that can be deferred for future analysis.”

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 City NOP-11
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(Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 431.)

The NOP also does not provide sufficient or detailed information regarding potential "conveyance facilities" for the Project. Such facilities should be considered part of the Project, and the EIR must review and analyze impacts on the environment associated with the construction and use of such conveyance facilities.

Finally, the NOP does not reflect or mention any consideration of alternatives to the project, including the "no project" alternative. The NOP does not indicate that Rosedale and Irvine will consider conservation, additional sources of water, alternate storage locations, or other alternatives to the Project.

The statements and comments in this letter constitute only the City's comments to the NOP. The City reserves the right to comment on and raise appropriate objections and challenges to the Project, the EIR which will be prepared in connection with the Project, and any other efforts or approvals related to the Project.

We thank you for consideration of these comments. Please let us know if you have any questions in regards to these comments.

Sincerely,



Colin L. Pearce
for DUANE MORRIS LLP

CLP:jlmm

cc: Art Chianello, City of Bakersfield

↑ City NOP-11
| City NOP-12
| City NOP-13
| City NOP-14

EXHIBIT B

Executive Department
State of California

EXECUTIVE ORDER B-29-15

WHEREAS on January 17, 2014, I proclaimed a State of Emergency to exist throughout the State of California due to severe drought conditions; and

WHEREAS on April 25, 2014, I proclaimed a Continued State of Emergency to exist throughout the State of California due to the ongoing drought; and

WHEREAS California's water supplies continue to be severely depleted despite a limited amount of rain and snowfall this winter, with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking supplies in underground water basins; and

WHEREAS the severe drought conditions continue to present urgent challenges including: drinking water shortages in communities across the state, diminished water for agricultural production, degraded habitat for many fish and wildlife species, increased wildfire risk, and the threat of saltwater contamination to fresh water supplies in the Sacramento-San Joaquin Bay Delta; and

WHEREAS a distinct possibility exists that the current drought will stretch into a fifth straight year in 2016 and beyond; and

WHEREAS new expedited actions are needed to reduce the harmful impacts from water shortages and other impacts of the drought; and

WHEREAS the magnitude of the severe drought conditions continues to present threats beyond the control of the services, personnel, equipment, and facilities of any single local government and require the combined forces of a mutual aid region or regions to combat; and

WHEREAS under the provisions of section 8558(b) of the Government Code, I find that conditions of extreme peril to the safety of persons and property continue to exist in California due to water shortage and drought conditions with which local authority is unable to cope; and

WHEREAS under the provisions of section 8571 of the California Government Code, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay the mitigation of the effects of the drought.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular Government Code sections 8567 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately.

IT IS HEREBY ORDERED THAT:

1. The orders and provisions contained in my January 17, 2014 Proclamation, my April 25, 2014 Proclamation, and Executive Orders B-26-14 and B-28-14 remain in full force and effect except as modified herein.

SAVE WATER

2. The State Water Resources Control Board (Water Board) shall impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016. These restrictions will require water suppliers to California's cities and towns to reduce usage as compared to the amount used in 2013. These restrictions should consider the relative per capita water usage of each water suppliers' service area, and require that those areas with high per capita use achieve proportionally greater reductions than those with low use. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.
3. The Department of Water Resources (the Department) shall lead a statewide initiative, in partnership with local agencies, to collectively replace 50 million square feet of lawns and ornamental turf with drought tolerant landscapes. The Department shall provide funding to allow for lawn replacement programs in underserved communities, which will complement local programs already underway across the state.
4. The California Energy Commission, jointly with the Department and the Water Board, shall implement a time-limited statewide appliance rebate program to provide monetary incentives for the replacement of inefficient household devices.
5. The Water Board shall impose restrictions to require that commercial, industrial, and institutional properties, such as campuses, golf courses, and cemeteries, immediately implement water efficiency measures to reduce potable water usage in an amount consistent with the reduction targets mandated by Directive 2 of this Executive Order.
6. The Water Board shall prohibit irrigation with potable water of ornamental turf on public street medians.
7. The Water Board shall prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or microspray systems.

8. The Water Board shall direct urban water suppliers to develop rate structures and other pricing mechanisms, including but not limited to surcharges, fees, and penalties, to maximize water conservation consistent with statewide water restrictions. The Water Board is directed to adopt emergency regulations, as it deems necessary, pursuant to Water Code section 1058.5 to implement this directive. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation. The California Public Utilities Commission is requested to take similar action with respect to investor-owned utilities providing water services.

INCREASE ENFORCEMENT AGAINST WATER WASTE

9. The Water Board shall require urban water suppliers to provide monthly information on water usage, conservation, and enforcement on a permanent basis.
10. The Water Board shall require frequent reporting of water diversion and use by water right holders, conduct inspections to determine whether illegal diversions or wasteful and unreasonable use of water are occurring, and bring enforcement actions against illegal diverters and those engaging in the wasteful and unreasonable use of water. Pursuant to Government Code sections 8570 and 8627, the Water Board is granted authority to inspect property or diversion facilities to ascertain compliance with water rights laws and regulations where there is cause to believe such laws and regulations have been violated. When access is not granted by a property owner, the Water Board may obtain an inspection warrant pursuant to the procedures set forth in Title 13 (commencing with section 1822.50) of Part 3 of the Code of Civil Procedure for the purposes of conducting an inspection pursuant to this directive.
11. The Department shall update the State Model Water Efficient Landscape Ordinance through expedited regulation. This updated Ordinance shall increase water efficiency standards for new and existing landscapes through more efficient irrigation systems, greywater usage, onsite storm water capture, and by limiting the portion of landscapes that can be covered in turf. It will also require reporting on the implementation and enforcement of local ordinances, with required reports due by December 31, 2015. The Department shall provide information on local compliance to the Water Board, which shall consider adopting regulations or taking appropriate enforcement actions to promote compliance. The Department shall provide technical assistance and give priority in grant funding to public agencies for actions necessary to comply with local ordinances.
12. Agricultural water suppliers that supply water to more than 25,000 acres shall include in their required 2015 Agricultural Water Management Plans a detailed drought management plan that describes the actions and measures the supplier will take to manage water demand during drought. The Department shall require those plans to include quantification of water supplies and demands for 2013, 2014, and 2015 to the extent data is available. The Department will provide technical assistance to water suppliers in preparing the plans.

13. Agricultural water suppliers that supply water to 10,000 to 25,000 acres of irrigated lands shall develop Agricultural Water Management Plans and submit the plans to the Department by July 1, 2016. These plans shall include a detailed drought management plan and quantification of water supplies and demands in 2013, 2014, and 2015, to the extent that data is available. The Department shall give priority in grant funding to agricultural water suppliers that supply water to 10,000 to 25,000 acres of land for development and implementation of Agricultural Water Management Plans.
14. The Department shall report to Water Board on the status of the Agricultural Water Management Plan submittals within one month of receipt of those reports.
15. Local water agencies in high and medium priority groundwater basins shall immediately implement all requirements of the California Statewide Groundwater Elevation Monitoring Program pursuant to Water Code section 10933. The Department shall refer noncompliant local water agencies within high and medium priority groundwater basins to the Water Board by December 31, 2015, which shall consider adopting regulations or taking appropriate enforcement to promote compliance.
16. The California Energy Commission shall adopt emergency regulations establishing standards that improve the efficiency of water appliances, including toilets, urinals, and faucets available for sale and installation in new and existing buildings.

INVEST IN NEW TECHNOLOGIES

17. The California Energy Commission, jointly with the Department and the Water Board, shall implement a Water Energy Technology (WET) program to deploy innovative water management technologies for businesses, residents, industries, and agriculture. This program will achieve water and energy savings and greenhouse gas reductions by accelerating use of cutting-edge technologies such as renewable energy-powered desalination, integrated on-site reuse systems, water-use monitoring software, irrigation system timing and precision technology, and on-farm precision technology.

STREAMLINE GOVERNMENT RESPONSE

18. The Office of Emergency Services and the Department of Housing and Community Development shall work jointly with counties to provide temporary assistance for persons moving from housing units due to a lack of potable water who are served by a private well or water utility with less than 15 connections, and where all reasonable attempts to find a potable water source have been exhausted.
19. State permitting agencies shall prioritize review and approval of water infrastructure projects and programs that increase local water supplies, including water recycling facilities, reservoir improvement projects, surface water treatment plants, desalination plants, stormwater capture, and greywater systems. Agencies shall report to the Governor's Office on applications that have been pending for longer than 90 days.

20. The Department shall take actions required to plan and, if necessary, implement Emergency Drought Salinity Barriers in coordination and consultation with the Water Board and the Department of Fish and Wildlife at locations within the Sacramento - San Joaquin delta estuary. These barriers will be designed to conserve water for use later in the year to meet state and federal Endangered Species Act requirements, preserve to the extent possible water quality in the Delta, and retain water supply for essential human health and safety uses in 2015 and in the future.
21. The Water Board and the Department of Fish and Wildlife shall immediately consider any necessary regulatory approvals for the purpose of installation of the Emergency Drought Salinity Barriers.
22. The Department shall immediately consider voluntary crop idling water transfer and water exchange proposals of one year or less in duration that are initiated by local public agencies and approved in 2015 by the Department subject to the criteria set forth in Water Code section 1810.
23. The Water Board will prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages. As the Department of Public Health's drinking water program was transferred to the Water Board, any reference to the Department of Public Health in any prior Proclamation or Executive Order listed in Paragraph 1 is deemed to refer to the Water Board.
24. The California Department of Forestry and Fire Protection shall launch a public information campaign to educate the public on actions they can take to help to prevent wildfires including the proper treatment of dead and dying trees. Pursuant to Government Code section 8645, \$1.2 million from the State Responsibility Area Fire Prevention Fund (Fund 3063) shall be allocated to the California Department of Forestry and Fire Protection to carry out this directive.
25. The Energy Commission shall expedite the processing of all applications or petitions for amendments to power plant certifications issued by the Energy Commission for the purpose of securing alternate water supply necessary for continued power plant operation. Title 20, section 1769 of the California Code of Regulations is hereby waived for any such petition, and the Energy Commission is authorized to create and implement an alternative process to consider such petitions. This process may delegate amendment approval authority, as appropriate, to the Energy Commission Executive Director. The Energy Commission shall give timely notice to all relevant local, regional, and state agencies of any petition subject to this directive, and shall post on its website any such petition.

26. For purposes of carrying out directives 2–9, 11, 16–17, 20–23, and 25, Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division are hereby suspended. This suspension applies to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions. This suspension, and those specified in paragraph 9 of the January 17, 2014 Proclamation, paragraph 19 of the April 25, 2014 proclamation, and paragraph 4 of Executive Order B-26-14, shall remain in effect until May 31, 2016. Drought relief actions taken pursuant to these paragraphs that are started prior to May 31, 2016, but not completed, shall not be subject to Division 13 (commencing with section 21000) of the Public Resources Code for the time required to complete them.
27. For purposes of carrying out directives 20 and 21, section 13247 and Chapter 3 of Part 3 (commencing with section 85225) of the Water Code are suspended.
28. For actions called for in this proclamation in directive 20, the Department shall exercise any authority vested in the Central Valley Flood Protection Board, as codified in Water Code section 8521, et seq., that is necessary to enable these urgent actions to be taken more quickly than otherwise possible. The Director of the Department of Water Resources is specifically authorized, on behalf of the State of California, to request that the Secretary of the Army, on the recommendation of the Chief of Engineers of the Army Corps of Engineers, grant any permission required pursuant to section 14 of the Rivers and Harbors Act of 1899 and codified in section 48 of title 33 of the United States Code.
29. The Department is directed to enter into agreements with landowners for the purposes of planning and installation of the Emergency Drought Barriers in 2015 to the extent necessary to accommodate access to barrier locations, land-side and water-side construction, and materials staging in proximity to barrier locations. Where the Department is unable to reach an agreement with landowners, the Department may exercise the full authority of Government Code section 8572.
30. For purposes of this Executive Order, chapter 3.5 (commencing with section 11340) of part 1 of division 3 of the Government Code and chapter 5 (commencing with section 25400) of division 15 of the Public Resources Code are suspended for the development and adoption of regulations or guidelines needed to carry out the provisions in this Order. Any entity issuing regulations or guidelines pursuant to this directive shall conduct a public meeting on the regulations and guidelines prior to adopting them.

31. In order to ensure that equipment and services necessary for drought response can be procured quickly, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, are hereby suspended for directives 17, 20, and 24. Approval by the Department of Finance is required prior to the execution of any contract entered into pursuant to these directives.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of April 2015.

EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT C

1 Gene R. McMurtrey, Esq. (#042986)
 2 James A. Worth, Esq. (#147207)
 Isaac L. St. Lawrence, Esq. (#229789)
 3 **McMURTREY, HARTSOCK & WORTH**
 2001 22nd Street, Suite 100
 4 Bakersfield, CA 93301
 Telephone: (661) 322-4417
 Facsimile: (661) 322-8123

EXEMPT FROM FILING FEE
[Government Code §6103]

5 Attorneys for Petitioners,
 ROSEDALE-RIO BRAVO WATER
 6 STORAGE DISTRICT and BUENA
 VISTA WATER STORAGE DISTRICT
 7

8
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **COUNTY OF KERN, METROPOLITAN DIVISION**
 11

12 ROSEDALE-RIO BRAVO WATER STORAGE
 DISTRICT, a California Water Storage District;
 13 BUENA VISTA WATER STORAGE DISTRICT, a
 California Water Storage District,
 14

Petitioners,

v.

16 CALIFORNIA DEPARTMENT OF WATER
 17 RESOURCES, a California State Agency,
 18

Respondent,

19 KERN WATER BANK AUTHORITY, a California
 Joint Powers Authority; WESTSIDE MUTUAL
 20 WATER COMPANY, a California Mutual Water
 Company; DUDLEY RIDGE WATER DISTRICT,
 21 a California Water District; WHEELER RIDGE-
 MARICOPA WATER STORAGE DISTRICT, a
 22 California Water Storage District; SEMITROPIC
 WATER STORAGE DISTRICT, a California Water
 23 Storage District; KERN COUNTY WATER
 AGENCY, a Special Act Public Agency, on behalf
 24 of its IMROVEMENT DISTRICT NO. 4; TEJON-
 CASTAC WATER DISTRICT, a California Water
 25 District; and DOES 1 through 5000, inclusive,
 26

Real Parties in Interest.
 27
 28

Case No.

**PETITION FOR WRIT OF MANDATE
 AND COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF**

[CCP §§526, 527, 1085, 1094.5;
 Public Resources Code § 21000, et seq.
 (California Environmental Quality Act)]

1 Petitioners Rosedale-Rio Bravo Water Storage District (Rosedale) and Buena Vista Water
2 Storage District (Buena Vista) (collectively “Petitioners”) jointly bring this Petition for Writ of
3 Mandate and Complaint for Injunctive and Declaratory Relief (Petition) and allege as follows:

4 **INTRODUCTION AND PARTIES**

5 1. Petitioners bring this action on behalf of themselves and on behalf of the
6 landowners and water users within their boundaries. This Petition challenges actions by
7 Respondent California Department of Water Resources (Respondent or DWR) approving and/or
8 adopting the Final Environmental Impact Report (FEIR) on the Monterey Amendment to the State
9 Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a
10 Settlement Agreement (Monterey Plus), and its decision to implement specific portions of the
11 project described therein (Project). Although Petitioners do support the Monterey Amendment to
12 the State Water Project, they object to the FEIR because, among other things, it does not
13 adequately describe or address the past, present and future use and operation of the Kern Water
14 Bank lands or the impacts thereof.

15 2. Petitioners bring this action against DWR in its capacity as the Lead Agency on the
16 Project described herein. Respondent DWR is presently and has been, at all times relevant hereto,
17 a public agency and political subdivision of the State of California, formed and existing pursuant to
18 Division 1 of the California Water Code §120, et seq. As the Lead Agency on the Project,
19 Respondent is responsible for preparation of an environmental document that adequately and
20 accurately describes the Project and its impacts, and, if necessary, evaluates mitigation measures
21 and/or alternatives to lessen or avoid any significant environmental impacts. Respondent is
22 responsible for implementing and complying with the provisions of the California Environmental
23 Quality Act (CEQA) and the CEQA Guidelines with respect to the Project.

24 3. Petitioners bring this action against the Kern Water Bank Authority (“KWBA”);
25 Wheeler Ridge-Maricopa Water Storage District (“WRMWSD”); Semitropic Water Storage
26 District (“SWSD”); Tejon-Castac Water District (“TCWD”); Dudley Ridge Water District
27 (DRWD); the Kern County Water Agency (KCWA) on behalf of its Improvement District No. 4
28 (“ID4”); and Westside Mutual Water Company (WMWC) as Real Parties in Interest with respect to

1 the use and operation of the Kern Water Bank (KWB).

2 4. KWBA is presently, and at all times relevant hereto has been, a public entity and
3 political subdivision of the State of California formed and existing pursuant to Division 7 of the
4 California Government Code, Joint Exercise of Powers Act, §6500, et seq. Petitioners are informed
5 and believe, and based thereon allege, that insofar as is material to this action, KWBA is presently
6 and has been, at all times relevant hereto, the owner and operator of the KWB.

7 5. WRMWSO is presently and has been, at all times relevant hereto, a California
8 Water Storage District organized and existing under and pursuant to California Water Storage
9 District Law [Division 14 (commencing with §39000) of the California Water Code]. Petitioners
10 are informed and believe, and based thereon allege, that insofar as is material to this action,
11 WRMWSO is presently and has been, at all times relevant hereto, a participant in the KWBA.

12 6. SWSD is presently and has been, at all times relevant hereto, a California Water
13 Storage District organized and existing under and pursuant to California Water Storage District
14 Law [Division 14 (commencing with §39000) of the California Water Code]. Petitioners are
15 informed and believe, and based thereon allege, that insofar as is material to this action, SWSD is
16 presently and has been, at all times relevant hereto, a participant in the KWBA.

17 7. TCWD is presently and has been, at all times relevant hereto, a California Water
18 District organized and existing under and pursuant to California Water District Law [Division 13
19 (commencing with §34000) of the California Water Code]. Petitioners are informed and believe,
20 and based thereon allege, that insofar as is material to this action, TCWD is presently and has been,
21 at all times relevant hereto, a participant in the KWBA.

22 8. DRWD is presently and has been, at all times relevant hereto, a California Water
23 District organized and existing under and pursuant to California Water District Law [Division 13
24 (commencing with §34000) of the California Water Code]. Petitioners are informed and believe,
25 and based thereon allege, that insofar as is material to this action, DRWD is presently and has been,
26 at all times relevant hereto, a participant in the KWBA.

27 9. WMWC is presently and has been, at all times relevant hereto, a California mutual
28 water company organized and existing under and pursuant to the laws of the State of California.

1 Petitioners are informed and believe, and based thereon allege, that insofar as is material to this
2 action, WMWC is presently and has been, at all times relevant hereto, a participant in the KWBA.

3 10. KCWA is presently and has been, at all times relevant hereto, a political subdivision
4 of the State of California organized and existing under the Kern County Water Agency Act
5 [California Water Code Appendix, §99-1, et seq.], and the Board of Directors of KCWA is also the
6 governing body of its Improvement District No. 4. Petitioners are informed and believe, and based
7 thereon allege, that insofar as is material to this action, KCWA is presently and has been, at all
8 times relevant hereto, a participant in the KWBA on behalf of ID4.

9 11. Petitioners bring this action as a result of Respondent's failure to adequately
10 describe the Project, and to fully evaluate and disclose the reasonably foreseeable effects of the
11 Project upon the environment, as well as the failure to adequately describe the environmental
12 setting of the Project, the failure to adequately consider alternatives and mitigation measures, the
13 failure to adequately respond to comments and to make appropriate findings regarding the
14 environmental impacts of the Project, and the failure to otherwise comply with the California
15 Environmental Quality Act (CEQA) and/or California State Guidelines implementing the same
16 (CEQA Guidelines). [Public Resources Code §21000, et seq.; Cal. Code Regs., Title 14 §15000, et
17 seq.]. In each of these respects, among others raised in this Petition, Respondent has violated its
18 duties under CEQA, abused its discretion, failed to proceed in a manner required by law, and have
19 decided the matters complained of without the support of substantial evidence.

20 12. The project description in the FEIR is insufficient in that it fails to adequately
21 describe past, present and future operations and use of the KWB and, in turn, fails to adequately
22 analyze the impacts of such operations and use. Petitioners are informed and believe, and based
23 thereon allege, that the use and operation of the KWB has actually and will potentially (i) adversely
24 impact the quality and quantity of groundwater within the region; (ii) lower the groundwater table
25 to dangerous and unacceptable levels; (iii) continue and exacerbate an unprecedented and improper
26 reversal of hydraulic gradients within the Kern River alluvial fan area; (iv) cause existing wells to
27 go dry; (v) result in substantial health and safety issues associated with the loss of wells serving
28 municipal and domestic purposes; and (vi) cause subsidence. Notwithstanding these actual and

1 potential significant adverse impacts caused by the use and operation of the KWB, Respondent
2 failed to undertake any proper or meaningful review or analysis of these and other effects of said
3 Project activities and, thus, failed to comply with CEQA and the CEQA Guidelines.

4 13. Petitioner Rosedale-Rio Bravo Water Storage District is presently and has been, at
5 all times relevant hereto, a California Water Storage District organized and existing under and
6 pursuant to California Water Storage District Law [Division 14 (commencing with §39000) of the
7 California Water Code]. Rosedale's boundaries are located exclusively within the boundaries of
8 the County of Kern, State of California. Rosedale is authorized by California Water Storage
9 District Law to commence and maintain this action on behalf of itself and on behalf of its
10 landowners and water users.

11 14. Petitioner Buena Vista Water Storage District is presently and has been, at all times
12 relevant hereto, a California Water Storage District organized and existing under and pursuant to
13 California Water Storage District Law [Division 14 (commencing with §39000) of the California
14 Water Code]. Buena Vista's boundaries are located exclusively within the boundaries of the
15 County of Kern, State of California. Buena Vista is authorized by California Water Storage
16 District Law to commence and maintain this action on behalf of itself and on behalf of its
17 landowners and water users.

18 15. Insofar as is material to this action, Petitioners have continuously maintained public
19 projects for groundwater replenishment and the diversion, delivery, storage, transportation,
20 distribution and use of water for beneficial purposes. Petitioners store and pump groundwater
21 existing in a common and interconnected groundwater basin shared by Petitioners and the KWB,
22 for one or more of the following purposes: municipal, industrial, domestic, irrigation, stock
23 watering and other reasonable and beneficial uses. Petitioners are informed and believe, and based
24 thereon allege, that the KWB's past, current and future extraction of groundwater has and will
25 potentially substantially and significantly affect groundwater levels underlying lands within the
26 boundaries of Petitioners and underlying other public projects in which the Petitioners participate;
27 the amount of groundwater available to and recoverable by Petitioners; the cost of such recovery;
28 the quality of groundwater available to Petitioners; the historical hydraulic gradients within the

1 Kern River alluvial fan area; and the environment of the region. Petitioners are informed and
 2 believe, and thereon allege, that the past, present and future operations and use of the KWB will
 3 potentially deprive Petitioners and their landowners and water users of significant quantities of
 4 water, and will otherwise have significant or potentially significant long-term adverse impacts
 5 upon the environment within the boundaries of Petitioners, the groundwater basin shared by
 6 Petitioners and the KWB, and the environment, none of which consequences were adequately
 7 evaluated in the FEIR, or in any other environmental document in compliance with CEQA.

8 16. Petitioners are beneficially interested in Respondent's compliance with its duties
 9 and responsibilities under applicable laws, including CEQA. Petitioners are beneficially interested
 10 in Respondent's performance of its duties to apply all applicable laws and consider rationally and
 11 in good faith all record evidence in deciding whether to approve public projects.

12 17. Petitioners are unaware of the true names and capacities of DOES 1 through 5000
 13 and therefore sue such persons, entities and organizations by these fictitious names. Petitioners are
 14 informed and believe, and based thereon allege, that those persons, entities and organizations
 15 fictitiously-named herein have an interest in the matters alleged in this action. When the true
 16 identities and capacities of said persons, entities and organizations have been determined,
 17 Petitioners will amend this Petition, with leave of court if necessary, to insert such identities and
 18 capacities.

19 VENUE AND JURISDICTION

20 18. The Kern County Superior Court has jurisdiction over the matters alleged herein
 21 pursuant to Code of Civil Procedure §§ 526, 527, 1085, 1094.5 and Public Resources Code §§
 22 21168 and 21168.5.

23 19. Venue is appropriate in the County of Kern pursuant to Code of Civil Procedure
 24 §393. Petitioners' causes of action arose in Kern County because the effects of Respondent's
 25 decisions will be felt in said county.

26 EXHAUSTION OF ADMINISTRATIVE REMEDIES

27 20. Petitioners have performed or are excused from performing any and all conditions
 28 precedent to the filing of this Petition, including compliance with Public Resources Code §21177,

1 and have fully exhausted all administrative remedies in that the determination by Respondent is
2 final and no further administrative appeal procedures are provided by state or local law. Petitioners
3 and other members of the public presented their specific objections to the decisions of DWR at the
4 public meetings, hearings and/or through written comments submitted to DWR.

5 21. Within 30 days past, DWR took final action with respect to its approval of the
6 Project and, on May 5, 2010, filed a Notice of Determination purportedly in compliance with
7 CEQA.

8 22. Pursuant to California Government Code §905(i) this action is not subject to the
9 California Torts Claim Act.

10 **NOTICE**

11 23. On June 2, 2010, prior to commencement of this action, Petitioners served written
12 notice of commencement of this action on Respondent in accordance with the requirements of
13 CEQA, and more specifically, Public Resources Code §21167.5. A true and correct copy of this
14 notice and a proof of service is attached hereto as Exhibit "A" and is incorporated herein by this
15 reference.

16 24. On June 3, 2010, Petitioners furnished the Attorney General of the State of
17 California with a copy of this Petition in accordance with the requirements of CEQA, and more
18 specifically, Public Resources Code §21167.7. A true and correct copy of the form of the notice to
19 the Attorney General is attached hereto as Exhibit "B" and is incorporated herein by this reference.

20 25. Concurrent with the service of this Petition, Petitioners will serve on Respondent a
21 request for preparation of the administrative record relating to this action in accordance with the
22 requirements of CEQA, and more specifically, Public Resources Code §21167.6.

23 **ATTORNEYS' FEES**

24 26. Petitioners are entitled to recover attorneys fees from Respondent pursuant to Code
25 of Civil Procedure §1021.5 because this action will, among other things, confer a significant
26 benefit on the general public and a large class of persons, and the necessity and burden of private
27 enforcement makes an award of fees appropriate.

28 ///

FACTUAL HISTORY

1
2 27. Respondent manages the State Water Project (SWP), a system of dams, reservoirs,
3 canals and aqueducts that delivers water from the Delta area of the Sacramento River to Central
4 and Southern California, including Kern County. In the 1960's, Respondent entered into contracts
5 for the provision of water to local suppliers (Contractors).

6 28. Real Party in Interest KWBA is a Joint Powers Authority made up of five public
7 agencies and one private mutual water company (which are the remaining Real Parties in Interest).
8 The KWBA owns, operates and uses the KWB, a massive groundwater banking operation in Kern
9 County. According to the KWBA, the KWB is the largest direct-recharge water-banking project in
10 the world, the primary purpose of which is to recharge, store, and recover water to improve the
11 water supply for its participants during periods of water shortages.

12 29. In the late 1980's and early 1990's, Respondent and the SWP Contractors disagreed
13 over water allocation procedures and other provisions of their long-term water supply contracts.

14 30. In 1994, Respondent and some of the SWP Contractors executed the Monterey
15 Agreement, an agreement which included provisions to modify the long-term water supply
16 contracts and, in pertinent part, to sell or lease the KWB property to designated Contractors.

17 31. The modifications were incorporated into the long-term water supply contracts in
18 what became known as the Monterey Amendment.

19 32. As part of the Monterey Amendment, Respondent was to transfer ownership of the
20 KWB property to the Kern County Water Agency, which would, in turn, transfer said ownership to
21 the KWBA.

22 33. In 1995, an EIR for the Monterey Amendment (the "Initial EIR") was certified by
23 the Central Coast Water Authority, a joint powers agency representing several SWP Contractors.

24 34. In 1997, the KWBA adopted an *Addendum to Monterey EIR of the Kern Water*
25 *Bank Authority, Kern Water Bank Habitat Conservation Plan/Natural Community Conservation*
26 *Plan* (Addendum). The Addendum focuses almost exclusively on the impacts to wildlife habitat
27 and other natural resources resulting from the construction and operation of KWB recharge basins.
28 The Addendum does not adequately describe or address the groundwater impacts associated with

1 the use and operation of the KWB. To the limited extent groundwater impacts are addressed, the
2 Addendum relies upon the analysis contained in the Initial EIR, which was ultimately decertified as
3 described below.

4 35. In 2000, after legal challenges to the Initial EIR, the Court of Appeal for the Third
5 Appellate District ordered that the Initial EIR be decertified because, among other things, DWR
6 should have been the Lead Agency on the Project.

7 36. Following the invalidation of the Initial EIR, a Settlement Agreement was executed
8 in 2003. Among other things, the Settlement Agreement required that DWR, as the Lead Agency,
9 prepare an EIR for the Project and exercise its judgment regarding the impacts related to the
10 transfer, development and operation of the KWB.

11 37. As required by the Settlement Agreement, Respondent prepared the *Monterey*
12 *Amendment to the State Water Project (SWP) Contract (including the Kern Water Bank Transfer)*
13 *and Associated Actions as Part of a Settlement Agreement (Monterey Plus) Draft Environmental*
14 *Impact Report (DEIR)*, which was circulated for public comment on or about October 15, 2007 and
15 until January 14, 2008.

16 38. The DEIR was inadequate in several respects, one of which was its failure to
17 adequately describe and analyze past, present and/or future use and operation of the KWB, which,
18 in turn, resulted in an inadequate analysis and incorrect conclusions regarding the Project's actual
19 and potential impacts on groundwater in Kern County, including impacts on the groundwater basin
20 shared by Petitioners and the KWB. While the DEIR does describe some of the past recharge
21 practices of the KWB, it does not adequately address all components and impacts of the present
22 and future use and operation of the KWB, most notably with respect to KWB groundwater
23 recovery operations. For example, the DEIR did not include any definite parameters describing
24 future recovery operations, and did not adequately analyze any specific impacts that are likely to
25 occur, and which in fact have occurred, at different levels of operations and use of the KWB for
26 recharge or recovery purposes.

27 39. On or about January 14, 2008, Petitioners submitted a comment letter (Comment
28 Letter) to Respondent expressing support for the Monterey Amendments, but also raising issues

1 relating to inadequacies in the DEIR, including the lack of an adequate project description and the
2 lack of an analysis of the impacts from the past, present and potential use and operation of the
3 KWB.

4 40. In the Comment Letter, Petitioners raised the following issues:

5 (a) Petitioners requested clarification as to whether the DEIR was intended to be
6 a Project or Program EIR (as those terms are defined by CEQA) with respect to the past,
7 present and/or potential future use and operation of the KWB.

8 (b) Petitioners objected to the project description in that it failed to adequately
9 describe the Project as it relates to use and operation of the KWB and, as such, the DEIR
10 failed to adequately analyze the impacts of such use and operation.

11 (c) Petitioners further objected to the inadequacy of the project description in
12 that it failed to include an operating plan for the KWB which identifies realistic recharge
13 and recovery parameters and/or which identifies resources (lands, bank accounts, etc.)
14 devoted to water marketing (i.e., sales) and those resources devoted to meeting the dry-year
15 requirements of KWB participants.

16 (d) Petitioners also objected to the DEIR in that it failed to adequately analyze
17 the actual and potential effects of the past, present and potential use and operation of the
18 KWB.

19 41. On or about January 14, 2008, the KWBA submitted a comment letter to
20 Respondent (KWBA Comment Letter). The KWBA Comment Letter contradicts Petitioners'
21 claims by asserting that the DEIR did address both past and future development, operation and use
22 of the KWB. It also states the DEIR concluded that the past and future development, operation and
23 use of the KWB will not result in any significant effects on the environment.

24 42. The FEIR was certified by Respondent on or around February 1, 2010. The FEIR
25 made only minor changes to the text of the DEIR, and failed to adequately address the issues raised
26 in Petitioners' Comment Letter. For example, contrary to the KWBA Comment Letter and
27 Respondent's promise in the Settlement Agreement to exercise its judgment regarding the impacts
28 related to the transfer, development and operation of the Kern Water Bank, the FEIR states that it is

1 not intended to cover specific operating parameters of the KWB or a detailed analysis of how the
2 water in the KWB is stored or allocated.

3 43. On February 2, 2010, Petitioners again sent a letter to Respondent highlighting the
4 deficiencies in the FEIR and describing the actual and potential significant impacts resulting from
5 the operation and use of the KWB.

6 44. On May 4, 2010, the Director of DWR, Mark W. Cowin, signed a Memorandum
7 that included, among other things, the following: adoption of findings and determinations on the
8 Project and direction to implement certain mitigation measures into the Project; adoption of a
9 Statement of Overriding Consideration for the Project; adoption of the Mitigation, Monitoring and
10 Reporting Program for the Project; direction to Respondent to carry out the Project; a
11 determination that Respondent had eliminated or substantially lessened all significant effects on the
12 environment where feasible; a determination that any remaining significant effects on the
13 environment found to be unavoidable are acceptable due to overriding considerations; and direction
14 to file a Notice of Determination on the Project.

15 45. On May 5, 2010, a Notice of Determination was filed on the Project.

16 **FIRST CAUSE OF ACTION**

17 **[California Environmental Quality Act]**

18 46. Petitioners incorporate by this reference paragraphs 1 through 45 as though they
19 were set forth in full herein.

20 **[Inadequate Project Description]**

21 47. Public Resources Code Sections 21100 and 21065, and 14 California Code of
22 Regulations Section 15378(a) require that EIRs fully describe and analyze projects, meaning the
23 whole of an action. An EIR must examine all phases of the project including planning,
24 construction, and operation. Where an individual project is a necessary precedent for action on a
25 larger project, or commits the lead agency to a larger project, with significant environmental
26 effects, an EIR must address itself to the scope of the larger project. [14 Cal. Code Reg's. §
27 15165]. "Project" does not mean each separate government approval. [14 Cal. Code Reg's. §
28 15178(c)]. And when a site is being acquired for a public project, the environmental effects of the

1 project should be reviewed prior to the acquisition. [14 Cal. Code Reg's. § 15004].

2 48. Integral parts of the Project include the transfer of the KWB to the KWBA, and the
3 past, present and future operation and use of the KWB. The EIR fails to adequately describe the
4 scope of the operation and use of the KWB, which leads to an inadequate analysis of the
5 environmental impacts of such operation and use, or of any way to mitigate those impacts, among
6 other deficiencies.

7 49. The plan for the operation and use of the KWB remains uncertain. For example,
8 there is no way to determine from the FEIR the extent of future recharge and recovery operations,
9 which are components of the Project.

10 50. The deficiencies in the project description deprived the public, including Petitioners,
11 of an opportunity to understand and meaningfully comment on the Project and its impacts, and
12 rendered the analyses in the EIR of the Project and its impacts inadequate.

13 **[Inadequate Description of the Environmental Setting]**

14 51. An EIR must include a description of the physical environmental conditions in the
15 vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice
16 of preparation is published, at the time environmental analysis is commenced, from both a local
17 and regional perspective. [14 Cal. Code Reg's. § 15125].

18 52. The subject EIR failed to include an adequate description of the Project's
19 environmental setting in that it failed to adequately describe the physical conditions of other
20 existing adjacent groundwater banking projects, other nearby public projects, including Petitioners'
21 public projects, or the physical conditions on and/or under nearby landowners' and water users'
22 land, including those within the Petitioners' boundaries.

23 53. These failures precluded the EIR from meaningfully analyzing the impacts of the
24 Project on the existing environmental setting, including those features of the existing environment
25 described above, and deprived the public, including Petitioners and Petitioners' landowners and
26 water users, of an opportunity to meaningfully comment on the Project and its impacts on the
27 existing environment.

28 ///

[Inadequate Evaluation of Project Impacts]

1
2 54. Public Resources Code Section 21100(a) and 14 California Code of Regulations
3 Sections 15126(a) and 15126.2 provide that an EIR must identify and focus on the significant
4 environmental effects of a proposed project, giving due consideration to both short-term and long-
5 term effects. An EIR must contain a sufficient degree of analysis to provide decision makers with
6 information which allows them to make a decision which intelligently takes account of the
7 environmental consequences. [14 Cal. Code Reg's. § 15151]. Drafting an EIR necessarily involves
8 some degree of forecasting, and an agency must use its best efforts to find out and disclose all that
9 it reasonably can. [14 Cal. Code Reg's. § 15144].

10 55. The FEIR fails to adequately consider and/or forecast the significant impacts of the
11 use and operation of the KWB, including but not limited to the impacts identified in this Petition.
12 The failure to adequately describe the scope of the Project necessarily resulted in an inadequate
13 and/or incorrect analysis of the impacts of the Project on, among other things, the level, supply,
14 quality and use of groundwater in the groundwater basin, as is more fully described in this Petition.
15 For example, the FEIR concludes that the Project has and will have a beneficial effect on
16 groundwater levels in Kern County, based upon the conclusion that the KWB will recover less
17 water than it has recharged. The FEIR concludes, without describing or setting any parameters on
18 the operation and use of the KWB, that this practice will continue in the future. This simple
19 analysis is insufficient in that it fails to consider, among other things, the specific actual and
20 potential impacts of continued groundwater recovery at a high level, the practice of recharging and
21 recovering water from different areas, the deep drilling of groundwater recovery wells, or the
22 construction and operation of multi-zone well completions.

23 56. In addition, an EIR must discuss significant cumulative impacts in conjunction with
24 other planned or proposed projects. [14 Cal. Code Reg's. § 15130]. The FEIR does not adequately
25 discuss cumulative impacts of the Project in connection with other groundwater banking and public
26 projects which are foreseeable, planned, approved and/or have been constructed and operated,
27 including but not limited to the Kern County Water Agency's Pioneer Project, the City of
28 Bakersfield's 2800 Acre Project, the Berrenda Mesa Project, the West Kern/Buena Vista project,

1 Arvin-Edison Water Storage District, Semitropic Water Storage District, and Petitioners' projects,
2 all of which share a common groundwater basin and are adjacent or proximate to the KWB.

3 **[Inadequate Analysis of Alternatives]**

4 57. Public Resources Code Section 21100(b)(4) and 14 California Code of Regulations
5 Sections 15126(f) and 15126.6 require that an EIR must describe a range of alternatives to the
6 proposed project which could feasibly attain the project's basic objectives, and evaluate the
7 comparative merits of the alternatives.

8 58. The FEIR's analysis of alternatives is inadequate because it fails to adequately
9 describe alternatives so that an adequate evaluation of the comparative merits of those alternatives
10 could be conducted. Because the project description fails to adequately describe the Project, the
11 purported alternatives do not include any alternatives for the actual present and potential future use
12 and operation of the KWB which could feasibly attain the Project's objectives while also
13 mitigating the Project's impacts.

14 59. Further, the FEIR fails to consider other reasonable alternatives, such as
15 implementation of an operating plan for the KWB that would include specific parameters on the
16 use and operation of the KWB, which would have reduced the Projects adverse impacts.

17 **[Inadequate Consideration of Mitigation Measures]**

18 60. Public Resources Code Section 21100(c) and 14 California Code of Regulations
19 Sections 15126(e) and 15126.4 require that EIRs contain adequate evaluations of measures to
20 mitigate adverse environmental impacts. In addition, 14 California Code of Regulations Section
21 15092(b) provides that a public agency shall not approve or carry out a project which has one or
22 more significant environmental effects unless it has [c]liminated or substantially lessened all
23 significant effects on the environment where feasible.

24 61. The FEIR's discussion of mitigation measures is inadequate in numerous respects,
25 including but not limited to the following:

- 26 (a) Because the project description fails to adequately describe the use and
27 operation of the KWB, it incorrectly concludes that no mitigation measures for groundwater
28 impacts are necessary, and further fails to include an evaluation of the likelihood that

1 appropriate mitigation measures for the Project's impacts to groundwater will actually be
 2 adopted, and even if they are adopted, whether or not they will be effective in mitigating
 3 said impacts.

4 (b) The measures, if any, discussed in the FEIR as a means of mitigating
 5 groundwater impacts are not in fact mitigation measures at all, since they merely consist of
 6 further study of an impact or are too vague and conclusory to qualify as mitigation
 7 measures for the purposes of CEQA.

8 **[Inadequate Response to Comments on the EIR]**

9 62. Public agencies must provide a good faith, reasoned analysis in response to
 10 comments received on the EIR and conclusory statements unsupported by factual information will
 11 not suffice. Agencies must address recommendations and objections in detail and explain why
 12 specific comments and suggestions were not accepted. [14 Cal. Code Reg's. § 15008(c)].

13 63. The EIR does not comply with CEQA because Respondent failed to adequately
 14 respond to comments, suggestions, and recommendations made by Petitioners and others with
 15 regard to the Project's description, impacts, mitigation measures, alternatives, and/or other matters,
 16 as alleged herein.

17 **[Inadequacy of Respondents CEQA Findings]**

18 64. Respondent was required by CEQA to determine in written findings whether each of
 19 the Project's impacts are significant or not, and whether any significant effects can be avoided.
 20 With respect to any significant environmental effects which could not be avoided or mitigated,
 21 Respondent was further required to make findings that the mitigation measures necessary to reduce
 22 project impacts are either (1) solely within the responsibility and jurisdiction of another public
 23 agency which can and should adopt those measures, or (2) are made infeasible, along with any
 24 alternatives which could reduce impacts, by specific economic, social or other consideration. [14
 25 Cal. Code Reg's. § 15091]. In such circumstances, the Lead Agency is required to find that the
 26 benefits of the proposed project outweigh the unavoidable adverse environmental effects. [14 Cal.
 27 Code Reg's. §§ 15092; 15093].

28 65. Respondent failed to make proper written findings as required by CEQA, because,

1 among other things:

2 (a) Respondent found that the Projects impacts on groundwater were not
3 significant when there was not substantial evidence in the record to support the finding.

4 (b) Respondent failed to make adequate and/or accurate findings concerning
5 the Project's impacts on groundwater.

6 66. In each of the respects enumerated herein, Respondent has violated its duties under
7 CEQA, abused its discretion, failed to proceed in a manner required by law, and have decided the
8 matters complained of without the support of substantial evidence. Accordingly, the certification of
9 the FEIR and the approval of the Project activities described herein must be set aside.

10 **[SECOND CAUSE OF ACTION]**

11 **[Injunctive Relief]**

12 67. Petitioners incorporate by reference paragraphs 1 through 66 as though they were
13 set forth in full herein.

14 68. Petitioners have exhausted their administrative remedies.

15 69. Petitioners are informed and believe, and thereon allege, that unless Petitioners are
16 granted injunctive relief they will suffer irreparable harm in that the implementation of the Project
17 activities described herein will cause permanent harm to Petitioners and will create the adverse
18 environmental impacts described in this Petition, among others, to the detriment of Petitioners,
19 their landowners, water users and others.

20 70. Petitioners are informed and believe, and thereon allege, that Petitioners lack an
21 adequate remedy at law because monetary damages cannot be ascertained and Petitioners, their
22 landowners and water users cannot be compensated for the environmental degradation caused by
23 the Project activities described herein.

24 **[THIRD CAUSE OF ACTION]**

25 **[Declaratory Relief]**

26 71. Petitioners incorporate by reference paragraphs 1 through 70 as though they were
27 set forth in full herein.

28 72. An actual controversy exists between the parties. Petitioners contend that

1 Respondent and Real Parties in Interest have acted in violation of CEQA. Respondent and Real
2 Parties in Interest dispute this contention. A judicial resolution of this controversy is necessary and
3 appropriate.

4 **PRAYER**

5 WHEREFORE, Petitioners pray as follows:

6 1. As to All Causes of Action herein, that this Court enter judgment determining and
7 declaring that the approval of Project activities described herein does not comply with applicable
8 law and therefore is null and void;

9 2. As to the First Cause of Action herein, that this Court enter judgment determining
10 and declaring that Respondent failed to comply with CEQA and therefore the approval of the
11 Project activities described herein was illegal and is null and void, and issue a writ of mandate
12 commanding Respondent to do the following:

13 (a) to vacate and set aside its approval of the Project activities described herein;

14 (b) to vacate and set aside certification of the FEIR as it relates to the Project
15 activities described herein;

16 (c) to prepare and certify a legally adequate EIR for the Project activities
17 described herein;

18 (d) to suspend any and all activities described herein pursuant to Respondent's
19 approval of said activities that could result in an adverse change or alteration to the
20 environment as described in this Petition until Respondent has complied with all
21 requirements of CEQA and all other applicable state and local laws, policies, ordinances,
22 and regulations as are directed by this Court pursuant to Public Resources Code section
23 21168.9.

24 3. As to the Second Cause of Action, that this court enter a preliminary and/or
25 permanent injunction enjoining Respondent and Real Parties in Interest from taking any action to
26 operate and/or use the KWB in any way that could result in a significant adverse impact on the
27 environment unless and until a lawful approval is obtained from Respondent after the preparation
28 and consideration of an adequate EIR and until Respondent and Real Parties in Interest have fully

1 complied with all requirements of CEQA and all other applicable state and local laws, policies,
2 ordinances and regulations.


3 4. As to the Third Cause of Action, that this Court enter a declaratory judgment
4 consistent with paragraphs 1 and 2 of this prayer.

5 5. That Petitioners be awarded their costs of suit herein, including reasonable
6 attorneys' fees; and

7 6. For such other and further relief as the Court may deem just and proper.

8 DATED: June 3, 2010

10 McMURTREY, HARTSOCK & WORTH

11
12 By: 
13 Isaac L. St. Lawrence, Attorneys for
14 Petitioners, Rosedale-Rio Bravo Water Storage
15 District and Buena Vista Water Storage District

16 [Petition Deemed Verified Under Code of Civil Procedure Section 446]

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28

EXHIBIT “A”

Gene K. McMurtrey
Robert W. Hartsock
James A. Worth

Isaac L. St. Lawrence
Rebecca A. Bos
Daniel N. Kayis

LAW OFFICES
McMURTREY, HARTSOCK & WORTH
A PROFESSIONAL CORPORATION
2001 22ND STREET, SUITE 100
BAKERSFIELD, CALIFORNIA 93301

AREA CODE 661
TELEPHONE 322-4417
FAX 322-8123

June 2, 2010

California Department of Water Resources
1416 9th Street
Sacramento, CA 95814

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: NOTICE OF INTENT TO FILE CEQA PETITION

To Whom It May Concern:

PLEASE TAKE NOTICE, that pursuant to Public Resources Code §21167.5, Rosedale-Rio Bravo Water Storage District and Buena Vista Water Storage District ("Petitioners") intend to file a Petition under the provisions of the California Environmental Quality Act ("CEQA") against the California Department of Water Resources ("Respondent") as the lead agency certifying and/or adopting a Final Environmental Impact Report ("FEIR"). More specifically, the primary purpose of the Petition will be to challenge the approval and adoption of the FEIR on the Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus), and Respondent's decision to implement specific portions of the project described therein.

Generally speaking, the Petition will seek, among other things, the following relief: (1) a writ of mandate regarding alleged defects in the FEIR and Respondent's approval of specific project activities; (2) declaratory relief; (3) a preliminary and permanent injunction; and (4) costs of suit and attorneys' fees.

Sincerely,

McMURTREY, HARTSOCK & WORTH

By: 

Isaac L. St. Lawrence
Attorneys for Rosedale-Rio Bravo Water
Storage District and Buena Vista Water
Storage District

ILS:gg

cc: Eric Averett, General Manager
Rosedale-Rio Bravo Water Storage District

Dan Bartel, General Manager
Buena Vista Water Storage District

PROOF OF SERVICE

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STATE OF CALIFORNIA, COUNTY OF KERN

I, GUADALUPE GONZALEZ, declare: I am and was at the time of the service hereunder mentioned, over the age of eighteen (18) years and not a party to the within cause. My business address is 2001 22nd Street, Suite 100, Bakersfield, California 93301.

On June 2, 2010, I served the document(s) titled:

LETTER DATED JUNE 2, 2010 RE: NOTICE OF INTENT TO FILE CEQA PETITION

on the interested parties in this action, as set forth below:

**California Department of Water Resources
1416 9th Street
Sacramento, CA 95814**

**Office of the Attorney General
1300 "I" Street
P. O. Box 944255
Sacramento, CA 94244-2550**

XXX (BY MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

____ (BY FACSIMILE TRANSMISSION) A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as completed and without error.

____ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s).

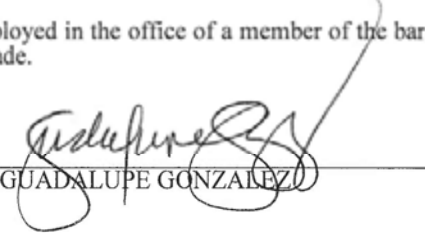
____ (BY OVERNIGHT COURIER) I caused such envelope with delivery fees fully prepaid to be sent by Federal Express.

____ (BY ELECTRONIC TRANSMISSION) A transmission report was properly issued by the person sending, and the electronic transmission was reported as completed and without error.

Executed on June 2, 2010, at Bakersfield, California.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.



GUADALUPE GONZALEZ



EXHIBIT “B”

1	Gene R. McMurtrey #042986	
	James A. Worth #147207	
	Isaac L. St. Lawrence #229789	
2	McMURTREY, HARTSOCK & WORTH	
	2001 22 nd Street, Suite 100	
3	Bakersfield, CA 93301	
	Telephone: (661) 322-4417	
4	Facsimile: (661) 322-8123	
5	Attorneys for Petitioners,	
6	ROSEDALE-RIO BRAVO WATER	
	STORAGE DISTRICT and BUENA	
7	VISTA WATER STORAGE DISTRICT	
8		
9	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
10	COUNTY OF KERN, METROPOLITAN DIVISION	
11	ROSEDALE-RIO BRAVO WATER STORAGE	Case No.
12	DISTRICT, a California Water Storage District;	
13	BUENA VISTA WATER STORAGE DISTRICT, a	NOTICE TO ATTORNEY GENERAL
	California Water Storage District,	
14	Petitioners,	[Public Resources Code §21167.7;
15	v.	Code of Civil Procedure §388]
16	CALIFORNIA DEPARTMENT OF WATER	
	RESOURCES, a California State Agency,	
17	Respondent,	
18	KERN WATER BANK AUTHORITY, a California	
19	Joint Powers Authority; WESTSIDE MUTUAL	
20	WATER COMPANY, a California Mutual Water	
	Company; DUDLEY RIDGE WATER DISTRICT, a	
21	California Water District; WHEELER RIDGE-	
22	MARICOPA WATER STORAGE DISTRICT, a	
	California Water Storage District; SEMITROPIC	
23	WATER STORAGE DISTRICT, a California Water	
24	Storage District; KERN COUNTY WATER	
	AGENCY, a Special Act Public Agency, on behalf	
25	of its IMPROVEMENT DISTRICT NO. 4; TEJON-	
26	CASTAC WATER DISTRICT, a California Water	
	District; and DOES 1 through 5000, inclusive,	
27	Real Parties in Interest.	
28	TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:	
	Notice to Attorney General Page 1 of 2	

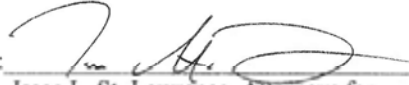
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PLEASE TAKE NOTICE, under Public Resources Code §21167.7 and Code of Civil Procedure §388, that on June 3, 2010 Petitioners Rosedale-Rio Bravo Water Storage District and Buena Vista Water Storage District filed a Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief (Petition) against the California Department of Water Resources. The Petition alleges that Respondent violated the California Environmental Quality Act by approving and/or adopting the Final Environmental Impact Report on the Monterey Amendment to the State Water Project Contracts (Including Kern Water Bank Transfer) and Associated Actions as Part of a Settlement Agreement (Monterey Plus), and its decision to implement specific portions of the project described therein (Project).

A copy of the Petition is attached to this notice.

DATED: June 3, 2010

McMURTREY, HARTSOCK & WORTH

By: 
Isaac L. St. Lawrence, Attorneys for
Petitioners, Rosedale-Rio Bravo Water Storage
District and Buena Vista Water Storage District

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STATE OF CALIFORNIA, COUNTY OF KERN

I, GUADALUPE GONZALEZ, declare: I am and was at the time of the service hereunder mentioned, over the age of eighteen (18) years and not a party to the within cause. My business address is 2001 22nd Street, Suite 100, Bakersfield, California 93301.

On June 3, 2010, I served the document(s) titled:

NOTICE TO ATTORNEY GENERAL

on the interested parties in this action, as set forth below:

**Office of the Attorney General
1300 "I" Street
P. O. Box 944255
Sacramento, CA 94244-2550**

XXX (BY MAIL) I am readily familiar with the firm's practice of collection and processing of documents for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Bakersfield, California, in the ordinary course of business.

____ (BY FACSIMILE TRANSMISSION) A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as completed and without error.

____ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s).

____ (BY OVERNIGHT COURIER) I caused such envelope with delivery fees fully prepaid to be sent by overnight courier.

____ (BY ELECTRONIC TRANSMISSION) A transmission report was properly issued by the person sending, and the electronic transmission was reported as completed and without error.

Executed on June 3, 2010, at Bakersfield, California.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.



GUADALUPE GONZALEZ

EXHIBIT D

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state Bar number, and address): Gene R. McMurtrey, Esq. (#042986); Isaac L. St. Lawrence, Esq. (#229789) McMURTREY, HARTSOCK & WORTH 2001 22nd Street, Suite 100 Bakersfield, CA 93301 TELEPHONE NO.: (661) 322-4417 FAX NO.: (661) 322-8123		FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiffs		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: 1415 Truxtun Avenue CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division		
CASE NAME: ROSEDALE-RIO BRAVO v. KERN WATER BANK AUTHORITY		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/D/W (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W (23) Non-PIP/D/W (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input checked="" type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 16, 2010
 ISAAC L. ST. LAWRENCE
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SEE ATTACHMENT.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SEE ATTACHMENT.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

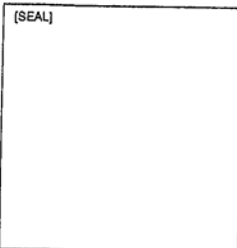
The name and address of the court is:
(El nombre y dirección de la corte es): Kern County Superior Court
Metropolitan Division, 1415 Truxtun Avenue
Bakersfield, CA 93301

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gene R. McMurtrey, Esq.; Isaac L. St. Lawrence, Esq. (661) 322-4417
McMURTREY, HARTSOCK & WORTH, 2001 22nd Street, Suite 100, Bakersfield, CA 93301

DATE: _____ Clerk, by _____, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
- other (specify):

4. by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Rosedale-Rio Bravo v. Kern Water Bank Authority	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

- Plaintiff Defendant Cross-Complainant Cross-Defendant

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, a California Water Storage District; BUENA VISTA WATER STORAGE DISTRICT, a California Water Storage District; HENRY MILLER WATER DISTRICT, a California Water District; and KERN DELTA WATER DISTRICT, a California Water District

SUM-200(A)

SHORT TITLE: Rosedale-Rio Bravo v. Kern Water Bank Authority	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

KERN WATER BANK AUTHORITY, a Joint Powers Authority; and DOES 1-100

Page 3 of 3

PLD-C-001

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> Gene R. McMurtrey #042986 Isaac L. St. Lawrence #229789 McMurtrey, Hartsock & Worth 2001 22nd Street, Suite 100 Bakersfield, CA 93301 TELEPHONE NO: 661-322-4417 FAX NO. <i>(Optional):</i> 661-322-8123 E-MAIL ADDRESS <i>(Optional):</i> ATTORNEY FOR <i>(Name):</i> Rosedale-Rio Bravo; Buena Vista; Henry Miller; Kern Delta	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern STREET ADDRESS: 1415 Truxtun Avenue MAILING ADDRESS: 1415 Truxtun Avenue CITY AND ZIP CODE: Bakersfield, CA 93301 BRANCH NAME: Metropolitan Division	
PLAINTIFF: SEE ATTACHED FOR FULL CAPTION DEFENDANT:	
<input checked="" type="checkbox"/> DOES 1 TO <u>100</u>	
<p style="text-align: center;">CONTRACT</p> <input checked="" type="checkbox"/> COMPLAINT <input type="checkbox"/> AMENDED COMPLAINT <i>(Number):</i> <input type="checkbox"/> CROSS-COMPLAINT <input type="checkbox"/> AMENDED CROSS-COMPLAINT <i>(Number):</i>	
Jurisdiction <i>(check all that apply):</i> <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000 but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE <i>(exceeds \$25,000)</i> <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint or cross-complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	CASE NUMBER:


1. **Plaintiff** *(name or names):*
 Rosedale-Rio Bravo WSD; Buena Vista WSD; Henry Miller Water District; Kern Delta Water District
 alleges causes of action against **defendant** *(name or names):*
 Kern Water Bank Authority
2. This pleading, including attachments and exhibits, consists of the following number of pages: 66
3. a. Each plaintiff named above is a competent adult
 except plaintiff *(name):* Rosedale-Rio Bravo WSD; Buena Vista WSD; Henry Miller WD; Kern Delta...
 (1) a corporation qualified to do business in California
 (2) an unincorporated entity *(describe):*
 (3) other *(specify):*
 Public Entities formed pursuant to Water Code §39000 et seq. or Water Code §34000 et seq.
- b. Plaintiff *(name):*
 a. has complied with the fictitious business name laws and is doing business under the fictitious name *(specify):*
 b. has complied with all licensing requirements as a licensed *(specify):*
- c. Information about additional plaintiffs who are not competent adults is shown in Attachment 3c.
4. a. Each defendant named above is a natural person
 except defendant *(name):* Kern Water Bank Authority **except defendant** *(name):*
 (1) a business organization, form unknown Authority (1) a business organization, form unknown
 (2) a corporation (2) a corporation
 (3) an unincorporated entity *(describe):* (3) an unincorporated entity *(describe):*
 (4) a public entity *(describe):* (4) a public entity *(describe):*
 A Joint Powers Authority
 (5) other *(specify):* (5) other *(specify):*

* If this form is used as a cross-complaint, plaintiff means cross-complainant and defendant means cross-defendant.

Page 1 of 2

PLD-C-001

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER:
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4. (Continued)
- b. The true names of defendants sued as Does are unknown to plaintiff.
- (1) Doe defendants (specify Doe numbers): 1 - 20 were the agents or employees of the named defendants and acted within the scope of that agency or employment.
- (2) Doe defendants (specify Doe numbers): 20 - 100 are persons whose capacities are unknown to plaintiff.
- c. Information about additional defendants who are not natural persons is contained in Attachment 4c.
- d. Defendants who are joined under Code of Civil Procedure section 382 are (names):
5. Plaintiff is required to comply with a claims statute, and
- a. has complied with applicable claims statutes, or
- b. is excused from complying because (specify):
Govt. Code §905(i)
6. This action is subject to Civil Code section 1812.10 Civil Code section 2984.4.
7. This court is the proper court because
- a. a defendant entered into the contract here.
- b. a defendant lived here when the contract was entered into.
- c. a defendant lives here now.
- d. the contract was to be performed here.
- e. a defendant is a corporation or unincorporated association and its principal place of business is here.
- f. real property that is the subject of this action is located here.
- g. other (specify):
8. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
- Breach of Contract
- Common Counts
- Other (specify):
Declaratory Relief, Injunction, and Specific Performance.
9. Other allegations:
10. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
- a. damages of: \$ According to Proof
- b. interest on the damages
- (1) according to proof
- (2) at the rate of (specify): _____ percent per year from (date): _____
- c. attorney's fees
- (1) of: \$ _____
- (2) according to proof.
- d. other (specify):
Declaratory Relief, Permanent Injunction, and Specific Performance.
11. The paragraphs of this pleading alleged on information and belief are as follows (specify paragraph numbers):
BC-2(c) & (d), DR-3
Date: September 16, 2010
Isaac L. St. Lawrence #229789
(TYPE OR PRINT NAME)
- 
(SIGNATURE OF PLAINTIFF OR ATTORNEY)

(If you wish to verify this pleading, affix a verification.)

MC-025

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER:
--	--------------

ATTACHMENT (Number): CAPTION

(This Attachment may be used with any Judicial Council form.)

PLAINTIFFS:

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, a California Water Storage District; BUENA VISTA WATER STORAGE DISTRICT, a California Water Storage District; HENRY MILLER WATER DISTRICT, a California Water District; and KERN DELTA WATER DISTRICT, a California Water District.

v.

DEFENDANTS:

KERN WATER BANK AUTHORITY, a Joint Powers Authority; and DOES 1-100.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

Form Approved for Optional Use
Judicial Council of California
MC-025 [Rev. July 1, 2009]

**ATTACHMENT
to Judicial Council Form**

www.courtinfo.ca.gov

PLD-C-001(1)

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER:
--	--------------

First _____ **CAUSE OF ACTION—Breach of Contract**

(number)

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

BC-1. Plaintiff (name): Rosedale-Rio Bravo WSD; Buena Vista WSD; Henry Miller WD & Kern Delta...

alleges that on or about (date): December 14, 1995

a written oral other (specify):

agreement was made between (name parties to agreement):

Kern Water Bank Authority and Kern County Water Agency

A copy of the agreement is attached as Exhibit A, or

The essential terms of the agreement are stated in Attachment BC-1 are as follows (specify):

BC-2. On or about (dates): within the last 4 years
defendant breached the agreement by the acts specified in Attachment BC-2 the following acts
(specify):

See Attachment BC-2

BC-3. Plaintiff has performed all obligations to defendant except those obligations plaintiff was prevented or excused from performing.

BC-4. Plaintiff suffered damages legally (proximately) caused by defendant's breach of the agreement
 as stated in Attachment BC-4 as follows (specify):

As a direct and proximate result of Defendant's breach of the Agreement, Plaintiffs have suffered and continue to suffer damages, including but not limited to, increased operating costs. In addition, Plaintiffs have suffered incidental and consequential damages, fees and costs. The exact amount of monetary damages is presently unknown, and Plaintiffs will ask leave to amend its pleadings to set forth the exact amount when the same is ascertained.

BC-5. Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

BC-6. Other:

Page _____

Page 1 of 1

MC-025

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER:
--	--------------

ATTACHMENT (Number): BC-2*(This Attachment may be used with any Judicial Council form.)*

- a. On or about December 14, 1995, Defendant Kern Water Bank Authority entered into an agreement with the Kern County Water Agency regarding the operation of the Kern Water Bank and entitled "Declaration of Covenants Conditions and Restrictions" ("Agreement") a copy of which is attached as Exhibit A and made a part of this pleading.
- b. By the terms of the Agreement, Defendant agreed to operate the Kern Water Bank project in a manner that would provide Plaintiffs with use of the Kern Water Bank facilities in certain specified circumstances. The Agreement was made for the Plaintiffs benefit in that it gave Plaintiffs a second priority right to use the Kern Water Bank facilities for the recharge and/or recovery of water as it specifically provided:
"To the extent there is recharge, storage and/or recovery capacity available in the Project facilities beyond that needed for the first priority ("Excess Capacity"), Agency Basic Contract Member Units, including Agency and its improvement districts, shall have the second priority right to use the Project for the recharge and/or recovery of water for use in the boundaries of Agency if they pay the Fair Compensation for such use or a lesser amount agreed to by KWBA [Kern Water Bank Authority]." [Agreement ¶4.2].
- c. By Definition under the terms of the Agreement, Plaintiffs are "Agency Basic Contract Member Units" which are defined as: "those member units that entered into long-term water supply contracts with the Agency prior to January 1, 1996, for an entitlement to a portion of the State Water Project..." [Agreement ¶1.0(a)].
- d. Plaintiffs are informed and believe, and thereon allege, that within four years last past, Defendant has violated the provision of the Agreement described above and has therefore breached the Agreement by refusing to permit Plaintiffs to use and exercise its second priority rights as described above.
- e. Plaintiffs have made several demands, both verbally and in writing, that Defendant perform its obligations under the Agreement, to no avail.
- f. Within four years last past, Plaintiffs have continued to attempt to exercise their rights under the Agreement and Defendant continues to refuse to allow Plaintiffs access and use of their second priority rights pursuant to the Agreement and/or continues to place such restrictions upon such use as to deny the right.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1*(Add pages as required)*

Form Approved for Optional Use
Judicial Council of California
MC-025 (Rev. July 1, 2009)

**ATTACHMENT
to Judicial Council Form**

www.courtinfo.ca.gov

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER: MC-025
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ATTACHMENT (Number): 8(a)

(This Attachment may be used with any Judicial Council form.)

SECOND CAUSE OF ACTION
(Declaratory Relief)

DR-1. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation in paragraphs 1 through 11 and BC-1 through BC-6 of this Complaint.

DR-2. An actual controversy has arisen and now exists between Plaintiffs and Defendant concerning Defendant's operation of the Kern Water Bank project and the duties and rights under the Covenants, Conditions, and Restrictions governing the operation of said project

DR-3. Plaintiffs contend that Defendant acted in violation of law and contract in each of the respects set forth in the prior causes of action. Plaintiffs contend that Defendant must cease and desist from restricting Plaintiffs' second priority right to use Kern Water Bank facilities for the recharge and/or recovery of water pursuant to the terms of the Covenants, Conditions, and Restrictions. Plaintiffs are informed and believe, and thereon allege, that Defendant contends otherwise.

DR-4. Accordingly, a judicial resolution of this controversy and a declaration of the rights of the parties herein are necessary and appropriate in accordance with Code of Civil Procedure §1060.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

Form Approved for Optional Use
Judicial Council of California
MC-025 (Rev. July 1, 2009)

**ATTACHMENT
to Judicial Council Form**

www.courtinfo.ca.gov

MC-025

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER:
--	--------------

ATTACHMENT (Number): 8(b)*(This Attachment may be used with any Judicial Council form.)*

THIRD CAUSE OF ACTION
(Injunction)

IR-1. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation in paragraphs 1 through 11, paragraphs BC-1 through BC-6, and paragraphs DR-1 through DR-4 of this Complaint.

IR-2. Unless Plaintiffs are granted injunctive relief, they will suffer irreparable harm in that they will lose the ability and right to access and use the Kern Water Bank facilities for the recharge and/or recovery of water as a second priority right holder. Such loss will cause, create, continue or exacerbate (i) significant groundwater impacts within the boundaries of Plaintiffs and (ii) a significant loss of resources, including, but not limited to, the loss of an opportunity to capture water which would significantly benefit Plaintiffs and their landowners.

IR-3. Plaintiffs are entitled to an injunction and order, pursuant to Code of Civil Procedure §§ 526 and 527, directing Defendant to cease and desist from limiting Plaintiffs from exercising their second priority rights pursuant to the Agreement, including without limitation limiting the use of the Kern Water Bank facilities in a manner exceeding the limitation imposed in the Agreement.

IR-4. Plaintiffs have no adequate legal remedy in that damages, if awarded, cannot be properly ascertained since the damages from continued refusal of second priority rights pursuant to the Agreement are difficult to assess and are overly speculative, and damages will be inadequate to compensate Plaintiffs for their detriment suffered by it, including destruction and/or loss of real property and/or real property rights. Additionally, continued restrictions on Plaintiffs' second priority rights, in violation of the terms and provisions of the Agreement, constitute a continuing breach of contract which would lead to a multiplicity of lawsuits.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1*(Add pages as required)*

Form Approved for Optional Use
Judicial Council of California
MC-025 (Rev. July 1, 2009)

ATTACHMENT
to Judicial Council Form

www.courtinfo.ca.gov

MC-025

SHORT TITLE: Rosedale-Rio Bravo WSD et al. v. Kern Water Bank Authority	CASE NUMBER:
--	--------------

ATTACHMENT (Number): 8(c)

(This Attachment may be used with any Judicial Council form.)

FOURTH CAUSE OF ACTION
(Specific Performance)

SP-1. Plaintiffs reallege and incorporate, as though fully set forth herein, each and every allegation in paragraphs 1 through 11, paragraphs BC-1 through BC-6, paragraphs DR-1 through DR-4, and paragraphs IR-1 through IR-4 of this Complaint.

SP-2. The consideration set forth in the Agreement was fair and reasonable at the time the Agreement was entered into. Plaintiffs have and/or are willing to pay the fair compensation for use of its second priority rights and use of the Kern Water Bank facilities, and the Agreement is, as to Defendant, just and reasonable.

SP-3. Plaintiffs have performed all conditions, covenants, and promises required by it on its part to be performed in accordance with the terms and conditions of the Agreement.

SP-4. Respondent has failed and refused, and continues to fail and refuse, to perform the conditions of the Agreement on its part as set forth in the First Cause of Action of this Complaint (Paragraphs BC-2, supra).

SP-5. Plaintiffs have no adequate legal remedy in that damages, if awarded, cannot be properly ascertained since the damages from continued refusal of second priority rights pursuant to the Agreement are difficult to assess and are overly speculative, and damages will be inadequate to compensate Plaintiffs for their detriment suffered by it, including destruction and/or loss of real property and/or real property rights. Additionally, continued restrictions on Plaintiffs' second priority rights, in violation and in excess of the terms and provisions of the Agreement, constitute a continuing breach of contract which would lead to a multiplicity of lawsuits.

(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)

Page 1 of 1

(Add pages as required)

Form Approved for Optional Use
Judicial Council of California
MC-025 (Rev. July 1, 2009)

ATTACHMENT
to Judicial Council Form

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EXHIBIT “A”

RECORDING REQUESTED BY:
 CHICAGO TITLE CO. ESCROW NO.
B 648002-mm
 RECORDING/REQUESTED BY/
 AND MAIL TO:

KERN COUNTY WATER AGENCY
 POST OFFICE BOX 58
 BAKERSFIELD, CALIFORNIA 93302-0058

EXEMPT FROM RECORDING FEE
 PURSUANT TO GOVERNMENT CODE
 SECTION 27383

James Maples-Assessor-Recorder
 Kern County Official Records

PATTI
 Pages: 57
 8/09/1996
 12:00:00

DOCUMENT #: 0196102058



Stat. Types: 1

Fees...
 Taxes...
 Other...

TOTAL PAID...

DECLARATION OF COVENANTS CONDITIONS & RESTRICTIONS

This Declaration is made this 14th day of Dec, 1995 by the KERN WATER BANK AUTHORITY, a California Joint Powers Authority ("KWBA") for the benefit of the KERN COUNTY WATER AGENCY, a California public agency ("Agency").

WHEREAS, KWBA and Agency have entered into a Transfer and Exchange Agreement, dated December 13, 1995, which at Section 3 provides for execution and recording of this Declaration upon the Agency transferring the Real Property described at Exhibit B to KWBA.

NOW, THEREFORE, KWBA DOES HEREBY PROVIDE THIS DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS:

1.0 Definitions: The following definitions shall apply to this Declaration:

(a) "Agency Basic Contract Member Units": shall mean those member units that entered into long-term water supply contracts with the Agency prior to January 1, 1996, for an entitlement to a portion of the State Water Project furnished to the Agency annually by the State of California pursuant to the Agency's November 15, 1963 water supply contract with the State of California and any amendments thereto.

(b) "Agency Non-Basic Member Units": shall mean any member units of the Agency other than Agency Basic Contract Member Units.

(c) "Agency Member Units": shall mean member units of the Agency as that term is defined in Section 2(g) of the Kern County Water Agency Act, California Statutes 1961, Chapter 1003, as amended.

(d) "Member Entities": shall mean those entities that have become members of the Kern Water Bank Authority by executing the Joint Powers Agreement for the Kern Water Bank Authority, and their successors and assigns that become members.

(e) "Project": shall mean the Project described in Article V of the Joint Powers Agreement for the Kern Water Bank Authority.

(f) "Property": shall mean the approximately 19,890 acres of real property together with all improvements thereon located within Kern County, California, more fully described in Exhibit A attached hereto and incorporated herein by reference.

(g) "SWP Agricultural Contractors": for purposes of this Declaration shall mean the following State Water Project contractors: County of Kings; Dudley Ridge Water District; Empire West Side Irrigation District; Kern County Water Agency; Oak Flat Water District; and Tulare Lake Basin Water Storage District.

(h) "SWP Urban Contractors": shall mean every State Water Project contractor other than the SWP Agricultural Contractors.

2.0 General - Property Benefitted & Burdened By Declaration: It is the intent of the parties that each restraint or restriction relating to the use, repair, maintenance or improvement of the Property shall constitute a covenant running with the land, binding upon all successive owners of all or any portion of the Property. Such covenants shall be for the benefit of the land of Agency as described in Exhibit A, and shall burden the Property described in Exhibit B.

3.0 Use Of Property:

3.1 The annual consumptive use of groundwater upon any of the Property by KWBA, any successor in interest to KWBA, or any transferee of any interest in the Property, shall be limited to 0.3 acre feet per acre; provided however, that KWBA, any successor in interest thereto, or any transferee of any interest in any of the Property may make arrangements for additional supplies, which may include water banked by KWBA and/or its Member Entities. In the event of a breach of the restrictions provided for in this Section, Agency shall have the rights and remedies provided for in Section 3.6.

3.2 Neither the whole, nor any part, nor any interest in the property described in Exhibit C, may be sold, transferred, leased, subleased, assigned, conveyed or encumbered without the express prior written consent of Agency Board of Directors, provided that (i) Agency shall not unreasonably withhold such consent; and (ii) upon consultation with the Agency, such property may be encumbered as a bona fide security for improvements upon this Property used for water banking purposes and such restrictions on transfer shall not apply to any transfer upon or deed in lieu of foreclosure of such permitted encumbrance or be binding upon any transferee pursuant to or in lieu of foreclosure or upon

such transferee's successors and assigns. In no event shall withholding of consent of the Agency be deemed unreasonable if Agency determines that the property involved can be used economically for groundwater storage and recovery for agricultural water use in Kern County. If Agency so determines, and KWBA disputes such determination, the matter shall be resolved by arbitration in accordance with the provisions of Title 9 (commencing with Section 1280) of Part 3 of the California Code of Civil Procedure. In determining whether the property affected can be economically used for groundwater storage and recovery for agricultural use in Kern County, the arbitrator shall not consider the possible economic returns from any other potential uses of the property. If the arbitrator determines that the property affected can not be used economically for such purpose, and KWBA thereafter elects to dispose of such property, Agency shall have a right of first refusal to purchase or lease such property on the same terms and conditions as those provided for in the proposed sale or lease. Any offer, acceptance, or agreement for such sale or lease by KWBA with a third party must state in writing that it is subject to such rights of Agency. KWBA shall serve written notice on Agency of the terms of such proposed sale or lease, and of any material amendments or modifications of such terms. Agency shall have 90 days after receipt of written notice of the terms of such sale or lease, or of any material amendments or modifications of such terms, whichever is later, to exercise such right of first refusal. In the event of a breach of the restrictions provided for in this Section, Agency shall have the rights and remedies specified in Section 3.6.

3.3 The property described in Exhibit D may be sold, transferred, leased, subleased, assigned, conveyed or encumbered; provided that all of the net proceeds from such disposition shall be used solely for the development, operation (including purchase of water) or maintenance of the Project, including any amortization of indebtedness incurred for such development, operation or maintenance, unless (i) substantially all the property described at Exhibit C has been or is being disposed of because it has been determined by the Agency or an arbitrator in accordance with the procedure set forth in Section 3.2 that the property described in Exhibit C can not be used economically for groundwater storage and recovery for agricultural water used in Kern County, or (ii) otherwise agreed to in writing by the Agency. In the event of a breach of the restrictions provided for in this Section, Agency shall have the rights and remedies provided for in Section 3.6.

3.4 The property described in Exhibit E may be sold, transferred, leased, subleased, assigned, conveyed or encumbered; provided that all of the net proceeds from such disposition shall be used solely for the development, operation (including purchase of water) or maintenance of the Project, including any amortization of indebtedness incurred for such development, operation or maintenance, unless (i) substantially all the property described at Exhibit C has been or is being disposed of because it has been determined by the Agency or an arbitrator in accordance with the procedure set forth in Section 3.2 that the property described in Exhibit C can not be used economically for groundwater storage and recovery for agricultural water used in Kern County, or (ii) otherwise agreed to in writing by the Agency. In the event that any of the property described in Exhibit E is sold, transferred, or conveyed, and KWBA does not retain and reserve a fee interest or a permanent exclusive easement, to

each of the well sites located thereon described in Exhibit F, together with any pumps or motors or other equipment used in connection with such wells, Agency shall have and is hereby granted an option (the "Option") to purchase such property at the fair market value. Agency may exercise the Option only if KWBA attempts to sell, transfer or convey any property listed on Exhibit E without retaining and reserving the well sites located thereon listed on Exhibit F. The Option shall be exercised by the Agency providing written notice to KWBA of the exercise of such option within 30 days of Agency's receipt of written notice from KWBA or any record owner of title to such property of a proposed sale, conveyance or transfer. Within 90 days of the date the parties agree as to the fair market value of the Property or within 90 days of the date of the appraisal provided for below, whichever is earlier, Agency and the owner of such property shall enter into the purchase agreement attached hereto as Exhibit G. The purchase price for such property shall be the fair market value of the property. In the event that the parties can not agree to the fair market value of the property within 30 days after the exercise of the Option, the parties shall select an M.A.I. appraiser to appraise the property. Each party shall pay one-half of the cost of such appraisal. In the event that the parties do not agree upon an appraiser within 45 days after the exercise of the Option, each party shall name an appraiser, and those appraisers shall jointly name an appraiser to appraise such property. In no event shall KWBA consummate more than three transfers or other transactions subject to this section without retaining the rights to such well sites.

3.5 KWBA may request that Agency make property which is subject to the restrictions contained in 3.2, subject instead to the provisions of 3.3. Such modification shall be subject to the written consent of the Agency; provided, Agency shall not unreasonably withhold such consent. If the Agency so determines, and KWBA disputes such determination, the matter shall be resolved by arbitration in accordance with the provisions of Title 9 (commencing with Section 1280) of Part 3 of the California Code of Civil Procedure. In the event the Agency so consents, Agency and KWBA shall promptly execute, acknowledge and record an appropriate amendment to this Declaration containing such modification.

3.6 In the event that KWBA, or any successor in interest to KWBA, or any transferee, lessee, sublessee or assignee of the Property affected, shall violate any of the restrictions or restraints upon such Property, or enter into any agreement which would cause such restrictions or restraints to be violated, or otherwise breach the terms of Sections 3.2, 3.3, 3.4 or 3.5, Agency shall have the following rights and remedies, at its sole election:

3.6.1 Agency shall be entitled to a temporary restraining order, and preliminary and permanent injunctions, restraining the breach of such restrictions; and in addition; any sale, transfer, lease, sublease, assignment, conveyance, encumbrance or use in violation or breach of the terms of Sections 3.3, 3.4 or 3.5 of this Declaration shall be void and of no force or effect; and Agency shall further be entitled to declaratory relief so providing;

3.6.2 Agency shall be entitled to any other remedies it may have at law or in equity.

3.7 The foregoing provisions of Sections 3.1 through 3.6 of this Declaration shall not apply if KWBA elects to change its form to another form of public entity, and in connection with such change of form transfers title to the Property to such successor entity, provided that (i) 66-2/3% of the members of the KWBA are members of or participants in the successor agency; and (ii) such successor agency assumes the obligations under this Declaration in the same manner as required of the KWBA. The foregoing provisions of Sections 3.1 through 3.6 of this Declaration also shall not apply to any succession to the rights, interests and obligations of KWBA pursuant to Section 5.6(c) of the Joint Powers Agreement of the KWBA, dated October 16, 1995, as amended from time to time, provided that the reconstituted Authority assumes the obligations under this Declaration in the same manner as required of the KWBA.

4.0 Priorities For Use Of The Project:

4.1 The KWBA Member Entities shall have the first priority right to use the Project for the recharge, storage and/or recovery of water primarily for the use within the boundaries of the Agency and Dudley Ridge Water District. Included within such priority will be uses of the Project for recharge of high flow Kern River flows under terms and conditions of agreement(s) entered into between the KWBA or any of its Member Entities and the holders of Kern River water rights. The KWBA and/or its Member Entities intend to enter into long term exchanges and programs with other entities including entities outside of Agency boundaries. Such exchanges will be subject to the following:

4.1.1 Any such exchange or program with interests outside the boundaries of the SWP Agricultural Contractors, shall be subject to the approval of Agency under the same terms and conditions as Agency applies to other Agency Member Units.

4.1.2 If approved, these transactions will be included in this first priority use category.

4.2 To the extent there is recharge, storage and/or recovery capacity available in the Project facilities beyond that needed for the first priority ("Excess Capacity"), Agency Basic Contract Member Units, including Agency and its improvement districts, shall have the second priority right to use the Project for the recharge and/or recovery of water for use in the boundaries of Agency if they pay the Fair Compensation for such use or a lesser amount agreed to by KWBA. The meaning of "Fair Compensation" shall be the same as that set forth in California Water Code section 1811. The KWBA Board of Directors may establish from time to time such rates consistent with said section 1811.

4.3 The third priority shall be any Agency Non-Basic Contract Member Unit for use within Kern County, subject to the approval of terms and conditions acceptable

to the KWBA and approval of Agency, where Agency approval would otherwise be required absent the Project.

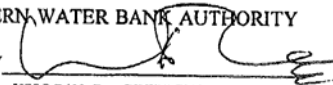
4.4 The fourth priority shall be any person, entity or organization within the County of Kern for use within Kern County, subject to terms and conditions acceptable to KWBA and approval of Agency, where Agency approval would otherwise be required absent the Project.

4.5 Any excess Capacity available beyond that needed for these first four priorities can be made available to other persons, entities, or organizations, including SWP Urban Contractors, on terms and conditions acceptable to the KWBA and Agency.

IN WITNESS WHEREOF, this Declaration has been executed the date first above written.

KERN WATER BANK AUTHORITY

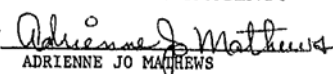
BY


WILLIAM D. PHILLIMORE

Its: Chairman

KERN COUNTY WATER AGENCY

BY


ADRIENNE JO MATTHEWS

Its: President

223315.2

EXHIBIT E

KERN RIVER WATER SERVICE AGREEMENT

THIS AGREEMENT, made as of the 31st day of August, 1961, by and between ANDERSON CANAL, INC., JAMES CANAL, INC., JOYCE CANAL, INC., PIONEER CANAL, INC., and PLUNKET CANAL, INC.; all corporations duly organized and existing under and by virtue of the laws of the State of California (herein called "Canal Companies"), as First Parties, and ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT, a water storage district duly organized and existing under and by virtue of the laws of the State of California (herein called "Rosedale District"), as Second Party,

W I T N E S S E T H:

THAT WHEREAS:

A. Canal Companies execute this agreement on their own behalf and on behalf of all the parties of the second part (or their successors in interest) in and to that certain contract known as the "Miller-Haggin Agreement" dated July 28, 1888, and recorded in the Office of the County Recorder of Kern County, California, in Book 2 of Agreements, at page 40, as amended and supplemented, and all of the parties (or their successors in interest) whose water rights on the Kern River were adjudicated among themselves in that certain judgment known as the "Shaw Decree", rendered August 6, 1900, by the Superior Court of the State of California in and for the County of Kern, Honorable Lucien Shaw, Judge, in that certain Action No. 1901 entitled "Farmers Canal Company, et al., Plaintiffs, vs. J. R.

Simmons, et al., Defendants", who might wish to share in the benefits and obligations of this agreement (herein called "Other Affiliates").

B. The increasing agricultural irrigation requirements of lands within Kern County are causing a continuing decline in the level of the ground-water table from which water in the Rosedale District is now drawn by pumps for irrigation purposes.

C. The Rosedale District was formed to provide an organized public entity that could cope with and solve the mutual water problems confronting residents and property owners of the area contained within the Rosedale District.

D. Canal Companies have observed that river seepage losses between First Point of Measurement and Second Point of Measurement on the Kern River have been increasing substantially during recent years, and the extent of such increased losses has become a matter of great concern to Canal Companies.

E. It is anticipated that future ground-water pumping conditions can be improved by the importation of additional surface water into the Rosedale District.

F. Canal Companies are undertaking to make improvements in the channel of the Kern River, the first phase being the construction of a concrete-lined canal, starting in the channel of the Kern River near the outlet of the Friant-Kern Canal in the West One-Half of Section 33, Township 29 South, Range 27 East, M.D.B. & M., running in a Southwesterly direction south of Kern River and terminating in the channel of Kern River at Second Point of Meas-

urement in the Northeast Quarter of Section 24, Township 30 South, Range 25 East, M.D.B. & M., hereinafter called the "Kern River Canal".

G. There is and for some years has been a shortage of water in Kern County, and because of such shortage, Rosedale District needs an additional permanent source of water.

H. Canal Companies are willing to make available to Rosedale District a permanent supply of water, and to furnish water transportation service, in the amounts and under the terms and conditions set forth in this agreement.

I. The parties desire to share in the mutual benefits which will accrue to them from construction of the Kern River Canal.

NOW, THEREFORE, Canal Companies and Rosedale District hereby agree with each other as follows:

1. Water Sale.

Canal Companies agree to sell to Rosedale District, and Rosedale District agrees to buy from Canal Companies, ten thousand (10,000) acre-feet of water per year computed as hereinafter provided upon a cumulative annual average basis, at the price and in accordance with the provisions hereinafter set forth, as follows:

(a) Term: The term of this agreement for the sale and purchase of water shall commence on the first day of January of the calendar year next following the calendar year in which the Kern River Canal is completed and placed in operation, and shall continue until terminated by mutual written consent or agreement of the Canal Companies and Rosedale District.

(b) Quantity: The quantity of water to be sold hereunder will vary from year to year, but the cumulative annual average quantity delivered hereunder as of the end of any calendar year shall never be less than ten thousand (10,000) acre-feet per year. Such cumulative annual average quantity shall be computed as of the end of each calendar year during the term hereof by dividing the total quantity of water sold hereunder from the commencement of the term hereof to the end of such calendar year by the number of calendar years embraced within that period of time. The total quantity delivered hereunder during any period of five (5) consecutive calendar years of the term hereof shall never be less than five thousand (5,000) acre-feet.

(c) Deliveries: All water sold by Canal Companies to Rosedale District hereunder shall be delivered at Rosedale District's Diversion Works on Kern River in Section One (1), Township Thirty (30) South, Range Twenty-Six (26) East, M.D.B. & M. All such deliveries of water shall be made at such times and at such rates as Canal Companies deem practicable in the light of available water supplies, unused capacity in the Kern River Canal, and other pertinent factors; provided, however, that Canal Companies shall not without the prior written consent of Rosedale District deliver water hereunder at rates of flow exceeding one hundred sixty-seven (167) cubic feet per second or at times which would interfere with Rosedale District's receipt of water under its "Contract for Short Term Water Service" with the United States Bureau of Reclamation as described in the "Report on Proposed Project for Rosedale-Rio Bravo

Water Storage District" dated February, 1960, or any extension thereof, or any other temporary or short-term contract of a similar nature hereafter made between the Rosedale District and the Bureau of Reclamation for a comparable water supply in replacement for said Contract so described in said Report.

(d) Maximum Annual Deliveries: The quantity of water delivered by Canal Companies to Rosedale District hereunder during any calendar year shall not, without the consent of Rosedale District, exceed whichever of the following maximum limits shall be applicable:

(1) In each and every calendar year the maximum delivery hereunder shall be forty thousand (40,000) acre-feet.

(2) In each calendar year during which Rosedale District shall receive more than thirty thousand (30,000), but not more than forty-five thousand (45,000), acre-feet of water at its Rosedale District Diversion Works from the Bureau of Reclamation pursuant to the contract or contracts described in Paragraph 1(c) hereof, the maximum delivery hereunder shall be forty thousand (40,000) acre-feet minus one (1) acre-foot for each acre-foot of water in excess of thirty thousand (30,000) acre-feet so received from the Bureau of Reclamation during the year.

(3) In each calendar year during which Rosedale District shall receive more than forty-five thousand (45,000) acre-feet of water at its Rosedale District Diversion Works from the Bureau of Reclamation pursu-

ant to said contract or contracts, the maximum delivery hereunder shall be twenty-five thousand (25,000) acre-feet, of which ten thousand (10,000) acre-feet may be delivered whenever permissible under Paragraph 1(c) hereof and the other fifteen thousand (15,000) acre-feet may be delivered at any time during the same calendar year after the lapse of ninety (90) consecutive days following the discontinuance of deliveries of water to Rosedale District at its Rosedale District Diversion Works from the Bureau of Reclamation pursuant to said contract or contracts and the completion of deliveries hereunder of the aforementioned ten thousand (10,000) acre-feet of water.

(4) The total quantity of water sold hereunder at the end of any calendar year during the term hereof shall not, without the consent of Rosedale District, exceed by more than sixty thousand (60,000) acre-feet a quantity equal to the product obtained by multiplying ten thousand (10,000) acre-feet by the number of years elapsing from the commencement of the term hereof to the end of such calendar year.

(e) Notice of Deliveries: Not less than thirty (30) days prior to any contemplated delivery of water to Rosedale District hereunder, Canal Companies shall give Rosedale District written or oral notice of the date and rate of such contemplated delivery. The giving of any such notice shall not, however, obligate Canal Companies to make delivery in accordance with such notice.

(f) Refusal of Water: If Rosedale District shall refuse to accept delivery of any water tendered for delivery

by Canal Companies in accordance with the provisions of this contract, the quantity so tendered and refused shall nevertheless be included as "water delivered" in computing the cumulative average annual quantity of water sold hereunder pursuant to Paragraph 1(b) hereof.

(g) Free Water: In recognition of the possibility that the construction and operation of the Kern River Canal may reduce to some extent the quantity of water seeping or percolating from the Kern River Channel to and under the lands within Rosedale District, Canal Companies and Rosedale District agree that the first four thousand (4,000) acre-feet out of each successive ten thousand (10,000) acre-feet of water delivered to Rosedale District hereunder shall be deemed and is agreed to be full replacement for any and all such reduction in such seepage and percolation and shall be sold and delivered to Rosedale District free of charge. Such water shall, however, be deemed for all purposes to be water sold hereunder and shall be included in computing the cumulative average annual quantity of water sold hereunder pursuant to Paragraph 1(b) hereof.

(h) Price: The price for all water sold hereunder other than the first 4,000 acre-feet out of each successive 10,000 acre-feet shall be One Dollar (\$1.00) per acre-foot.

(i) Additional Water Sales: Whenever the quantities of water delivered hereunder shall equal the applicable maximum limit specified above in Paragraph 1(d) hereof in any calendar year, the parties may, by mutual agreement

from time to time, provide for the sale and delivery of additional water by Canal Companies to Rosedale District hereunder at the rate of One Dollar (\$1.00) per acre-foot.

(j) Use of Water: All water sold by Canal Companies to Rosedale District hereunder shall be used only within the boundaries of Rosedale District and not elsewhere, provided, however, that Rosedale District may enter into agreements providing for the delivery of such water to, in exchange for a like quantity of water from, areas outside the boundaries of Rosedale District, and provided further that before any such exchange is entered into, Canal Companies shall be notified thereof in writing and the method of exchange shall be subject to Canal Companies prior written approval.

(k) Modification of Schedules: Each and all of the maximum limits and schedules specified herein for water deliveries hereunder may be modified at any time or from time to time, either temporarily or permanently, by mutual agreement of Canal Companies and Rosedale District.

2. Transportation of Other
Rosedale District Water.

(a) Upon completion of the Kern River Canal, Canal Companies agree, subject to the qualifications stated below, to transport from time to time upon written request of Rosedale District water purchased by Rosedale District from the United States Bureau of Reclamation through Canal Companies' facilities from the general vicinity of the terminal point of the Friant-Kern Canal to Rosedale District's diversion works in Section 1, Township 30 South, Range 26 East, M.D.B.&M., on the Kern River for a charge of ten

cents (10¢) per acre-foot of Rosedale District water so transported. Canal Companies agree to transport such water only when there is capacity in the Kern River Canal available for such purposes and such canal is not being used for the purpose of meeting Canal Companies' own requirements, the requirements of Other Affiliates, or the requirements of other persons pursuant to commitments existing on the date hereof pertaining to the transportation of water in the Kern River Canal.

(b) All Rosedale District water transported pursuant to this paragraph shall bear its own share of transportation losses, including but not limited to evaporation and seepage.

3. Kern River Channel Improvements

(a) The Rosedale District consents to and approves the construction and operation by Canal Companies of the Kern River Canal described above; provided that the maximum carrying capacity of such canal so constructed by Canal Companies shall not exceed eleven hundred (1100) cubic feet per second. Rosedale District makes no commitment, however, with respect to the construction or operation of any other canal between the outlet of Friant-Kern Canal and Second Point of Measurement nor with respect to any possible enlargement of the above-described Kern River Canal by Canal Companies or other parties above a maximum capacity of eleven hundred (1100) cubic feet per second. Rosedale District also agrees that it will not oppose the construction and operation of a similar canal of not exceeding 1100 cubic feet per second in capacity between the Calloway Weir in the Kern River Channel and the outlet of Friant-Kern Canal.

(b) If Canal Companies or Other Affiliates are required by any court order in a proceeding commenced by or on behalf of any person as owner or operator of lands within Rosedale District to release into Kern River Channel any water which could be transported in the Kern River Canal within the capacity limits of 1100 cubic feet per second, or to deliver any water to the Rosedale District or to any such land, then all of such water so ordered to be released or delivered shall be deemed to have been sold and delivered to Rosedale District pursuant to Paragraph 1 of this agreement in partial satisfaction of Canal Companies' obligation to sell and deliver to Rosedale District a cumulative annual average quantity of at least ten thousand (10,000) acre-feet, and all such water shall be included in all computations of the cumulative average annual quantity of water delivered hereunder, but Rosedale District shall not be required to pay for such water pursuant to Paragraph 1(h) hereof.

4. Payments for Sale and Transportation of Water.

(a) The payments specified in Paragraphs 1(h), 1(i) and 2(a) hereof shall be adjusted annually upon request of either party upward or downward in proportion to the percentage variation in the Price Index for the "All Commodities" classification of the Wholesale Price Indices for Major Commodity Groups published by the Bureau of Labor Statistics of the United States Department of Labor, which index uses the years 1947 to 1949 as the base years, and which stood at 119.6 for the month of November, 1960. In the event of the discontinuance of said Index, the adjustment shall thereafter

be made upon the basis of whatever index shall replace or supersede the discontinued index. Said adjustment shall be made as of January 1 of each calendar year, and said payments shall be adjusted upward or downward in proportion to the percentage variation from the point at which said index stood on the first day of January of the first calendar year of the term of this agreement. ^{v/v/b}

(b) As soon as possible after the end of each calendar year Canal Companies shall furnish Rosedale District with a written statement of all charges due with respect to operations hereunder during such calendar year pursuant to this agreement, and within ninety (90) days after the receipt of such statement Rosedale District agrees to pay the full amount thereof to Canal Companies at their office in Bakersfield, California.

5. Notices.

Any notice hereunder to either party shall be deemed to have been given if deposited in the United States Mail in a sealed envelope, postpaid, certified and addressed as follows:

To Canal Companies:	Anderson Canal, Inc. James Canal, Inc. Joyce Canal, Inc. Pioneer Canal, Inc. Plunket Canal, Inc. Post Office Box 380 Bakersfield, California
To Rosedale District:	Rosedale-Rio Bravo Water Storage District 2714 L Street Bakersfield, California

Any party may change its address by giving the other party written notice of its new address.

6. Succession.

This agreement shall bind and inure to the benefit of the successors and assigns of each of the parties to this agreement. Neither this agreement nor any of its rights hereunder may be assigned by Rosedale District, however, without the prior written consent of Canal Companies.

EXECUTED in seven counterparts at Bakersfield, California, as of the day and year first above written.

ANDERSON CANAL, INC.

By William T. DeLoe President

(SEAL)

Attest: D. S. Atwood Secretary

JAMES CANAL, INC.

By William T. DeLoe President

(SEAL)

Attest: D. S. Atwood Secretary

JOYCE CANAL, INC.

By William T. DeLoe President

(SEAL)

Attest: D. S. Atwood Secretary

PIONEER CANAL, INC.

By William T. DeLoe President

(SEAL)

Attest: D. S. Atwood Secretary

PLUNKET CANAL, INC.

By William T. DeLoe President

(SEAL)

Attest: D. S. Atwood Secretary

First Parties

ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT

By Paul E. Pano President

(SEAL)

Attest: Oran W. Palmer ASSISTANT Secretary

Second Party

12.

EXHIBIT F

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

ORDER WR-2010-0010

In the Matter of the Petitions to Revise the
Declaration of Fully Appropriated Streams to Allow
Processing of Applications to Appropriate Water from the Kern River

SOURCE: Kern River

COUNTIES: Kern and Tulare

**ORDER AMENDING DECLARATION OF FULLY APPROPRIATED STREAMS
TO REMOVE DESIGNATION OF THE KERN RIVER AS FULLY APPROPRIATED**

BY THE BOARD:

1.0 INTRODUCTION

Pursuant to Water Code sections 1205 through 1207, the State Water Resources Control Board (State Water Board or Board) has adopted and periodically revised the Declaration of Fully Appropriated Streams (Declaration). The Declaration includes a list of streams that have been found to be fully appropriated for all or part of the year based on court decisions or decisions by the State Water Board. The Kern River system has been found to be fully appropriated throughout the year from Buena Vista Sink upstream, including all tributaries where hydraulic continuity exists in Kern County. The Kern River system was included in the original Declaration adopted by State Water Board Order WR 89-25, and it remains listed on the most recent revised Declaration adopted by State Water Board Orders WR 91-07 and WR 98-08. Order 89-25 cited State Water Rights Board Decision 1196 (D-1196), issued on October 29, 1964, as the basis for including the Kern River on the Declaration. D-1196 was based on the fact that "there was no showing that there is unappropriated water available" in the Kern River watershed. (D-1196, p.5.)

In 2007, in accordance with California Code of Regulations, title 23, section 871, five petitions were filed with the State Water Board, Division of Water Rights (Division), requesting revision of the Kern River's fully appropriated status as listed in the Declaration. The five petitions were

received from: North Kern Water Storage District and City of Shafter, City of Bakersfield, Buena Vista Water Storage District, Kern Water Bank Authority and Kern County Water Agency (Petitioners). Petitioners also filed applications to appropriate water. Petitioners cited the Fifth District Court of Appeal's decision in *North Kern Water Storage District v. Kern Delta Water District* (1997) (147 Cal.App.4th 555 [54 Cal.Rptr.3d 578]) (North Kern Decision) as the basis for filing the petitions. The Fifth District's ruling found that there was a partial forfeiture of Kern Delta Water District's (Kern Delta) pre-1914 water rights on the Kern River.

2.0 BACKGROUND

California Code of Regulations, title 23, section 871 provides that the State Water Board may revoke or revise the Declaration upon its own motion or upon petition of any interested person. In this instance, the Board received the petitions from the above-named entities to revise the Declaration. In a memorandum dated October 8, 2008, the State Water Board Deputy Director for Water Rights concluded that there was sufficient information to process the petitions and conduct a hearing on the question of whether the Declaration should be revised. The Board held a pre-hearing Conference on September 24, 2009. The purpose of the pre-hearing conference was to receive comments from the parties and other participants on the scope of the hearing, the status of any negotiations to resolve protests, and any other appropriate procedural issues. Representatives of the following parties participated in the pre-hearing conference: Kern County Water Authority, Buena Vista Water Storage District, North Kern Water Storage District, Kern County Water Agency, City of Shafter¹ and the City of Bakersfield.

The primary concern of the parties raised at the pre-hearing conference was the scope of evidence that would be considered in this proceeding. In his letter of September 25, 2009, Board Member Arthur Baggett, Jr., the hearing officer for this proceeding, stated that, as expressed in the Notice of Public Hearing, the purpose of this proceeding is to determine if there has been a change in circumstances since the Kern River was included in the Declaration sufficient to justify the State Water Board revising the Declaration for the purpose of processing water right applications for the Kern River. Therefore, the parties were requested to limit evidence and testimony to whether additional information, based on court decisions or Board

¹ At the pre-hearing conference, these five parties, collectively called the North Kern Petitioners, agreed to consolidate testimony and file most exhibits jointly. The North Kern Petitioners likewise agreed to conduct direct and cross-examination of witnesses jointly. Each participant was allowed to give a separate opening statement and closing statement.

orders, or hydrological data showing periods of flows exceeding recognized rights, has become available since the Board listed the Kern River as fully appropriated.

A question was also asked regarding whether the State Water Board would accept evidence pertaining to contractual disputes over water in the Kern River. Board Member Baggett's September 25, 2009 letter to the service list stated that to the extent that these disputes are relevant to whether additional information has become available to justify the Board revising the Declaration, then such evidence may be considered.

The final issue raised at the pre-hearing conference was the extent to which instream flows and public trust matters would be addressed in this hearing. In his September 25, 2009 letter, the Hearing Officer stated public trust issues did not appear to be relevant to this proceeding. This issue is addressed more fully in Section 5.0 of this order.

The Board held a public evidentiary hearing on October 26-27, 2009. The hearing provided an opportunity for the petitioners and all interested parties to present evidence and argument in support of their positions. Following the hearing, the Board received legal briefs from the City of Bakersfield: the North Kern Petitioners, jointly; and the Kern County Water Agency, separately.

3.0 DESCRIPTION OF PENDING PETITIONS AND APPLICATIONS

Each petitioner submitted an application to appropriate the water identified in the petitions as follows:

- 1) Buena Vista Water Storage District's petition and application request a right to collect a maximum of 520,000 acre-feet/annum (afa) in surface and underground storage, and to directly divert a maximum amount of 180,000 afa for the purpose of irrigation.
- 2) City of Bakersfield's petition and application propose combined direct diversion and surface and underground storage of 90,000 afa. The purpose of use is for irrigation, domestic, municipal, recreation, industrial, fish and wildlife enhancement, and water quality uses.

- 3) Kern County Water Agency's petition and application propose combined direct diversion and surface and underground storage of 2,279,000 afa. The purpose of use is for municipal, irrigation, and aquifer storage.
- 4) Kern Water Bank Authority's petition and application propose to directly divert at a rate of 10 cubic feet per second (cfs) for 5,000 afa for municipal use, 1,500 cfs for 490,000 afa for irrigation use, and 15 cfs for 5,000 afa for industrial use. The total combined amount taken by direct diversion and underground storage will be 500,000 afa.
- 5) North Kern Water Storage District and City of Shafter's petition and application request to directly divert at a rate of 1,850 cfs. The maximum combined amount of direct use and surface and underground storage is 500,000 afa. The application by North Kern Water Storage District and City of Shafter lists irrigation, groundwater replenishment, municipal, industrial, domestic and other uses, of the water.

4.0 EVIDENCE SUPPORTING REVISION OF FULLY APPROPRIATED STREAM DECLARATION

As described above, the purpose of the hearing was to receive evidence and testimony regarding whether additional information has become available since the Board listed the Kern River as fully appropriated to justify the State Water Board revising the Declaration for the purpose of processing water right applications for the Kern River. The information could be based on court decisions or Board orders, or hydrological data showing periods of flows exceeding recognized rights. To this end, both Bakersfield and the North Kern Petitioners presented evidence that in some years there are periods of flows exceeding recognized rights in the Kern River, even without regard to any additional water that may be available due to the Kern Delta's partial forfeiture of its pre-1914 water rights. (Bakersfield 2-1, p. 15 ¶ 69 & 70; Joint Exhibit (JE)-46, pp. 2-3, ¶ 4.)

Specifically, Bakersfield submitted exhibit 2-18, which is a table of water diversions via the Kern River/California Aqueduct Intertie (Intertie). This table shows Kern River water being diverted into the Intertie in nine separate years since 1978.

Likewise, the North Kern Petitioners presented a graph; exhibit JE 67, showing Kern River water "undistributed to existing entitlements" in several years. Daniel Easton, witness for the North

Kern Petitioners, explained in his written and oral testimony that there was what he calls "undistributed release" water in at least eight months since 1964. (JE-46, p. 12, ¶ 28; Reporter's Transcript (R.T.) pp. 208-209.) Mr. Easton testified that water diverted into the Intertie is in excess of traditionally held and exercised rights and claims of right to Kern River water, and that whenever water has been released into the Intertie in the past, all Kern River water right claims had already been satisfied. (R.T. p. 264.) This water is, by definition, unappropriated water.

When asked about this "undistributed" water, Mr. Easton expressed his belief that the North Kern Decision would not have changed the availability of water in years of high flows; that water would have been available in those years anyway. (R.T. pp. 210-211.) Because the purpose of this hearing was to determine whether there is unappropriated water in the Kern River, not limited to whether the North Kern Decision made additional water available for appropriation, Mr. Easton's point merely reinforces the fact that in some years there is unappropriated water. Mr. Easton's point that water would have been available in those years regardless of the North Kern Decision further supports the conclusion that unappropriated water exists in the Kern River in some years.

In addition to the undisputed evidence that water has historically been diverted into the Intertie, and that those diversions are in excess of any proprietary water rights to the diversion and use of Kern River water, the evidence presented by the parties did not clearly resolve whether the partial forfeiture of Kern Delta's rights itself created any additional unappropriated water. Because, however, there is sufficient evidence, as discussed above, to justify the State Water Board revising the Declaration for the purpose of processing water right applications for the Kern River, the Board will not make a determination at this time regarding whether the other pre-1914 rights claimants will use, in full, any water released to the Kern River by the forfeiture judgment. It will be up to the applicants to show when and how much available water there is for appropriation in the context of the Division's processing of those applications.

5.0 ENVIRONMENTAL ISSUES/PUBLIC TRUST

Several parties raised the issue of the extent to which instream flows and public trust matters would be addressed in this hearing. In his September 25, 2009 letter to the service list, the Hearing Officer stated that based on the key issues identified in the August 24, 2009 Notice of Public Hearing, public trust issues did not appear to be relevant to this proceeding. As specified in the Notice of Public Hearing, no determination regarding approval of the pending applications for appropriation of water will be made until after the State Water Board makes a determination on whether the stream system is fully appropriated.

The environmental issues associated with the North Kern Petitioners' and City of Bakersfield's water right applications will be addressed by the State Water Board in the context of processing Petitioners' applications. Prior to any potential approval or decision to proceed with a proposed project, these entities and the State Water Board must fulfill their obligations under the California Environmental Quality Act (CEQA). (Pub. Res. Code, § 21000 et seq.) In addition to meeting statutory responsibilities under CEQA, the State Water Board will comply with its obligation to consider environmental and public interest issues under the Water Code and the public trust doctrine in the context of processing the water right applications submitted by Petitioners. As such, those issues are not relevant to this order.

6.0 CONCLUSION

It is clear from the evidence and testimony submitted by the parties to this hearing that, even without regard to the North Kern Decision, there is some unappropriated water in the Kern River. The State Water Board recognizes that processing water right applications will require consideration of numerous issues not addressed in this order, including those discussed above, the specific amounts of water available for appropriation under the applications, the season of water availability, the public interest in approval or denial of the applications, and any conditions to be included in any permits that may be issued on the applications. As indicated in the hearing notice, the focus of the Board's inquiry in this proceeding was on the relatively narrow task of determining if the evidentiary record supports revising the fully appropriated status of the Kern River. Based on our review of the record and the findings above, we conclude that the Declaration of Fully Appropriated Streams, as adopted by State Water Board Orders WR 89-25, WR 91-07 and WR 98-08, should be revised to allow for processing the applications to

appropriate water from the Kern River in accordance with the provisions of the Water Code and other applicable law.

ORDER

IT IS HEREBY ORDERED THAT, based upon the foregoing findings:

- 1) The Declaration of Fully Appropriated Streams, as adopted by the State Water Board in Orders WR 89-25, WR 91-07 and WR 98-08, is amended to allow for processing applications to appropriate water from the Kern River.²
- 2) The Division shall process any water right applications accepted as a result of this order in accordance with applicable law.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 16, 2010.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc
Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

² This order does not affect the separate designations of the North Fork Kern River or the unnamed spring tributary to Cuddy Creek as fully appropriated.

EXHIBIT G

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2010-0016

In the Matter of Petition for Reconsideration of
North Kern Water Storage District
City of Shafter
Buena Vista Water Storage District
Kern Water Bank Authority
Kern County Water Agency

Regarding Order Amending Declaration of Fully Appropriate Streams
 To Remove Designation of the Kern River as Fully Appropriated

ORDER DENYING RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

On February 16, 2010, the State Water Resources Control Board (State Water Board or Board) issued State Water Board Order (Order) WR 2010-0010 amending the Declaration of Fully Appropriated Streams (FAS declaration) to remove the designation of the Kern River as fully appropriated. The FAS declaration was amended based on evidence showing unappropriated water in the Kern River. North Kern Water Storage District, City of Shafter, Buena Vista Water Storage District, Kern Water Bank Authority and Kern County Water Agency (Petitioners) jointly filed a petition for reconsideration on March 18, 2010 (Petition). Petitioners request that the State Water Board amend Order WR 2010-0010 to find that the petitioners requesting revision of the FAS declaration failed to demonstrate the existence of unappropriated water available for appropriation, and for that reason dismiss all petitions to revise the declaration. Petitioners also request that the Board amend Order WR 2010-0010 to "clearly state that occasional flood flows are not the basis for amending the FAS declaration absent an application" to place such waters to beneficial use, and for that reason dismiss all petitions to revise the declaration. In the alternative, Petitioners ask that the Board reopen the proceeding to receive further evidence regarding whether the Fifth District Court of Appeal's (Court of Appeal) decision in *North Kern*

Water Storage District v. Kern Delta Water District (North Kern) (1997) 147 Cal.App.4th 555 resulted in additional water available for appropriation and definitively resolve that issue before accepting any water right applications on the Kern River.

2.0 GROUND FOR RECONSIDERATION

Any person interested in any application, permit or license affected by a State Water Board decision or order may petition for reconsideration of the decision or order. (Cal. Code Regs., tit. 23, § 768.)¹ The legal bases for reconsideration are: (a) irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing; (b) the decision or order is not supported by substantial evidence; (c) there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced; or (d) error in law.

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (§ 770, subd. (a)(1).) Alternatively, after review of the record, the State Water Board may deny the petition if the State Water Board finds that the decision or order in question was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

3.0 LEGAL AND FACTUAL BACKGROUND

The Kern River system was previously found to be fully appropriated throughout the year from the Buena Vista Sink upstream, including all tributaries where hydraulic continuity exists in Kern County, and, pursuant to Water Code section 1205, was included in the original FAS declaration. (Order WR 89-25.) That original FAS declaration cited State Water Rights Board D1196 (D1196), issued on October 29, 1964, as the basis for including the Kern River in the declaration. (Order WR 89-25, pp. 13-14.)

¹ All further regulatory references are to the State Water Board's regulations located in title 23 of the California Code of Regulations unless otherwise indicated.

In 2007, five petitions were filed with the State Water Board's Division of Water Rights (Division), requesting revision of the Kern River's fully appropriated status as listed in the FAS Declaration. The five petitions were received from the North Kern Water Storage District (North Kern) and City of Shafter, City of Bakersfield, Buena Vista Water Storage District, Kern Water Bank Authority and Kern County Water Agency. The petitions cited *North Kern* as the basis for filing the petitions. The Court of Appeal's ruling in *North Kern* found that there was a partial forfeiture of Kern Delta Water District's pre-1914 water rights on the Kern River, leaving it to the State Water Board to determine whether the Kern River is no longer fully appropriated. (*North Kern, supra*, 147 Cal.App.4th p. 583.)

Pursuant to section 871, subdivision (b), Victoria Whitney, the State Water Board Deputy Director for Water Rights, issued a memorandum dated October 8, 2008 (Whitney Memo), concluding that there is sufficient information to process the petitions and conduct a hearing on the question of whether the FAS declaration should be revised. The Whitney Memo identified two changes in circumstances since D1196 was issued in 1964 that provide bases for concluding that water may be available for appropriation. First, water has been diverted from the Kern River into the California Aqueduct on numerous occasions since the aqueduct's construction in 1977. (Whitney Memo, pp. 3-4.) Second, *North Kern* found that some of the rights that were considered in D1196 had been partially forfeited. (*Id.*, at pp. 3-5.)

On August 24, 2009, the Board issued a Notice of Public Hearing and Pre-Hearing Conference (Hearing Notice), stating that any action on the petitions would be for purposes of determining whether the Declaration should be revised, and no determination regarding approval of the pending applications will be made until after the Board makes a determination on whether the stream system is fully appropriated. (Hearing Notice, p. 2.) Pursuant to the Hearing Notice, the State Water Board held a pre-hearing conference on September 24, 2009 and a public hearing on October 26 and 27, 2009. After receiving all evidence, the Board accepted closing arguments, and on February 16, 2010, issued Order WR 2010-0010 amending the FAS Declaration to remove the designation of the Kern River as fully appropriated. Order WR 2010-0010 concluded that there is unappropriated water on the Kern River, because water in excess of any proprietary water right to diversion from the Kern River has been diverted into the Kern River-California Aqueduct Intertie (Intertie). (*Id.*, pp. 4-5.) Having determined that there is some unappropriated water on the Kern River without regard to the forfeiture,

Order WR 2010-0010 concluded that it was unnecessary to determine how much, if any, additional water was made available through forfeiture. (*Id.*, pp. 5-6.)

4.0 DISCUSSION

Petitioners offer six reasons why they believe Order WR 2010-0010 is inappropriate and improper. In summary, these arguments claim that it has not been established that any additional water has been made available for appropriation as a result of forfeiture, and that it was inappropriate to consider other changes in circumstances indicating that water is available for appropriation.

4.1 It is not necessary for the evidentiary record to prove that the *North Kern* decision created "new water."

In Order WR 2010-0010, the Board concluded that even without regard to the *North Kern* decision, the evidentiary record established that there is some unappropriated water in the Kern River. Petitioners contend that "a petition [must] be dismissed unless the petitioner proves the existence of 'new water'." (Petition, p. 4.) Petitioners equate "new water" with a demonstration that the *Kern River* decision made additional water supplies available in excess of that needed to satisfy existing rights. (See *id.*, pp. 7-8.)

The Water Code does not set any specific limitation on the factors that may be considered in determining whether to revise the FAS declaration. (Wat. Code, § 1205, subd. (c).) State Water Board regulations indicate that the FAS declaration may be revised based on "any relevant factor, including but not limited to a change in circumstances" (§ 871, subd. (b).) The diversion of water into the California Aqueduct through the Intertie in amounts in excess of those needed to meet the demands of proprietary water right holders on the Kern River is a relevant factor because it constitutes a change in circumstance and demonstrates that there is unappropriated water on the Kern River.

In support of their argument that the existence of "new water" must be established, Petitioners rely on Order WR 2000-12.² However, Order WR 2000-12 does not specify such a requirement. As Petitioners recognize, Order WR 2000-12 determined that there was a basis for revising the FAS declaration because "water previously lost as flood flows can now be stored or regulated by the new Seven Oaks Dam flood control project." (Order WR 2000-12 at p. 1, see *id.* at pp. 13-14.) One of the circumstances justifying a revision of the FAS declaration here – the construction of a major water development project making it possible to capture what were previously considered to be flood flows that could not practicably be appropriated – is essentially the same as identified as a basis for modifying the FAS declaration in Order WR 2000-12.³

4.2 The Board was not required to determine whether the North Kern decision resulted in unappropriated water.

Petitioners contend that the Board improperly deferred a decision whether the *North Kern* decision resulted in appropriated water. Because the evidence in the record established that there is some unappropriated water in the Kern River even without regard to the forfeiture issue, it was unnecessary to determine whether the *North Kern* decision resulted in unappropriated water. It is not necessary to determine how much unappropriated water is available, and therefore is not necessary, at this stage, to determine whether there are additional reasons unappropriated water may be available beyond that identified as a basis for deciding that at least some unappropriated water is available. Once it is determined that there is adequate cause to revise the FAS declaration, the determination whether sufficient unappropriated water is available for the diversion and use proposed under an application can best be decided in proceedings to issue or deny a permit on that application. As stated in Order WR 2010-0010:

[P]rocessing water right applications will require consideration of numerous issues not addressed in this order, including ... the specific amounts of water available for appropriation under the applications, the season of water

² Petitioners also rely on an unpublished draft Board order concerning the American River. Because a draft order has not been adopted by the Board, it does not constitute "longstanding FAS precedent," and Petitioners' reliance on it is misplaced.

³ Petitioners characterize the water made available by the Seven Oaks flood control project as "new water." (Petition, p. 6.) Applying Petitioners' definition of "new water," water made available through flood control facilities that divert water through the Intertie would also constitute "new water." Because the Water Code, Board regulations and Board precedents do not establish any requirement for "new water," we see no need to define the term.

availability, the public interest in approval or denial of the applications, and any conditions to be included in any permits that may be issued on the applications.

(Order WR 2010-0010, p. 6.)

The Board has been consistently clear that these issues would not be decided during this particular portion of the proceeding, and that "[a]s indicated in the hearing notice, the focus of the Board's inquiry in this proceeding was on the relatively narrow task of determining if the evidentiary record supports revising the fully appropriated status of the Kern River." (*Ibid.*)

This approach is consistent with the Board's approach in previous Board orders. As part of an order revising the FAS declaration as applied to the Santa Ana River, the Board stated:

All questions regarding the specific amount of water available for appropriation under the applications, the season of water availability, approval or denial of the applications, and the conditions to be included in any permit(s) that may be issued... will be resolved in further proceedings on each application pursuant to applicable provisions of the Water Code.

(Order WR 2000-12, p. 2.)

In Order WR 94-1, the Board denied a request for modification of the declaration for the Kern River because there had been no "showing that hydrologic conditions in the Kern River have changed or that other circumstances exist which justify the continued processing of Application 27554." (Order WR 94-1, p. 9.) The Board did not suggest that the petitioner was required to show exactly how much water had been made available in order for the Board to revise the declaration. The Board merely required a sufficient showing of the availability of at least some unappropriated water as to justify the processing of an application.

Contrary to Petitioners' contentions, this approach is not in conflict with the *North Kern* decision. The Court of Appeal held that "the initial determination whether the forfeiture creates an allocable excess is reserved in the first instance to [the State Water Board]." (*North Kern, supra*, 147 Cal.App.4th p. 584.) The *North Kern* decision did not dictate that the Board would make its determination as part of its processing of a petition for revising the FAS declaration. If the FAS declaration is revised based on a determination that at least some water is available for appropriation, the Board may determine how much, if any, water is made available as a result of forfeiture as part of its subsequent review of an application to appropriate the water alleged to

have been forfeited. The approach followed by the Board in Order WR 2010-0010, where the Board determines to what extent unappropriated water is available as a result of the forfeiture in the context of a request by a party seeking to appropriate that water, is fully consistent with the *North Kern* decision. (See *id.*, p. 583 [the "determination will be made" by the State Water Board in reviewing "a petition of a potential appropriator of the excess."].)⁴

4.3 The evidence in the record supports the conclusion that water diverted into the Intertie is unappropriated water.

The Whitney Memo directly raises the issue of water diverted into the Intertie, stating that "the agreement [between the Department of Water Resources (DWR), the Kern County Water Agency and other water districts asserting water rights on the Kern River] limits Intertie diversions to flood flows *in excess of the needs of the districts claiming water rights on the Kern River.*" (Whitney Memo, p. 3, italics in original.) Evidence presented at the hearing, as described in Order WR 2010-0010, directly supports this conclusion. Petitioners contend that the evidence supporting this conclusion cannot be relied upon.

Petitioners concede that substantial amounts of water have been diverted into the California Aqueduct, with diversions occurring on several occasions. (See Order WR 2010-0010, pp. 4-5.) They claim, however, that the testimony that these diversions were in excess of the needs of water right holders should be disregarded because the witnesses did not have the expertise necessary to conduct a legal analysis for the water rights of parties claiming rights on the Kern River. (Petition, pp. 13-14.) Petitioners' argument mischaracterizes the nature of the testimony, which was based on the demands of those claiming entitlements, not the amounts to which the claimants might be entitled if they both intended to divert and reasonably needed the water for beneficial use. All water rights are limited to amounts reasonably necessary for beneficial use (Wat. Code, §§ 100, 101), and even if water could be put to beneficial use, it is unappropriated water if no water right holder intends to use it. (See *id.*, § 1201.) The witnesses were familiar

⁴ We do not read the Court of Appeal's use of the word "petition" as intended to exclude the State Water Board's consideration of the issue as part of its processing of a water right application. There is no indication that the court had any intent to limit the discretion vested in the Board, including the discretion to decide which procedures the Board should employ in making its determination.

with hydrologic conditions and water demands on the Kern River, and were competent to testify on those issues. (See Joint Exhibit (JE) 46 and Bakersfield Exhibit 2-1.) Their testimony was more than adequate to support the conclusion that the waters diverted into the Intertie are taken from flows in excess of the amounts reasonably necessary to meet the demands of those with entitlements to divert water for beneficial use from the Kern River.

Based on previous determinations that the Kern River is fully appropriated, Petitioners also contend that the record indicates that diversions through the Intertie were not in excess of proprietary rights. (Petition, pp. 15-17.) But these determinations were based on conditions as they were understood to be prior to construction of the Intertie. (See, e.g., D1196; see also Order WR 89-25 [basing determination on the record before the Board when it issued D1196].) Moreover, these determinations and testimony cited by Petitioners are addressed to the general issue of whether unappropriated water is available under most conditions, and does not specifically address the relatively infrequently occurring conditions prevailing at times when water is diverted through the Intertie. Far from establishing that there is never any unappropriated water on the Kern River, Petitioners' reliance on previous determinations underscores the point that the evidence concerning diversions through the Intertie amounts to changed conditions.

Petitioners contend that there is "no evidence" that the water diverted through the Intertie has been "anything other" than water voluntarily transferred pursuant to pre-1914 appropriative rights. (See Petition, p. 18, citing Wat. Code, § 1706.)⁵ But a voluntary transfer would be made pursuant to the entitlements and demands of Kern River users, contrary to the testimony that diversions through the Intertie are based on water in excess of those demands. (See JE 46 and Bakersfield Exhibit 2-1; see also Whitney Memo, p. 3 ["the agreement [between DWR, the Kern County Water Agency and other water districts asserting water rights on the Kern River] limits Intertie diversions to flood flows *in excess of the needs of the districts claiming water rights on*

⁵ In the alternative, Petitioners contend that if the water diverted into the Aqueduct is being diverted solely for flood control purposes, and not for beneficial use, then the diversions are not subject to the Board's water right authority. (Petition, p. 18-19; see generally State Water Board Decision 100, p. 61 [flood control is not a beneficial use].) The purpose of these proceedings is not to determine whether water diverted through the Intertie is subsequently put to beneficial use for which a water right permit is required, but merely to determine whether the FAS declaration should be revised. Evidence that water is being diverted through the Intertie and exported from the Kern River watershed during periods when the diversion does not injure any water right holder on the Kern River, where there is no permit authorizing appropriation of water diverted through the Intertie, establishes the availability of unappropriated water whether or not a permit is required for those diversions.

the Kern River."].) The testimony also indicated that diversions were made for flood control purposes. (Reporter's Transcript, pp. 263-265.) There is no evidence in the record that any, let alone all, of the water diverted through the Intertie was delivered pursuant to a voluntary transfer under pre-1914 water rights.

4.4 In determining whether to revise the FAS declaration, the Board is not limited to consideration of sources of unappropriated water sought to be appropriated by a party petitioning for revision of the FAS declaration.

Petitioners suggest that because there are no applications for water diverted into the Intertie, the Board cannot amend the FAS declaration based on the availability of that water. (Petition, pp. 19-21.) However, the procedures for revising the FAS declaration do not limit the Board's consideration to water sought to be appropriated in an application filed by a petitioner, or even require that an application be filed. Board regulations establish that the Board may revise the declaration based either on the recommendation of the Deputy Director for Water Rights, as provided by section 871, subdivision (b), or based on a petition of a person seeking revision of the fully appropriated status of a stream system, as provided by section 871, subdivision (c). Subdivision (b) does not include any requirement for the filing of an application, and under subdivision (c), a petitioner "may," but is not required to, file an application accompanying the petition. (§ 871, subd. (c)(2).) The proceedings leading to adoption of Order WR 2010-0010 were based both on the recommendations of the Deputy Director for Water Rights and the petitions that had been filed.

Petitioners claim that they did not have proper notice that the availability of water diverted into the Intertie was relevant to whether the FAS declaration should be revised. This contention is without merit. The Whitney Memo, which was sent to the parties under cover of letter dated October 30, 2008, directly raises the issue of water diverted into the Intertie and unambiguously specifies that construction and use of the Intertie constitute changed circumstances since 1964. (Whitney Memo, p. 4.) The hearing notice clearly identified this memo as part of its discussion of the bases for the proceedings, and included a link to the Whitney Memo. (Hearing Notice, p. 2.) The Hearing Notice recited the conclusion that "there is sufficient information to process the petitions and conduct a hearing on the question of whether the Declaration should be revised pursuant to California Code of Regulations, title 23, section 871, subdivision (b)." (*Ibid.*) Thus, the parties were on notice that the hearing would include consideration of the

recommendations of the Deputy Director for Water Rights, as provided by section 871, subdivision (b), including the Deputy Director's recommendation that the FAS declaration be revised due to changed circumstances involving diversions into the Intertie, and not based solely on the petitions, pursuant to section 871, subdivision (c).

4.5 The potential for issuance of temporary permits does not preclude revision of the FAS declaration.

Petitioners claim it was legal error to revise the FAS declaration based on evidence indicating unappropriated water is available intermittently, during periods of high flows. (Petition, pp. 21-23.) Petitioners point out that these flows could be appropriated based on temporary permits, even if a stream system is listed as fully appropriated in the FAS declaration. (See Wat. Code, §§ 1206, subd. (c), 1425 et seq.) The temporary permit procedure is not intended as a substitute for approval of appropriations pursuant to the ordinary permitting process. (See *id.*, § 1425, subds. (a) [authorizing temporary permits based on "urgent need"] & (c) [the Board ordinarily should not issue a temporary permit if the applicant has not exercised due diligence to obtain a permit pursuant to the ordinary permitting process].) The desirability of authorizing appropriations through the ordinary permitting process, instead of through repeated issuance of temporary permits, is underscored by the statement in the Whitney Memo that "DWR has informed the State Water Board that it intends to use the Intertie more frequently over the next several years." (Whitney Memo, p. 3.)

While Petitioners are correct that temporary permits could be issued to authorize appropriations of flood flows, it does not follow that a temporary permit is the best or only method for authorizing such appropriation, as the circumstances where a temporary permit may be issued include almost any other circumstance that might support amendment of the FAS declaration to remove a fully appropriated listing. A temporary permit may be issued if unappropriated water is available on a stream system listed as fully appropriated, and permitting the appropriation would further the state policy that waters should be put to beneficial use to the fullest extent to which they are capable. (Wat. Code, § 1425, subd. (c).) If the FAS declaration could not be amended under circumstances where a temporary permit could be issued, the FAS declaration could not be amended based on changed circumstances indicating that unappropriated water is available. The Water Code provides the Board with broad authority to revoke or revise a declaration that a stream system is fully appropriated, without any reference to whether unappropriated waters are

available only occasionally or could be appropriated pursuant to temporary permits. (*Id.*, § 1205, subd. (c).) Adopting Petitioners' argument would eliminate that discretion, leaving the Board with little or no ability to revise a declaration that a stream system is fully appropriated.

In Order WR 2000-12, the Board revised the declaration that the Santa Ana River is fully appropriated based on occasional flood flows. Petitioners do not contend that Order WR 2000-12 was incorrectly decided, but instead argue that the Board's authority to revise the FAS declaration based on intermittently or occasionally available flows is limited to cases where an application is filed to appropriate those flows. (Petition, pp. 22-23.) As discussed above, however, the Board's authority to revise the FAS declaration is not limited to those issues that must be decided in addressing an application accompanying a petition to revise the FAS declaration.

As in the case of Order WR 2000-12, revising the FAS declaration here is consistent with the constitutional policy of putting waters to beneficial use to the fullest extent to which they are capable. (Cal. Const., art. X, § 2.) Revising the FAS declaration allows for the filing of applications to obtain rights to put to beneficial use high flows initially diverted for flood control purposes pursuant to the statutory appropriative rights procedures, and these statutory procedures are in furtherance of the constitutional policy. (See Wat. Code, § 1050.)⁶

⁶ Order WR 2010-0010 and this order do not specifically address the issue of whether a permit is required for current operations of the Intertie. It is unnecessary to address that issue in order to determine that the FAS declaration should be revised, and the Department of Water Resources has requested that we not make a determination on the issue at this time. The Board's decision not to address the issue should not be construed as a determination that no permit is required or that the Board has any misgivings about the opinions expressed by the Chief Counsel in a memo dated January 22, 2007. Allowing parties to obtain water rights for beneficial use of waters diverted through the Intertie helps promote the constitutional policy of putting water to full beneficial use, and the Legislative determination that this policy should be implemented through the statutory permitting and licensing system, whether or not a permit is required for diversions through the Intertie.

4.6 Order WR 2010-0010 is not unlawfully broad or uncertain.

Petitioners observe that the Board has discretion to impose conditions and limitations when it revises the FAS declaration to remove the designation of a stream system as fully appropriated, but cite no authority requiring the Board to impose conditions and limitations. In this case, the Board has determined that at least some unappropriated water is available, but has not determined how much. While some water rights on the Kern River have been partially forfeited under the *North Kern* decision, and some water may be available for appropriation as a result, it has not been determined how much, if any, unappropriated water has become available, or under what conditions it may have become available due to forfeiture. In addition, while water has been diverted through the Intertie only occasionally, it appears that the Intertie will be used more frequently in the future. In these circumstances, it would be difficult, if not impossible, to craft conditions or limitations that would meaningfully limit the types of applications that could be filed without having the undesirable effect of precluding applications seeking to appropriate water that is in fact unappropriated.

In these circumstances, Order WR 2010-0010 reasonably concluded that issues concerning the specific amounts of water available for appropriation, the season of water availability, and other issues relevant to determining whether water rights permits may be issued are best determined as part of the processing of water right applications. (Order WR 2010-0010, p. 6.) As part of its evaluation of a water right application, the Board may require the applicant to prepare and submit a water availability analysis. (See Wat. Code, §§ 1260, subd. (k), 1275, subd. (a).) The Board may also require of those who protest the application based on claims that the appropriation would divert water to which they are entitled, that they provide information supporting their protests. (*Id.*, § 1335, subd. (c)(3).) These procedures allow the Board to address availability of unappropriated water as part of application processing in greater detail than in a FAS declaration proceeding. Application processing procedures also serve to address other relevant issues, including environmental and public trust issues. (Order WR 2010-0010, p. 6.)

While the Board has discretion to impose conditions and limitations on the applications it will consider, imposing conditions like those suggested by Petitioners is neither necessary nor desirable at this time. If, as part of its consideration of an application, the Board issues an order

or decision determining that no water is available for appropriation under particular seasons or conditions, including but not limited to a determination that no water is available for appropriation taking into account waters reasonably necessary for the protection of instream beneficial uses under those seasons or conditions, the Board may amend the FAS declaration at that time. (See Wat. Code, §§ 1205, subd. (b), 1243.)

ORDER

IT IS HEREBY ORDERED THAT, for the foregoing reasons, Petitioners' petition for reconsideration is denied.

CERTIFICATION


The undersigned Clerk of the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 4, 2010.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc
Board Member Walter G. Pettit

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

EXHIBIT H

TYPE OR PRINT
IN BLACK INK
(For instructions, see
booklet: "How to File an
Application to
Appropriate Water in
California")



California Environmental Protection Agency

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000, Sacramento, CA 95812-2000
Tel: (916) 341-5300 Fax: (916) 341-5400
www.waterboards.ca.gov/waterrights

APPLICATION NO. 31819

APPLICATION TO APPROPRIATE WATER

1. APPLICANT/AGENT

	APPLICANT	ASSIGNED AGENT (if any)
Name	ROSEDALE-RIO BRAVO WATER STORAGE DISTRICT	
Mailing Address	P. O. Box 867	
City, State & Zip	Bakersfield, CA 93302	
Telephone	661-589-6045	
Fax	661-589-1867	
E-mail	eaverett@rrbwsd.com	

2. OWNERSHIP INFORMATION (Please check type of ownership.)

- Sole Owner
- Limited Partnership*
- Corporation
- Limited Liability Company (LLC)
- Business Trust
- Joint Venture
- General Partnership*
- Husband/Wife Co-Ownership
- Other See Attachment 1, Sec. 2

*Please identify the names, addresses and phone numbers of all partners.

3. PROJECT DESCRIPTION (Provide a detailed description of your project, including, but not limited to, type of construction activity, area to be graded or excavated, and how the water will be used.) Add additional pages if needed and check box below and label as an attachment.

See Attachment 1, Sec. 3.

2010 JAN 29 PM 2:31
 OFFICE OF THE CHIEF CLERK
 CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

For continuation, see Attachment No. 1

DFG > 1/29/2010
\$ 850.00
RP

1/29/2010
\$ 454,960.00
RP

4. PURPOSE OF USE, DIVERSION/STORAGE AMOUNT AND SEASON

a. PURPOSE OF USE (irrigation, domestic, etc.)	DIRECT DIVERSION				STORAGE		
	AMOUNT		SEASON OF DIVERSION		AMOUNT	SEASON OF COLLECTION	
	Rate (cfs or gpd)*	Acre-feet per annum	Beginning date (month & day)	Ending date (month & day)	Acre-feet per annum	Beginning date (month & day)	Ending date (month & day)
Domestic		65,750	Jan. 1	Dec. 31			
	Total afa	65,750	Total afa				

See Attachment No. ____ * If rate is less than 0.025 cubic feet per second (cfs), use gallons per day (gpd).

- b. Total combined amount taken by direct diversion and storage during any one year will be 65,750 acre-feet.
- c. Reservoir storage is: onstream offstream underground (If underground storage, attach Underground Storage Form.)
- d. County in which diversion is located: Kern County in which water will be used: Riverside, Los Angeles and Orange

5. SOURCES AND POINTS OF DIVERSION/REDIVERSION

- a. Sources and Points of Diversion (POD)/Points of Rediversion (PORD):
 - POD / PORD # 1 Kern River/Cal. Aqueduct Intertie tributary to _____ thence _____
 - POD / PORD # _____ tributary to _____ thence _____
 - POD / PORD # _____ tributary to _____ thence _____
 - POD / PORD # _____ tributary to _____ thence _____

If needed, attach additional pages, check box below and label attachment

See Attachment No. ____

b. State Planar and Public Land Survey Coordinate Description:

POD/PORD #	CALIFORNIA COORDINATES (NAD 83)	ZONE	POINT IS WITHIN (40-acre subdivision)	SECTION	TOWNSHIP	RANGE	BASE AND MERIDIAN
	See Attachment 1, Sec. 5(b) Attachment 3		¼ of ¼				
			¼ of ¼				
			¼ of ¼				
			¼ of ¼				

If needed, attach additional pages, check box below and label attachment

See Attachment No. 1 & 3

- c. Name of the post office most often used by those living near the proposed point(s) of diversion: Tupman, California

6. WATER AVAILABILITY

- a. Have you attached a water availability analysis for this project? YES NO
 If NO, provide sufficient information to demonstrate that there is reasonable likelihood that unappropriated water is available for the proposed appropriation: If needed, attach additional pages, check box below and label attachment.
See Attachment 2.
- See Attachment No. 2
- b. Is your project located on a stream system declared to be fully appropriated by the State Water Resources Control Board (State Water Board) during your proposed season of diversion?
 YES NO
- c. In an average year, does the stream dry up at any point downstream of your project? YES NO
 If YES, during which months? Jan Feb Mar Apr May Jun Jul Aug Sep Oct
 Nov Dec
- d. What alternate sources of water are available if a portion of your requested diversion season must be excluded because water is not available for appropriation? (e.g., percolating groundwater, purchased water, etc.) If needed, attach additional pages, check box below and label attachment
See Attachment 1, Sec. 6(d).
 See Attachment No. 1

7. PLACE OF USE

a.

USE IS WITHIN (40-acre subdivision)	SECTION*	TOWNSHIP	RANGE	BASE & MERIDIAN	IF IRRIGATED	
					Acres	Presently cultivated?
¼ of ¼	See Attachment 1, Sec. 7; Attachment 4					<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
¼ of ¼						<input type="checkbox"/> YES <input type="checkbox"/> NO
Total Acres:						

*Please indicate if section is projected with a "(P)" following the section number.
 See Attachment No. ___ Please provide the Assessor's Parcel Number(s) for the place of use:

8. PROJECT SCHEDULE

Project is: proposed, partially complete or complete (Year completed - 1975).

Extent of completion: 100%

Estimated amount of time in years it will take for construction to be completed: N/A

Estimated amount of time in years it will take for water to be put to full beneficial use: N/A

9. JUSTIFICATION OF AMOUNTS REQUESTED

a. IRRIGATION: Maximum area to be irrigated in any one year: _____ acres.

CROP	ACRES	METHOD OF IRRIGATION (sprinklers, flooding, etc.)	WATER USE (Acre-feet/Yr.)	SEASON OF WATER USE	
				Beginning date (month & day)	Ending date (month & day)

See Attachment No. _____

b. DOMESTIC: Number of residences to be served: _____ Separately owned?
 YES NO Number of people to be served: _____ Estimated daily use per person is: _____ gallons per day Area of domestic lawns and gardens: _____ square feet
 Incidental domestic uses: _____

(dust control area, number and kind of domestic animals, etc.)

a. STOCKWATERING: Kind of stock: _____ Maximum number: _____
 Describe type of operation: _____
 (feedlot, dairy, range, etc.)

d. RECREATIONAL: Type of recreation: Fishing Swimming Boating Other _____

e. MUNICIPAL:

POPULATION List for 5-year periods until use is completed		MAXIMUM MONTH		ANNUAL USE		
Period	Population	Average daily use (gallons per capita)	Rate of diversion (cfs)	Average daily use (gallons per capita)	Acre-foot (per capita)	Total (acre-feet)
Present	See Attachment 1, Sec. 9.					

See Attachment No. 1

Month of maximum use during year: N/A
 Month of minimum use during year: N/A

f. HEAT CONTROL: Area to be heat controlled: _____ net acres
 Type of crops protected: _____
 Rate at which water is applied to use: _____ gpm per acre
 Heat protection season will begin _____ and end _____
 (month and day) (month and day)

g. FROST PROTECTION: Area to be frost protected: _____ net acres
 Type of crops protected: _____
 Rate at which water is applied to use: _____ gpm per acre
 The frost protection season will begin _____ and end _____
 (month & day) (month & day)

h. INDUSTRIAL: Type of industry: _____

Basis for determination of amount of water needed: _____

- i. MINING: Name of the claim: _____ Patented Unpatented
 Nature of the mine: _____ Mineral(s) to be mined: _____
 Type of milling or processing: _____
 After use, the water will be discharged into _____ (watercourse)
 in _____ ¼ of _____ ¼ of Section _____, T _____, R _____, _____ B. & M.
- j. POWER: Total head to be utilized: _____ feet
 Maximum flow through the penstock: _____ cfs Maximum theoretical horsepower capable of
 being generated by the works (cfs x fall ÷ 8.8): _____
 Electrical capacity (hp x 0.746 x efficiency): _____ kilowatts at: _____% efficiency
 After use, the water will be discharged into _____ (watercourse)
 in _____ ¼ of _____ ¼ of Section _____, T _____, R _____, _____ B&M. FERC No.: _____
- k. FISH AND WILDLIFE PRESERVATION AND/OR ENHANCEMENT: List specific species and
 habitat type that will be preserved or enhanced: _____
- l. OTHER: Describe use: _____
 Basis for determination of amount of water needed: _____

10. DIVERSION AND DISTRIBUTION METHOD

- a. Diversion will be by gravity by means of: Kern River/Cal. Aqueduct Intertie
 (dam, pipe in unobstructed channel, pipe through dam, siphon, weir, gate, etc.)
- b. Diversion will be by pumping from: _____
 (sump, offset well, channel, reservoir, etc)
 Pump discharge rate: _____ cfs or gpd Horsepower: _____
 Pump Efficiency: _____

c. Conduit from diversion point to first lateral or to offstream storage reservoir:

CONDUIT (pipe or channel)	MATERIAL (type of pipe or channel lining; indicate if pipe is buried or not)	CROSS-SECTION (pipe diameter, or ditch depth and top and bottom width) (inches or feet)	LENGTH (feet)	TOTAL LIFT OR FALL		CAPACITY (cfs, gpd or gpm)
				feet	+ or -	
N/A						

See Attachment No. _____

d. Storage reservoirs: (For underground storage, complete and attach underground storage form)

RESERVOIR NAME OR NUMBER	DAM				RESERVOIR		
	Vertical height from downstream toe of slope to spillway level (feet)	Construction material	Length (feet)	Freeboard: dam height above spillway crest (feet)	Surface area when full (acres)	Capacity (acre-feet)	Maximum water depth (feet)
N/A							

See Attachment No. _____

e. Outlet pipe: Complete for storage reservoirs having a capacity of 10 acre-feet or more.

RESERVOIR NAME OR NUMBER	OUTLET PIPE				
	Diameter in inches	Length in feet	Fall: Vertical distance between entrance and exit of outlet pipe in feet	Head: Vertical distance from spillway to entrance of outlet pipe in feet	Dead Storage: Storage below entrance of outlet pipe in acre-feet
N/A					

See Attachment No. ____

- e. If water will be stored and the reservoir is not at the point of diversion, the maximum rate of diversion to off-stream storage will be _____ cfs. Diversion to offstream storage will be made by:
 Pumping Gravity

11. CONSERVATION AND MONITORING

a. What methods will you use to conserve water? Explain.

The Project will conserve local groundwater supplies by substituting Intertie
Water for groundwater extraction.

- b. How will you monitor your diversion to be sure you are within the limits of your water right and you are not wasting water? Weir Meter Periodic sampling Other (describe)

12. RIGHT OF ACCESS

a. Does the applicant own all the land where the water will be diverted, transported and used?

YES NO

If NO, I do do not have a recorded easement or written authorization allowing me access.

b. List the names and mailing addresses of all affected landowners and state what steps are being taken to obtain access:

Dept. of Water of Natural Resources; P. O. Box 942836, Sacramento, CA 94236
Kern County Water Agency, 3200 Rio Mirada Drive, Bakersfield, CA 93308

See Attachment No. ____

13. EXISTING WATER RIGHTS AND RELATED FILINGS

a. Do you claim an existing right for the use of all or part of the water sought by this application?

YES NO

If YES, please specify: Riparian Pre-1914 Registration Permit License

Percolating groundwater Adjudicated Other (specify) _____

b. For each existing right claimed, state the source, year of first use, purpose, season and location of the point of diversion (to within quarter-quarter section). Include number of registration, permit, license, or statement of water diversion and use, if applicable.

See Attachment No. ____

- c. List any related applications, registrations, permits, or licenses located in the proposed place of use or that utilize the same point(s) of diversion.

See Attachment No. ____

14. OTHER SOURCES OF WATER

Are you presently using, or do you intend to use, purchased water or water supplied by contract in connection with this project? Yes No If yes, please explain: _____

15. MAP REQUIREMENTS

The Division cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the quarter/quarter, section, township, range, and meridian of (1) the proposed points of diversion and (2) the place of use. A copy of a U.S.G.S. quadrangle/topographic map of your project area is preferred, and can be obtained from sporting goods stores or through the Internet at <http://topomaps.usgs.gov>. A certified engineering map is required when (1) appropriating more than three cubic feet per second by direct diversion, (2) constructing a dam which will be under the jurisdiction of the Division of Safety of Dams, (3) creating a reservoir with a surface area in excess of ten acres or (4) appropriating more than 1,000 acre-feet per annum by underground storage. See the instruction booklet for more information.

See Attachment No. 3 & 4

ENVIRONMENTAL INFORMATION

Note: Before a water right permit may be issued for your project, the State Water Board must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared for your project, a determination must be made of who is responsible for its preparation. If the State Water Board is determined to be responsible for preparing the CEQA document, the applicant will be required to pay all costs associated with the environmental evaluation and preparation of the required documents. Please answer the following questions to the best of your ability and submit with this application any studies that have been conducted regarding the environmental evaluation of your project.

16. COUNTY PERMITS

- a. Contact your county planning or public works department and provide the following information:

Person contacted: _____ Date of contact: _____
 Department: _____ Telephone: (____) _____
 County Zoning Designation: _____

Are any county permits required for your project? YES NO If YES, check appropriate box below:

Grading permit Use permit Watercourse Obstruction permit Change of zoning
 General plan change Other (explain): _____

- b. Have you obtained any of the required permits described above? YES NO

If YES, provide a complete copy of each permit obtained.

See Attachment No. ____

17. STATE/FEDERAL PERMITS AND REQUIREMENTS

- a. Check any additional state or federal permits required for your project:
 Federal Energy Regulatory Commission U.S. Forest Service U.S. Bureau of Land Management U.S. Corps of Engineers U.S. Natural Res. Conservation Service Calif. Dept. of Fish and Game State Lands Commission Calif. Dept. of Water Resources (Div. of Safety of Dams) Calif. Coastal Commission State Reclamation Board Other (specify) N/A

- b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

See Attachment No. ____

- c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed, bank, or riparian habitat of any stream or lake? YES NO
 If YES, explain:

See Attachment No. ____

- b. Have you contacted the California Department of Fish and Game concerning your project?
 YES NO If YES, name, telephone number and date of contact:

18. ENVIRONMENTAL DOCUMENT

- a. Has any California public agency prepared an environmental document for your project?
 YES NO
- b. If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: See Attachment 1, Sec. 18; Attachment 5
- c. If NO, check the appropriate box and explain below, if necessary:
 The applicant is a California public agency and will be preparing the environmental document.*
 I expect that the State Water Board will be preparing the environmental document.**
 I expect that a California public agency other than the State Water Board will be preparing the environmental document.* Public agency: _____
 See Attachment No. ____

* **Note:** When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the State Water Board, Division of Water Rights and proof of payment of the State Clearinghouse filing fee. Processing of your application cannot be completed until these documents are submitted.

** **Note:** CEQA requires that the State Water Board, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the applicant and at the applicant's expense under the direction of the State Water Board. Division of Water Rights.

19. WASTE/WASTEWATER

- a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation? YES NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

N/A

See Attachment No. ____

- b. Will a waste discharge permit be required for your project? YES NO
Person contacted: _____ Date of contact: _____

- c. What method of treatment and disposal will be used? _____

See Attachment No. ____

20. ARCHEOLOGY

- a. Have any archeological reports been prepared on this project? YES NO
b. Will you be preparing an archeological report to satisfy another public agency? YES NO
c. Do you know of any archeological or historic sites located within the general project area?
 YES NO If YES, explain:

See Attachment No. ____

21. ENVIRONMENTAL SETTING

Attach **two complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the following three locations:

- Along the stream channel immediately downstream from the proposed point(s) of diversion.
 Along the stream channel immediately upstream from the proposed point(s) of diversion.
 At the place(s) where the water is to be used. See the attached maps.
 See Attachment No. 6

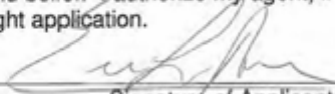
SUBMITTAL FEES

Calculate your application filing fee using the "Water Right Fee Schedule Summary" that was enclosed in the application packet. The "Water Right Fee Schedule Summary" can also be viewed at the Division of Water Rights' website (www.waterrights.ca.gov).

A check for the application filing fee, payable to the "Division of Water Rights" and an \$850 check for the Streamflow Protection Standards review fee [Pub. Resources Code § 10005(a)], payable to the "California Department of Fish and Game," must accompany this application. All applicable fees are required at the time of filing. If the application fees are not received, your application will not be accepted and will be returned to you. Please check the fee schedule for any fee changes prior to submitting the application.

DECLARATION AND SIGNATURE

I declare under penalty of perjury that all information provided is true and correct to the best of my knowledge and belief. I authorize my agent, if I have designated one above, to act on my behalf regarding this water right application.

	General Manager	January 29, 2010
Signature of Applicant	Title or Relationship	Date

Signature of Co-Applicant (if any)	Title or Relationship	Date

Applications that are not completely filled out and/or do not have the appropriate fees will not be accepted. In the event that the Division has to return the application because it is incomplete, a portion of the application submittal fee will be charged for the initial review.

"APPLICATION TO APPROPRIATE WATER" CHECKLIST

Before you submit your application, be sure to:

- Answer each question completely.
- Number, label and include all necessary attachments.
- Include a legible map that meets the requirements discussed in the instruction booklet.
- Include the Water Availability Analysis or sufficient information to demonstrate that there is reasonable likelihood that unappropriated water is available for the proposed appropriation.
- Include two complete sets of color photographs of the project site.
- Enclose a check for the required fee, payable to the Division of Water Rights.
- Enclose an \$850 check for the Streamflow Protection Standards review fee, payable to the Department of Fish and Game.
- Sign and date the application.

Send the original and one copy of the entire application to:

State Water Resources Control Board
Division of Water Rights
P.O. Box 2000
Sacramento, CA 95812-2000

Attachment 1

ATTACHMENT 1
Rosedale-Rio Bravo Water Storage District's
Application to Appropriate Water

2. OWNERSHIP INFORMATION

Rosedale-Rio Bravo Water Storage District ("RRB") is a California water storage district formed and existing pursuant to California Water Code section 39000, et seq., and located within the County of Kern, State of California.

3. PROJECT DESCRIPTION

RRB's project consists of diverting for reasonable and beneficial use up to an annual total of 65,750 acre-feet of water from the Kern River via the Kern River - California Aqueduct Intertie ("Intertie"). The water to be diverted by RRB is any water flowing in the Kern River which is in excess of the needs or claims of existing Kern River water right holders and which is, therefore, offered to the Intertie for disposal ("Intertie Water"). Evidence has shown that in certain years there are periods of days, weeks or months when Intertie Water is available (see ATTACHMENT 2).

RRB will use existing facilities (i.e., the Intertie and the California Aqueduct) to deliver Intertie Water to third parties, thereby fulfilling duties and obligations under existing contracts for the banking, storage and sale of water. Implementation of this project will enable RRB to meet its contractual obligations while reducing groundwater recovery within RRB. This will in turn conserve energy, maintain higher groundwater levels, and result in better management of RRB's water supplies.

RRB currently has contractual obligations to provide and deliver water to the following entities in the specified amounts:

CONTRACTUAL PARTNER	PLACE OF USE	MAXIMUM ANNUAL DELIVERY
Castaic Lake Water Agency	Castaic Lake Water Agency Service Area	8,250 AF
Glorious Land Company & Coachella Valley Water District	Coachella Valley Water District Service Area	20,000 AF

ATTACHMENT 1

Page 1 of 5

Castaic Lake Water Agency	Castaic Lake Water Agency Service Area	20,000 AF
Irvine Ranch Water District	Service Area	17,500 AF

5(b) SOURCES AND POINTS OF DIVERSION/REDIVERSION

The Intertie is located within Section 5, T31S, R25E approximately S 86° 42' 18" W a distance of 1058 feet from the NE corner of said Section 5. The Intertie location is shown on the Map designated ATTACHMENT 3 (coordinates were taken from the Kern County GIS).

6(d). WATER AVAILABILITY

RRB is currently meeting its contractual obligations through extraction and delivery, directly or by exchange, of previously banked water. When available, Intertie Water will be substituted for groundwater extraction thus enabling RRB to reduce energy costs and improve groundwater levels by retaining the previously banked water. This project is consistent with RRB's projects submitted as part of the Kern County Integrated Regional Water Management Plan, of which RRB is a participant.

7. PLACE OF USE

RRB will deliver Intertie Water to the recipient third parties (identified above) in the California Aqueduct at its connection to the Intertie. The recipient third parties transport the Intertie Water, directly or by exchange, to their respective service areas. The Intertie Water (or substitute water acquired by exchange) will be used within the boundaries of the recipient third party. The boundaries of the recipient third parties are shown on the Map designated ATTACHMENT 4.

9. JUSTIFICATION OF AMOUNTS REQUESTED

Castaic Lake Water Agency Sale Program:

RRB and Buena Vista Water Storage District (BV) developed the Water Banking and Recovery Program (Recovery Program) to re-regulate high-flow water supplies utilizing recharge, storage and recovery facilities available to both parties. The Castaic Lake Water Agency (Castaic) has entered into a long-term agreement with RRB & Buena Vista to purchase 11,000 acre-feet per year (AFY) from the Recovery Program. An additional 9,000 AFY could be purchased in years when additional water is available.

ATTACHMENT 1

Page 2 of 5

Water delivered by RRB to Castaic is utilized within the Castaic service area and is a key component of the Castaic Urban Water Management Plan reliability analysis. The Castaic service area encompasses the service area of four (4) retail water service providers who collectively provide an annual water supply of 100,050 AFY and serve a population of 196,000. The water provided by Castaic is utilized for single/multifamily homes, commercial, industrial, institutional/governmental and landscaping.

Castaic's purchase of water from the Recovery Program enables Castaic to mitigate fluctuations in State Water Project (SWP) supplies and ensure a more reliable long-term supply.

Castaic Lake Water Agency Banking Program:

In an effort to ensure a more reliable water supply, Castaic entered into an agreement with RRB for the recharge, storage and recovery of water supplies available to Castaic. Castaic, through its agreement with RRB, may recharge up to 200,000 acre-feet and has the ability to call upon up to 20,000 AFY.

The water supply banked by Castaic in RRB is used to augment Castaic's SWP supplies during drought and to ensure a more reliable water supply.

Glorious Land Company:

The GLC program entails the delivery of 220,000 acre-feet of water to GLC over an initial term of 33 years, with an average of 6,667 AFY. The Coachella Valley Water District (Coachella) acts as the water service provider for the GLC project. Coachella will utilize water delivered by RRB within its service area and make a like amount of previously banked groundwater available to GLC. RRB has the ability to deliver up to 20,000 AFY to Coachella, subject to approval by Coachella for any amount over 9,500 AFY.

The GLC program provides GLC with the water supply necessary water to support urban development within the Coachella service area and comply with SB 221 & SB 610.

Irvine Ranch Water District:

Irvine Ranch Water District (Irvine) and RRB entered into a water banking program (Strand Ranch Project) whereby Irvine may deliver surplus SWP or other available supplies to RRB for recharge, storage and banking for future return to Irvine during periods of reduced allocation on the SWP. The Strand Ranch Project provides Irvine with the ability to call upon 17,500 AFY of previously banked water in RRB for return to Irvine.

Irvine provides potable and recycled water to municipal, industrial and agricultural customers within its 114,560 acre service area within Orange County. Irvine provides approximately 56,000 AFY of potable and 30,000 AFY of recycled water. Irvine provides water service to

approximately 316,000 residents. Approximately 60% of Irvine's water supply is from local sources with the remaining 40% coming to Irvine from the SWP through its contract with Metropolitan Water District of Southern California.

The Strand Ranch Project provides Irvine with the ability to re-regulate high-flow or other surplus supplies into RRB for re-regulation within the Strand Ranch Project. The Strand Ranch Project significantly improves Irvine's ability to meet dry-year water supply needs and provide a more reliable water supply to its constituents.

18. ENVIRONMENTAL DOCUMENT

The storage, banking and sale projects identified in this application have been reviewed pursuant to the California Environmental Quality Act ("CEQA") as shown by the following documents:


PROJECT	CEQA DOCUMENTATION	DATE COMPLETED
Castaic Lake Water Agency Water Sale Program	Buena Vista WSD / Rosedale-Rio Bravo WSD FEIR	9/1/2002
Glorious Land Company & Coachella Valley Water District Water Sale Program	Mitigated Negative Declaration	12/12/2002
Castaic Lake Water Agency Water Banking Program	Master EIR	7/17/2001
Irvine Ranch Water District Water Banking Program	Strand Ranch FEIR	5/1/2008
All RRB Projects	Master EIR	7/17/2001

A copy of each of the identified environmental documents is contained on the CD which is submitted with this Application as ATTACHMENT 5.

CERTIFICATION

I, ERIC L. AVERETT, do hereby declare under penalty of perjury under the laws of the state of California that the information provided in this Attachment to Application to Appropriate Water is true and correct to the best of my knowledge and belief.

Dated this 29 of January, 2010 in Bakersfield, California


Eric L. Averett,
General Manager, Rosedale-Rio Bravo
Water Storage District

C:\Users\jacob\Documents\2010\12\29\ROSEDALE-RIO BRAVO\Attachments\certificat to appropriate water 1-29-10.doc

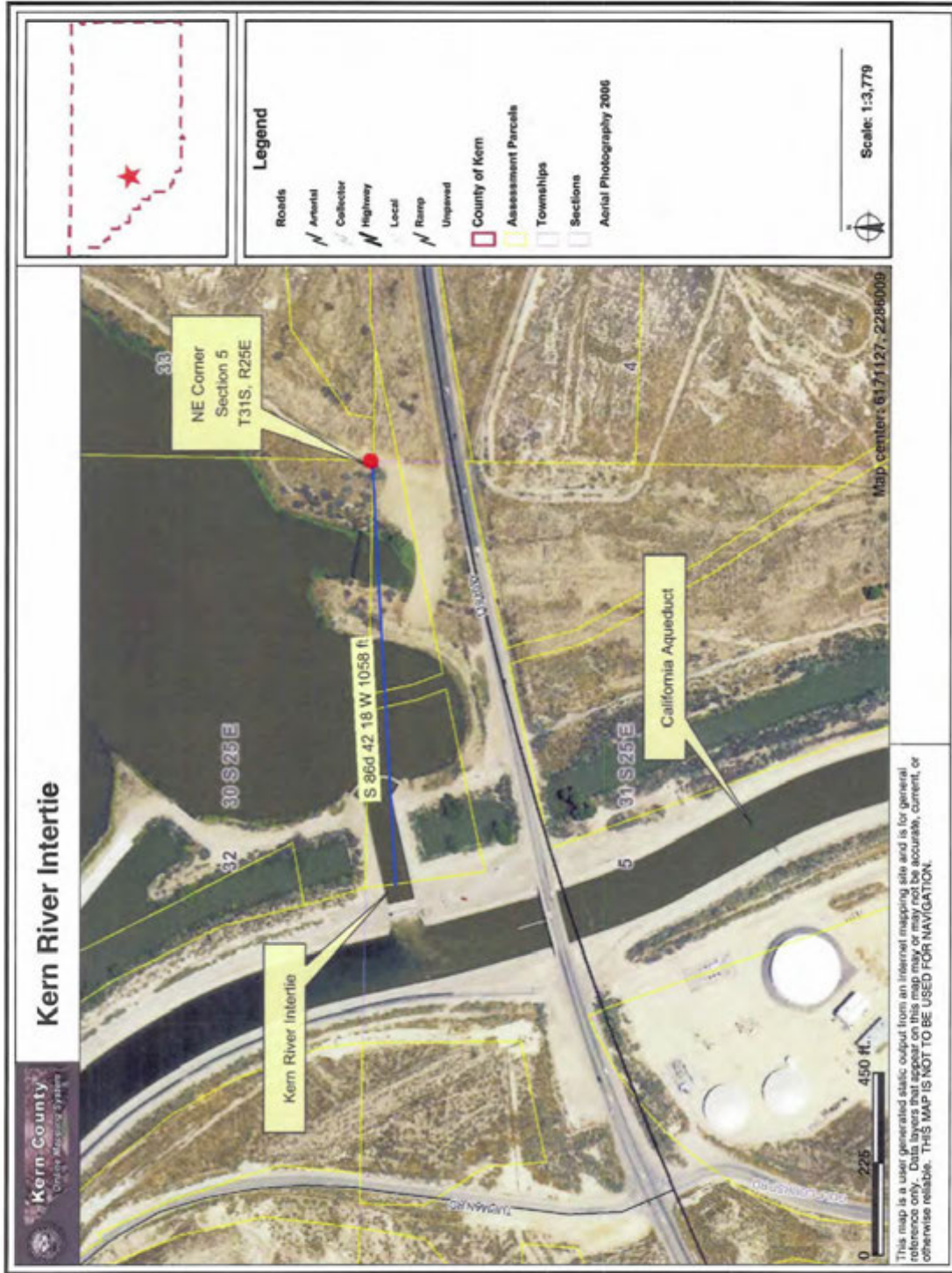
Attachment 2

REPORT of the KERN RIVER WATERMASTER
TABLE OF WATER DIVERSIONS VIA THE
KERN RIVER / CALIFORNIA AQUEDUCT INTERTIE

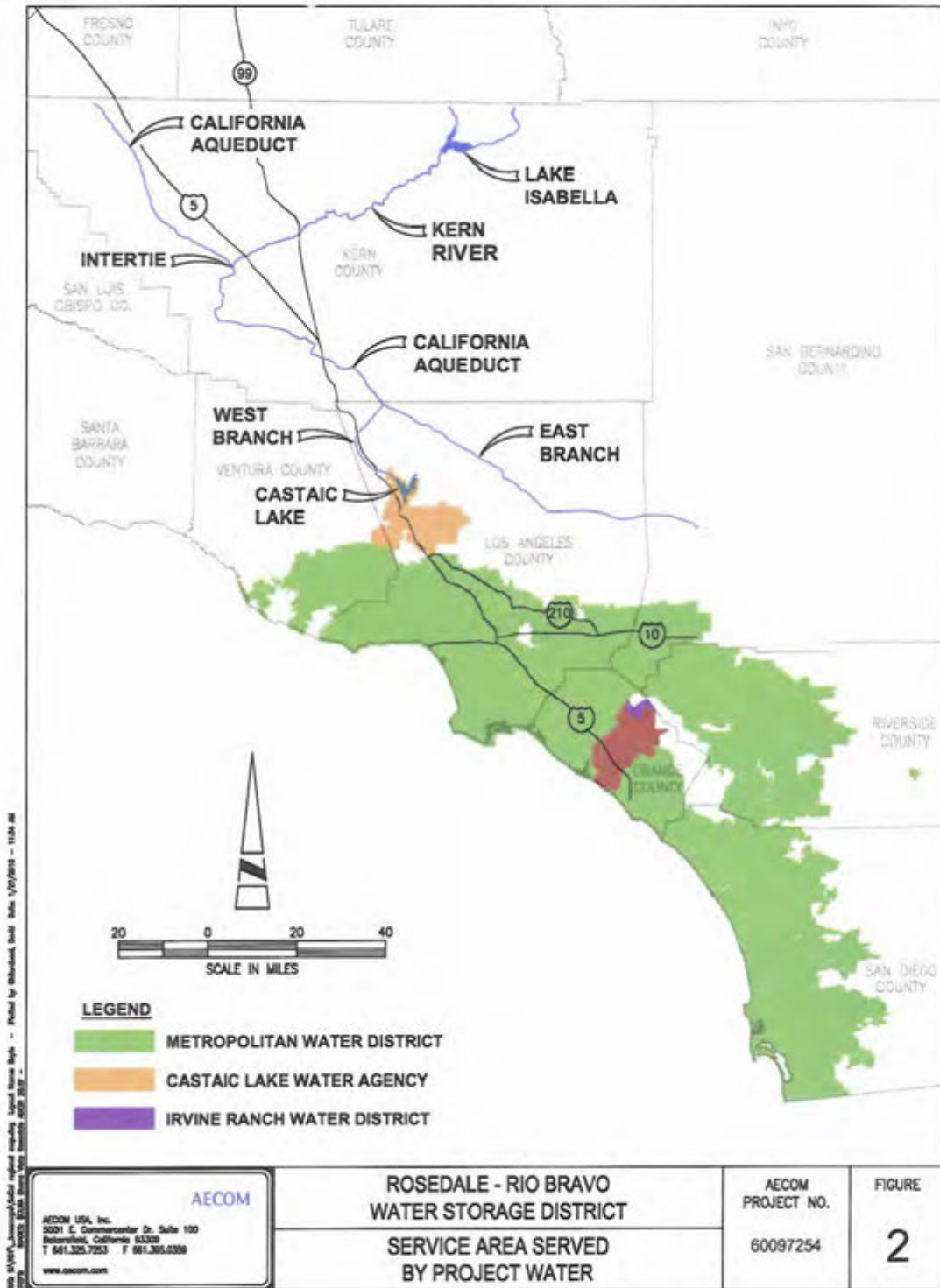
YEAR	Quantities in acre-feet Except Where Noted.....		DAYS OF OPERATION	FRIANT-KERN WATER	DAYS OF OPERATION	TOTAL WATER	TOTAL DAYS OF OPERATION	KERN RIVER ANNUAL FLOW IN PERCENT OF NORMAL
	KERN RIVER WATER							
1978	160,818		84	9,113	16	177,931	84	234%
1980	130,816		112	0	0	130,816	112	212%
1982	10,339		13	11,968	21	22,307	34	171%
1983	604,036		283	96,200	53	700,236	338	331%
1984 1)	28,720		40	0	0	28,720	40	91%
1986	1,068		3	15,560	22	17,448	25	190%
1987	1,793		7	51,055	48	52,848	48	122%
1988	130,228		71	57,822	44	188,048	97	243%
2006 2)	73,411		49	28,329	30	101,740	49	170%
TOTALS	1,216,027		662	270,067	264	1,486,094	827	

1) KR Intertie flows carryover from 1983 Isabella storage.
 2) KR Intertie flows due to storage restrictions imposed on Isabella Reservoir

Attachment 3

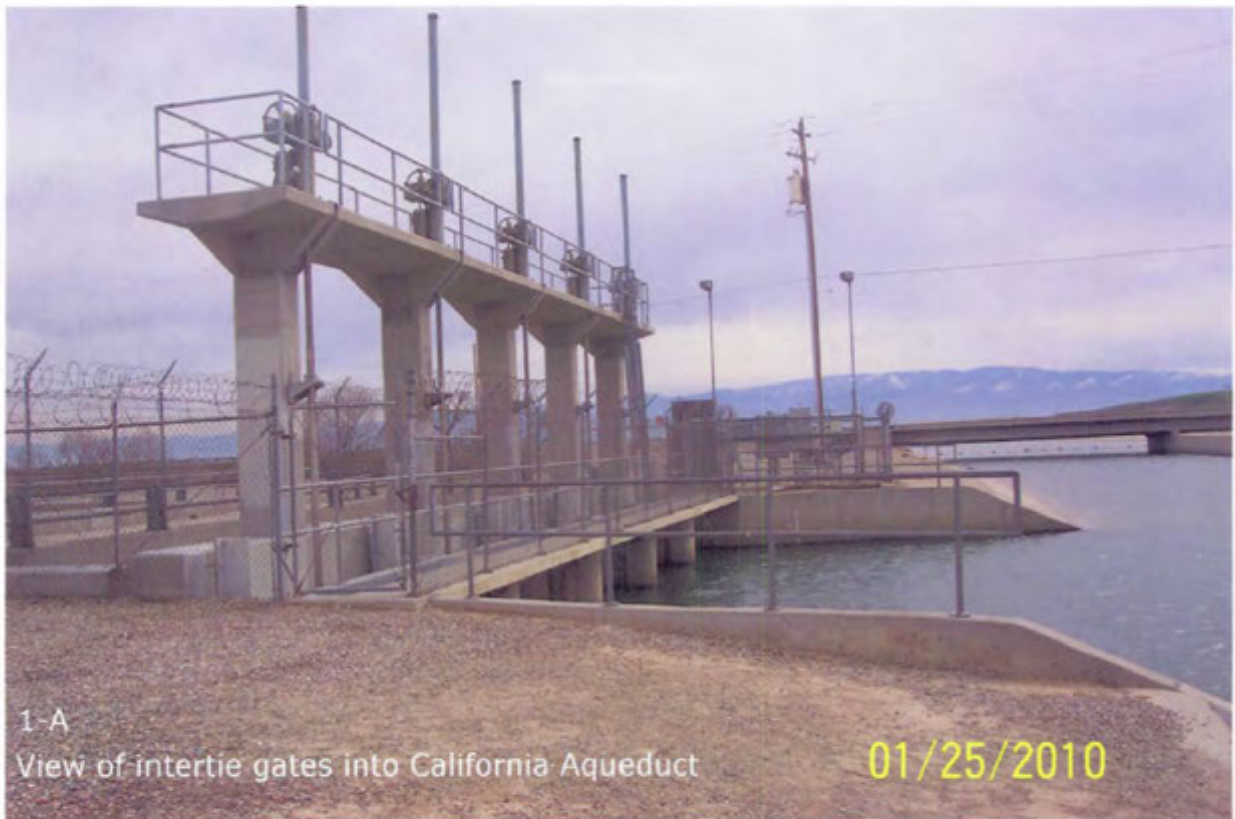


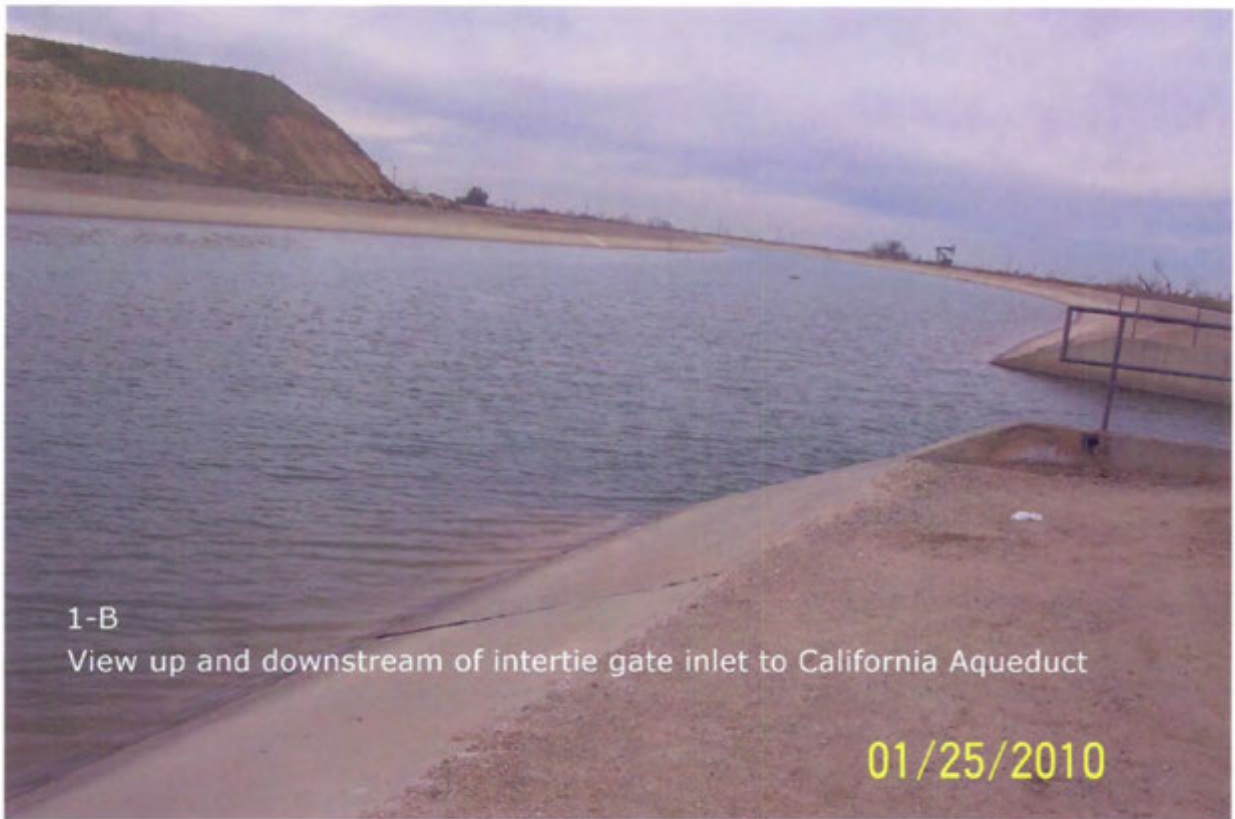
Attachment 4



Attachment 5

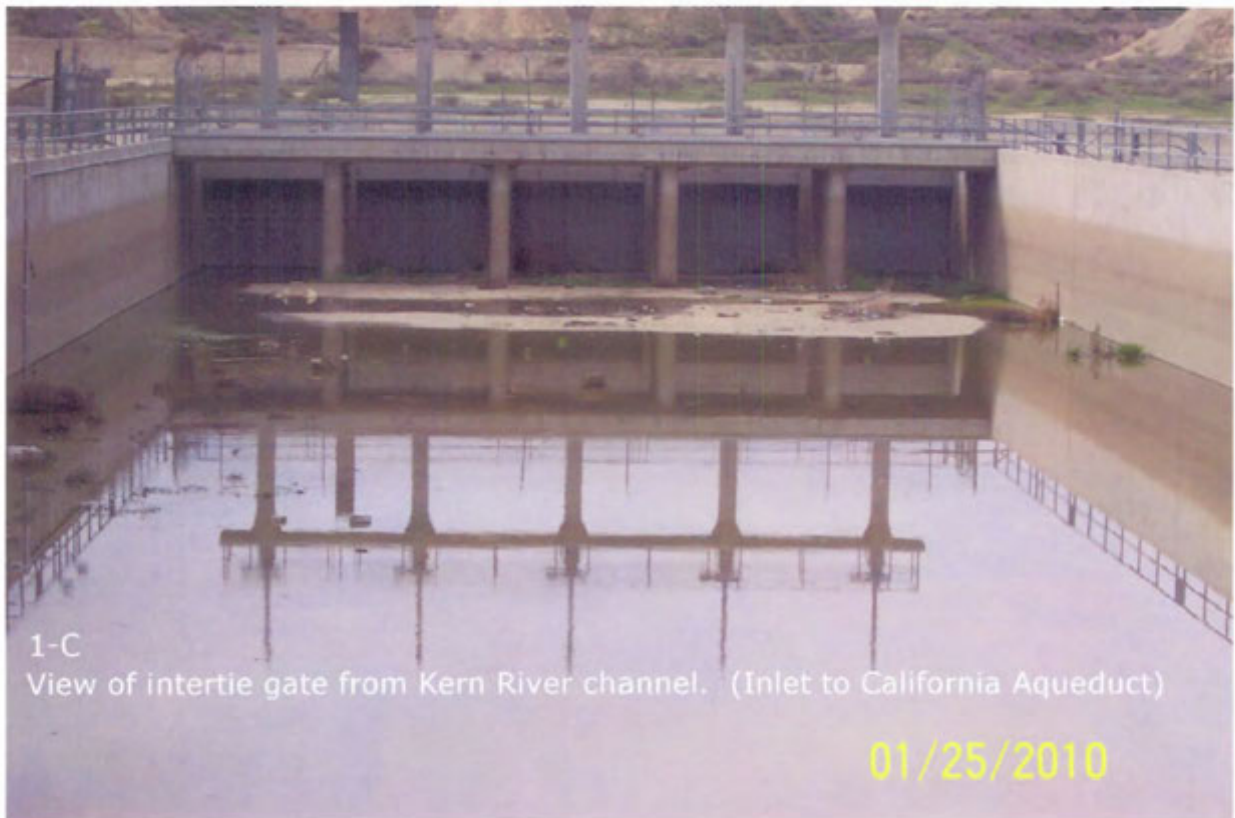
Attachment 6





1-B
View up and downstream of intertie gate inlet to California Aqueduct

01/25/2010





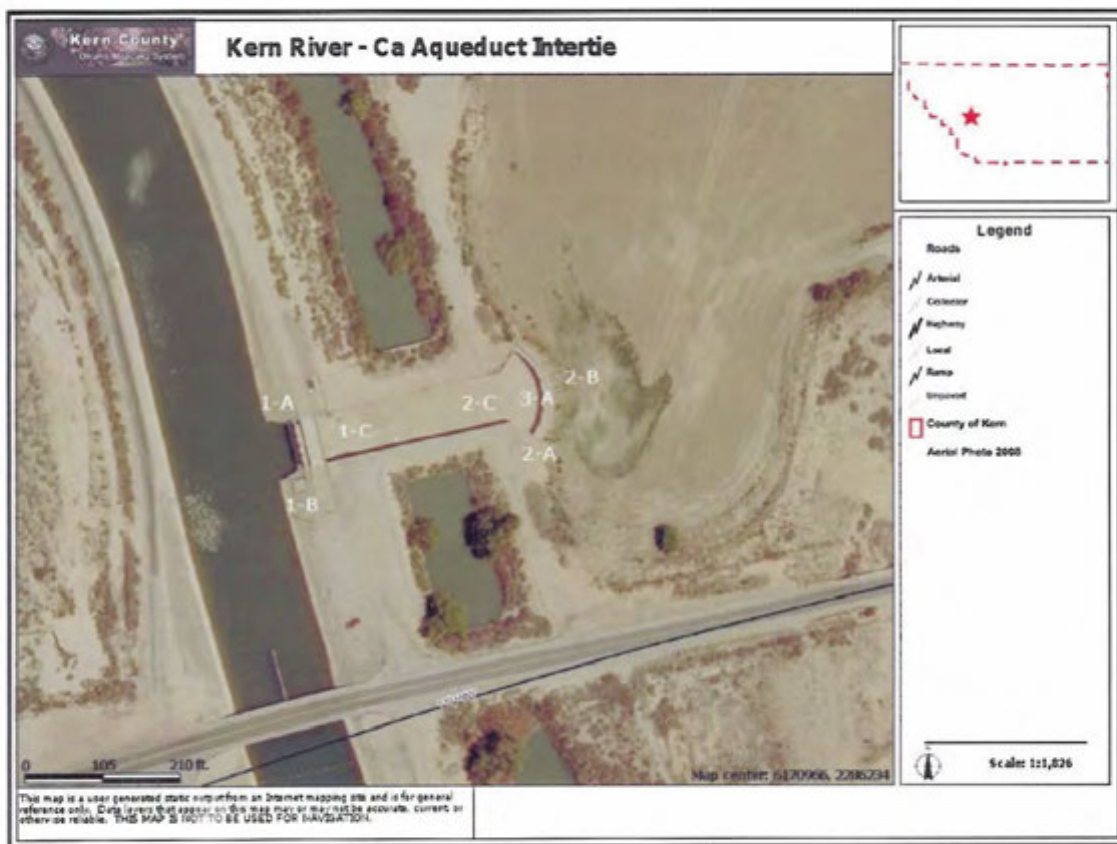
2-A
View of bar screens from Kern River channel to intertie channel

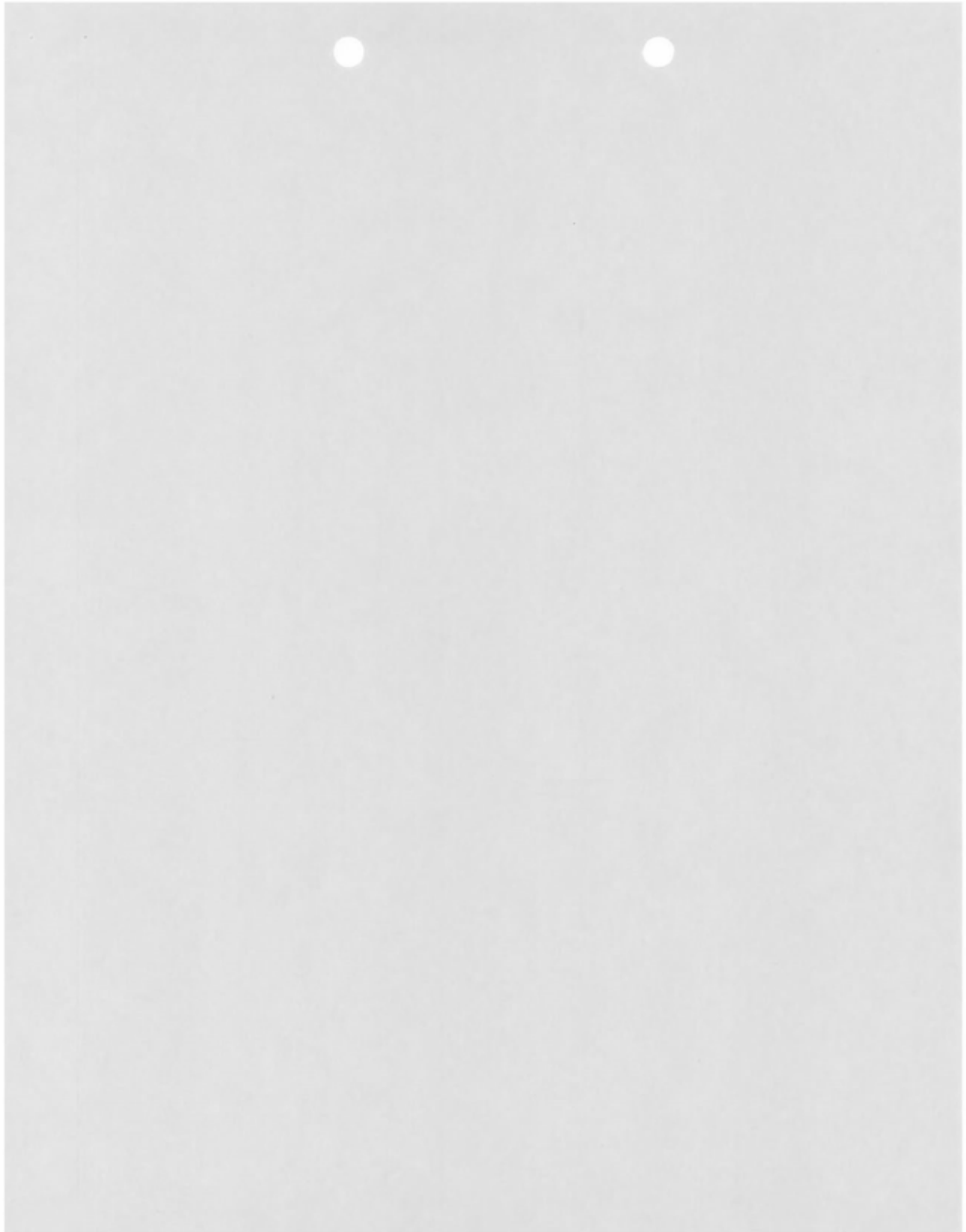
01/25/2010

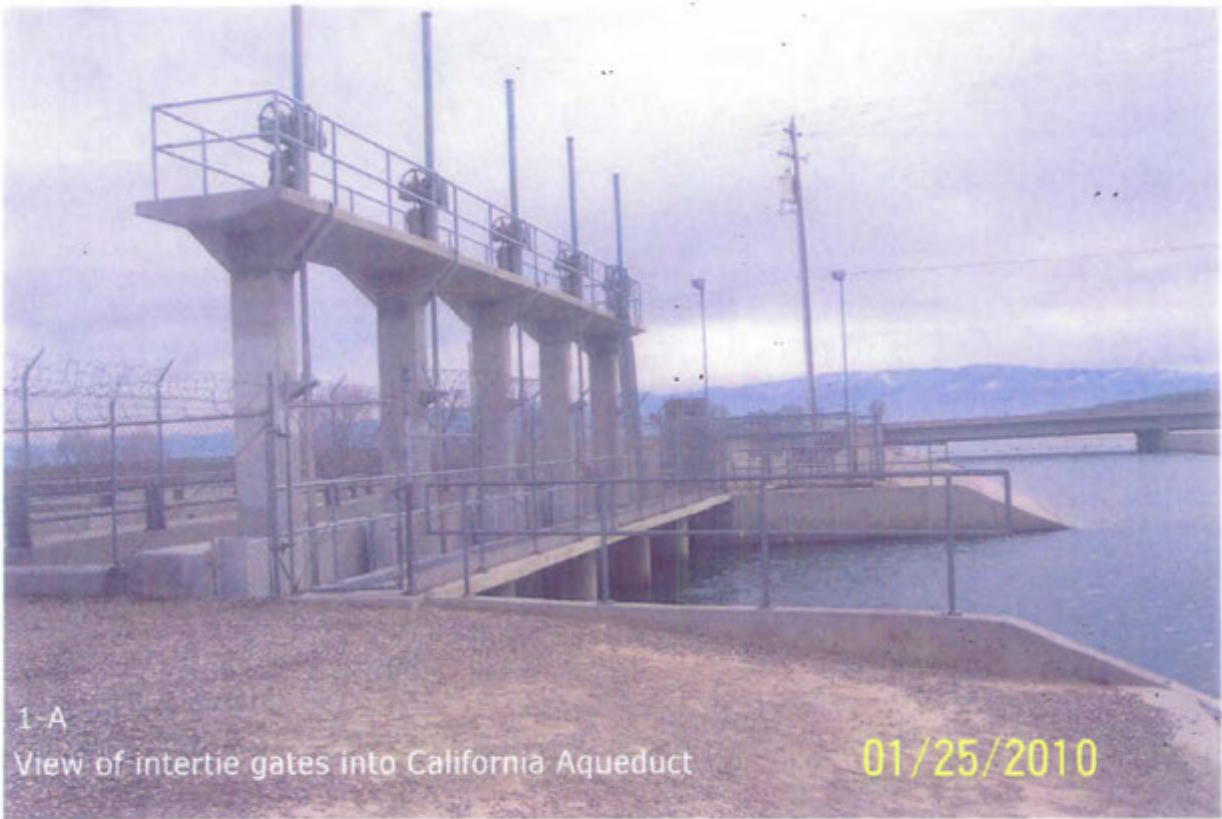


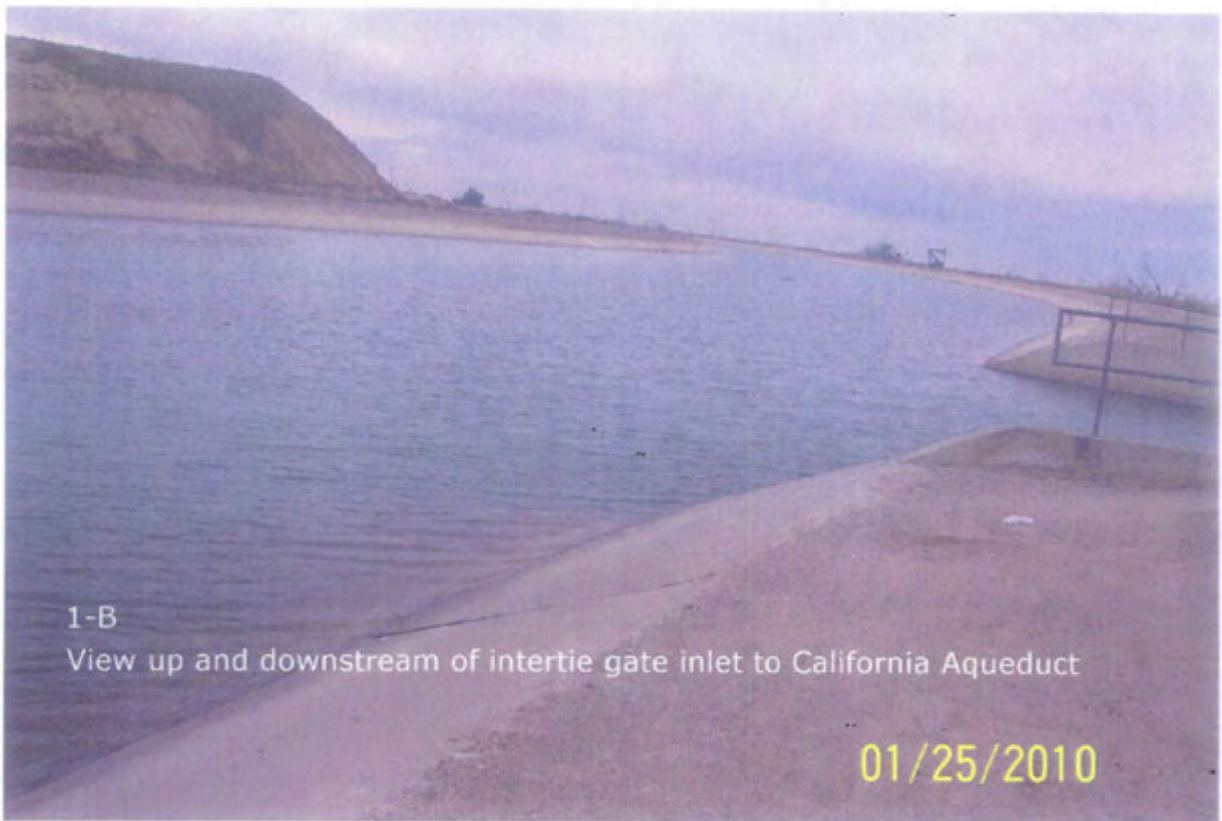












1-B
View up and downstream of intertie gate inlet to California Aqueduct

01/25/2010





2-A

View of bar screens from Kern River channel to intertie channel

01/25/2010



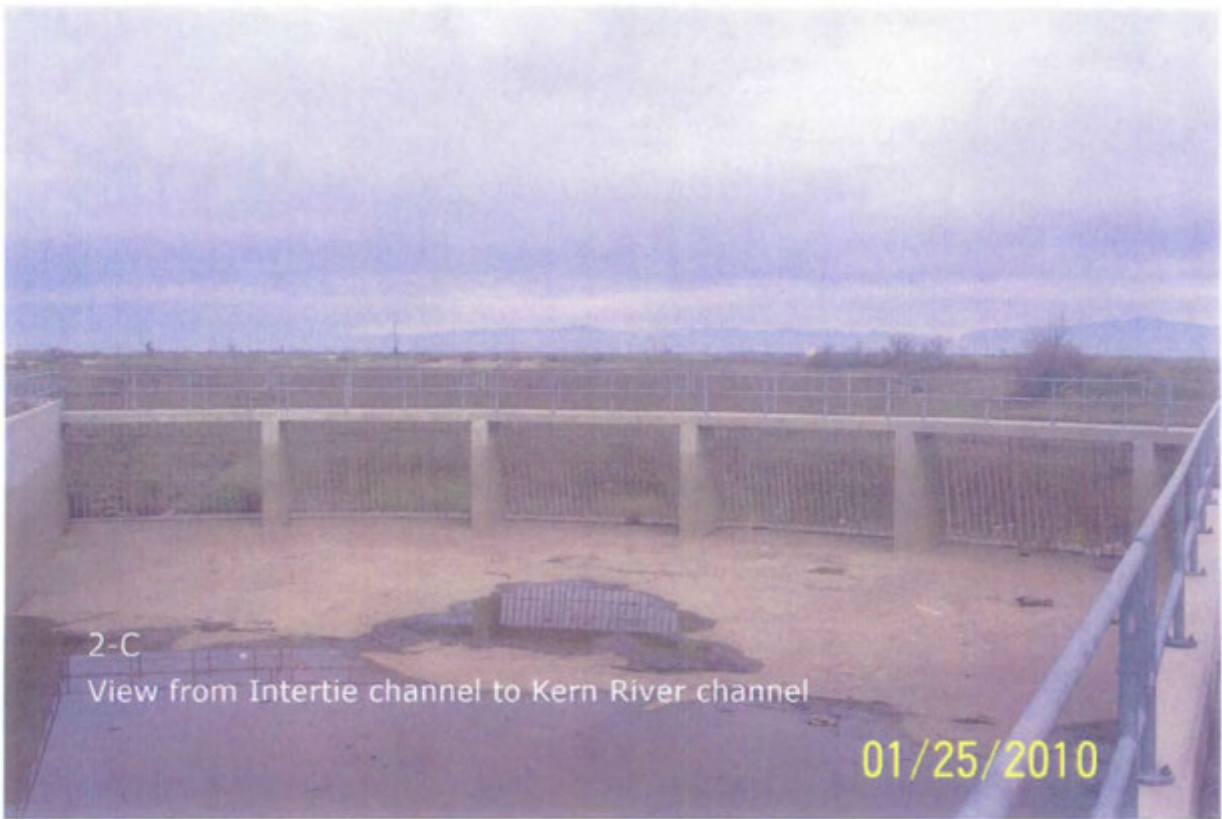
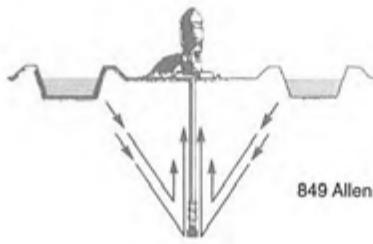






EXHIBIT I



ROSEDALE - RIO BRAVO

WATER STORAGE DISTRICT

849 Allen Road • P. O. Box 867 • Bakersfield, California 93302-0867 • (661) 589-6045 • FAX (661) 589-1867

February 20, 2010

City of Bakersfield Water Resources
1000 Buena Vista Road
Bakersfield, CA 93311

Attention: Mark Lambert

Re: Application to Appropriate Intertie Water

Dear Mr. ^{Mark}Lambert:

As you are aware, Rosedale-Rio Bravo Water Storage District (Rosedale) recently filed an application with the State Water Resources Control Board (SWRCB) to appropriate water delivered to the Kern River/California Aqueduct Intertie (Intertie). Rosedale's decision to file this application was based upon the SWRCB proposed draft order to revise the fully appropriated stream status of the Kern River based on water delivered to the Intertie.

The intent of this letter is to attempt to dispel concerns regarding the nature of Rosedale's application. Rosedale intentionally structured its application to avoid creating conflict with Kern River right holders and to only seek to appropriate those waters which are surplus to the needs and/or claims of these entities. This is demonstrated in the Project Description of Attachment 1, to Rosedale's application where Rosedale states *"The water to be delivered by Rosedale is any water that is flowing in the Kern River which is in excess of the needs or claims of existing Kern River water right holders and which is, therefore, offered to the Intertie for disposal"*.

Rosedale's belief that its application would not be in conflict with the existing Kern River right holders was, in part, based upon testimony provided by Mr. Daniel Easton, expert witness for the North Kern Petitioners, who apparently testified that *"water diverted to the Intertie is in excess of traditionally held and exercised rights and claims of right to Kern River water and that whenever water had been released into the intertie in the past, all Kern River water right claims had been satisfied."* Rosedale felt that water delivered to the Intertie, based upon this testimony, was considered to be outside the "needs or claims" of existing Kern River right holders even by those water right holders themselves.

In light of the proposed draft order, it seemed likely to Rosedale that someone would file an application to appropriate water offered to the Intertie, such as water hungry developers in Southern California. Since the Rosedale application is intended to provide local benefits, we consider it a better option.

City of Bakersfield Water Resources
Mr. Mark Lambert
January 20, 2010
Page 2 of 2

While recognizing the various rights of the Kern River interests, Rosedale will actively seek to appropriate any Friant-Kern water and/or any water deemed to be surplus to the needs and/or claims of Kern River right holders. Should the SWRCB determine that water delivered to the Intertie is "abandoned" then Rosedale's application may have merit without constituting a challenge or infringement upon existing Kern River rights.

I hope this letter provides a better understanding as to the motive and intent of the Rosedale application to appropriate water delivered to the Intertie. Rosedale values its relationship with the various Kern River interests and does not seek to infringe upon any existing and vested rights to Kern River water.

Sincerely,

A handwritten signature in black ink, appearing to be "E. C. ...", written over a light blue horizontal line.

EXHIBIT J



FEDERAL REGISTER

Vol. 78 Tuesday,
No. 127 July 2, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical
Habitat for Buena Vista Lake Shrew; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2009-0062; 4500030114]

RIN 1018-AW85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) under the Endangered Species Act (Act). In total, approximately 2,485 acres (1,006 hectares) in Kings and Kern Counties, California, fall within the boundaries of the critical habitat designation. The effect of this regulation is to conserve the Buena Vista Lake shrew's habitat under the Act.

DATES: This rule becomes effective on August 1, 2013.

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov>, at Docket No. FWS-R8-ES-2009-0062. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA, 95825; telephone 916-414-6600; facsimile 916-414-6713.

The coordinates or plot points, or both, from which the maps were generated are included in the administrative record for this critical habitat designation and are available at <http://criticalhabitat.fws.gov/crithab/>, and at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0062, and at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA, 95825; telephone

916-414-6600; facsimile 916-414-6713. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Buena Vista Lake shrew. In total, we are designating approximately 2,485 acres (ac) (1,006 hectares (ha)), in six units in Kings and Kern Counties, California, as critical habitat for the subspecies. This is a final rule to designate critical habitat for the Buena Vista Lake shrew (shrew).

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be a threatened or endangered species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. We listed the Buena Vista Lake shrew as an endangered species in 2002 (67 FR 10101; March 6, 2002), proposed critical habitat in 2004 (69 FR 51417; August 19, 2004), and designated final critical habitat in 2005 (70 FR 3438; January 24, 2005). The previous final designation excluded all but 84 acres (ac) under section 4(b)(2) of the Act. In 2009, under the terms of a settlement agreement, we repropose the areas originally proposed in 2004 (74 FR 53999; October 21, 2009). We subsequently received new information on additional areas occupied by the shrew, and so revised the proposed critical habitat on July 10, 2012, to include two additional areas and one modification to an existing unit (77 FR 40706). Based on the settlement agreement, we are to submit a final designation to the **Federal Register** by June 29, 2013.

The basis for our action. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary can exclude an area from critical habitat if she determines the benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species. The critical habitat areas we are designating in this rule constitute our current best assessment of the areas

that meet the definition of critical habitat for the Buena Vista Lake shrew.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on March 5, 2013 (78 FR 14245), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We requested opinions from four knowledgeable individuals with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information. We received responses from two of the four peer reviewers. The peer reviewers that responded provided additional information, and suggestions to improve this final rule. Information we received from the peer reviews is incorporated in this final revised designation. We also considered all comments and information received from the public during the comment period.

Previous Federal Actions

We published a final rule listing the shrew as endangered in the **Federal Register** on March 6, 2002 (67 FR 10101). The final listing rule is available at <http://www.fws.gov/policy/library/2005/05-982.pdf>. Please refer to the final listing rule for information on Federal actions prior to March 6, 2002, and for additional information on the shrew and its habitat.

On January 12, 2004, the United States District Court for the Eastern District of California issued a Memorandum Opinion and Order (*Kern County Farm Bureau et al. v. Anne Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1 et al.*, CV F 02-5376 AWIDLB). The order required us to publish a proposed critical habitat determination for the shrew by July 12, 2004, and a final determination by January 12, 2005. On July 8, 2004, the court extended the deadline for submitting the proposed rule to the **Federal Register** to August 13, 2004. We submitted a proposed rule by the required date, which was published in the **Federal Register** on August 10, 2004 (69 FR 51417). We published a notice in the **Federal**

Register making available the DEA for the proposed designation on November 30, 2004 (69 FR 69578), and then published a final critical habitat designation on January 24, 2005 (70 FR 3438). The final designation excluded four of the five proposed units, based on the Secretary of the Interior's authority under section 4(b)(2) of the Act, that the benefits of exclusion outweighed the benefits of inclusion, and that exclusion would not result in the extinction of the subspecies.

In response to a legal complaint and resulting settlement agreement (*Center for Biological Diversity v. United States Fish and Wildlife, et al.*, Case No. 08-CV-01490-AWI-GSA), we published a new proposed designation, encompassing the same area as the 2004 proposed designation, on October 21, 2009 (74 FR 53999). We subsequently published a notice in the **Federal Register** on April 28, 2011 (76 FR 23781), announcing the availability of a new DEA, and the reopening of the comment period for the new proposed critical habitat designation, the associated DEA, and the amended required determinations. This document also announced a public hearing, which was held in Bakersfield, California, on June 8, 2011. On March 6, 2012, we were granted an extension by the Court to consider additional information on the shrew prior to publishing our new final critical habitat designation (*Center for Biological Diversity v. Kempthorne et al.*, Case 1:08-cv-01490-AWI-GSA, filed March 7, 2012). We published a revised proposed rule on July 10, 2012 (77 FR 40706), in which we proposed to designate approximately 5,182 ac (2,098 ha) in seven units in Kings and Kern Counties, California. We published a notice in the **Federal Register** making available the revised DEA on March 5, 2013 (78 FR 14245), and reopened the comment period on the revised proposed designation and revised DEA. We also announced a public hearing in that document, which took place in Bakersfield, California, on March 28, 2013.

Background

It is our intent to discuss below only those topics directly relevant to designating critical habitat for the Buena Vista Lake shrew in this final rule. For additional background information, please see the proposed designation of critical habitat for the Buena Vista Lake shrew published on July 10, 2012 (77 FR 40706), and available at <http://ecos.fws.gov>. That information is incorporated by reference into this final rule.

Species Information. The Buena Vista Lake shrew is a mammal, approximately the size of a mouse. Like other shrews, the subspecies has a long snout, tiny bead-like eyes, ears that are concealed, or nearly concealed by soft fur, and five toes on each foot (Burt and Grossenheider 1964, p. 2; Ingles 1965, pp. 81–84). Shrews are active day or night. When they are not sleeping, they are searching for food (Burt and Grossenheider 1964, p. 3). The Buena Vista Lake shrew is one of nine subspecies within the ornate shrew (*Sorex ornatus*) species complex known to occur in California (Hall 1981, pp. 37, 38; Owen and Hoffmann 1983, pp. 1–4; Maldonado 1992, p. 3).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Buena Vista Lake shrew during four comment periods, which took place subsequent to the 2009 proposal (73 FR 53999), the 2011 NOA (76 FR 23781), the 2012 revised proposal (77 FR 40705), and the 2013 notice of availability of the revised DEA (78 FR 14245) (see Previous Federal Actions, above). Each of the comment periods ran for 60 days. We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received five comment letters addressing the proposed critical habitat designation. During the second comment period, we received eight comment letters addressing the proposed critical habitat designation or the 2011 draft economic analysis. During the June 8, 2011, public hearing, one individual provided written comments, but we did not receive oral comments directly addressing the proposed designation. During the third comment period, we received four comments directly addressing the 2012 revised proposed critical habitat designation or the 2011 DEA. During the fourth comment period, we received four comments addressing the 2012 revised proposed critical habitat designation or the 2013 DEA. During the March 28, 2013, public hearing, we received one oral comment addressing the 2012 revised proposed critical habitat designation or the 2013 DEA.

All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into

general issues specifically relating to the proposed critical habitat designation for the shrew and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from two of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the shrew. The peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule. We address the two peer reviewers' comments in the following summary and have incorporated them into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer referred to the designation as essential to the conservation of the species, and indicated his agreement with our use of best available evidence, our methods, and our identification of essential habitat features (primary constituent elements (PCEs)). He stated that the rule appears to be supported by the latest scientific information; that we have accurately described that information; and that scientific uncertainties seem to have been clearly identified with the implications of those uncertainties described. He also noted that he has no additional information regarding the shrew's conservation needs, or indicating the location of additional populations, but that he is in the process of finalizing a genetic analysis of the shrew as compared to other subspecies in the San Joaquin Valley.

Our Response: We thank the reviewer for his comments. Should the genetic analysis provide significant new information regarding essential habitat or populations, we have the option of revising our designation in the future to take the information into account.

(2) *Comment:* The second peer reviewer stated that, because the quantity of habitat necessary to conserve viable populations of the shrew is unknown, all remaining habitat known or suspected to be suitable should be protected. He concluded it was therefore appropriate and necessary to designate the 5,182 ac in 7 units that we had proposed.

Our Response: We are designating all occupied areas containing the specific physical and biological features (the primary constituent elements) essential to the shrew. We delineated each area according to the extent of those features on the landscape, thereby including contiguous areas with essential habitat features to which a shrew population could reasonably be expected to extend. When we learned of the additional occupied areas, we published a revised proposal to include those areas in the designation as well. We consider the proposed areas sufficient for the conservation of the shrew because the proposed areas contain a variety of habitats usable by the shrew, meet the recovery goals established for the shrew (Service 1998, p. 192), and are large enough to accommodate expanding populations.

Although we are excluding one of the seven proposed units (see Exclusions, below), we are doing so because we consider the benefits of exclusion to outweigh the benefits of inclusion for the conservation of the shrew in that area. The area (Unit 3) is already protected by various means, and additional protections and benefits to the shrew may result due to exclusion. We thus consider this designation to follow the basic philosophy expressed by the reviewer: that all areas of essential habitat with the potential to benefit the shrew should be protected.

(3) *Comment:* The peer reviewer strongly recommended that we not exclude Unit 3, because the City of Bakersfield's habitat management plan for the area does not ensure optimal conditions for the shrew. Specifically, the plan allows extended periods without water, periodic flooding, and periodic ground disturbance for maintenance and repair of pumps and other equipment. The reviewer also noted that the City has not yet officially adopted the management plan.

Our Response: The City of Bakersfield has now submitted information to indicate it had officially adopted the management plan (Bakersfield Water Board Committee 2011, entire; Chianello 2013, p. 2). Although the habitat management plan may not be completely optimal for the shrew, we consider it to provide the best conservation option. Designation of the unit as critical habitat would not prevent the management drawbacks identified by the reviewer, since these drawbacks do not involve action by a Federal agency. We have worked with the City of Bakersfield over multiple years to address monitoring and protection of shrew habitat. We have consequently concluded that excluding

the unit from designation will assist our partnership with the City of Bakersfield to manage more effectively for the conservation of the shrew while still accommodating the City's use of the area as a groundwater recharge basin. For further analysis of the tradeoffs and benefits involved in our decision to exclude, see Exclusions Under Section 4(b)(2) of the Act—Kern Fan Water Recharge Area, below.

(4) *Comment:* The peer reviewer suggested we consider designation of the Wind Wolves Preserve (WWP), in southwestern Kern County. We had indicated in the proposed rule (77 FR 40709; July 10, 2012) that shrews in the Wind Wolves Preserve were expected to be adorned ornate shrews (*Sorex ornatus ornatus*), based on preliminary unpublished data from a mitochondrial DNA analysis of a tissue sample taken from one shrew at that location. The reviewer indicated his understanding, based on conversations with the geneticist who conducted the analysis, that the Wind Wolves sample was actually more similar to Buena Vista Lake shrews than to adorned ornate shrews. The reviewer also noted that additional samples from Wind Wolves Preserve still remain to be statistically analyzed, and that these could potentially corroborate the hypothesis that the shrews at Wind Wolves Preserve are Buena Vista Lake shrews.

Our Response: In considering whether to propose the Wind Wolves site as critical habitat for the Buena Vista Lake shrew, Service staff with expertise in genetics reviewed papers on shrew taxonomy and habitat by Dr. Maldonado and others, and noted that the historical range of Buena Vista Lake shrew, as depicted by Owen and Hoffman (1983), shows the Buena Vista Lake shrew as embedded within the range of the more common California ornate shrew (*S. ornatus ornatus*), which occupies more upland areas. They also found that the mitochondrial DNA of the one shrew sample contained a genetic type that occurs in ornate shrews at Tranquility and Helm, but not in any Buena Vista Lake shrew occurrences, suggesting that Wind Wolves Preserve might be the California ornate shrew. Our staff communicated with Dr. Maldonado, who supported our tentative conclusion that the Wind Wolves site contains California ornate shrews (Maldonado 2011, unpaginated). We are aware of the further genetic testing that Dr. Maldonado is conducting, and welcome further information from his study. However, we are responsible for using the best available information to complete the rule within the regulatory time-frame. When genetic analysis of

the Wind Wolves samples is completed, if the analysis supports the presence of Buena Vista Lake shrews at the Wind Wolves Preserve, the critical habitat designation may be revised to take such data into account.

Comments From States

During the development of the proposed rule and this final rule, we coordinated with the appropriate State agencies regarding the designation. Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." We did not receive any comments from State agencies regarding this critical habitat designation.

Public Comments

(5) *Comment:* Several commenters asked us to exclude Unit 2 based on the implementation of a biological opinion (BO) that we issued in 2004 for a wetlands restoration and enhancement project funded through the North American Wetlands Conservation Act (NAWCA) within the historical lake bed of Goose Lake (Service 2004).

Our Response: The terms and conditions in the BO all applied to the means by which groundbreaking activities would be carried out for the project (Service 2004, pp. 20–22). There was thus little provision established for ongoing management of the property for the benefit of the shrew after completion of the project. The BO did include several conservation recommendations, including: (1) that the effects of restoration activities on the shrew be monitored; (2) that an outreach and education program for the shrew be developed; and (3) that a programmatic BO be undertaken that would consider long-term seasonal wetlands maintenance actions. To our knowledge, none of these recommended conservation actions have been undertaken. In balancing the benefits of exclusion against the benefits of designation, we generally consider the extent to which exclusion would result in ongoing benefits that would not otherwise be realized. Because the NAWCA-funded wetlands improvement project is a completed project, and no ongoing management plan has been established for the conservation benefit of the shrew under the associated BO, the Secretary is not exercising her discretion to exclude Unit 2 under section 4(b)(2) of the Act.

(6) *Comment:* Several commenters asked us to exclude Unit 3 based on the completion and implementation of a

habitat management plan (HMP) for the area.

Our Response: The Secretary has determined that the benefits of exclusion outweigh the benefits of inclusion of the area identified in Unit 3 as critical habitat. As a result, she has excluded Unit 3 under section 4(b)(2) of the Act. See Exclusions below for further discussion of this exclusion.

(7) *Comment:* Three commenters noted that, contrary to our description, the shrew is included as a covered species under the conservation easement establishing the Coles Levee Ecosystem Preserve, which overlaps most of Unit 4. One commenter added that the easement specifically benefits the shrew by establishing a year-round water supply to the artificial pond near which shrews were first found on the unit.

Our Response: Although the easement agreement does not specifically use the term "covered species" to apply to the shrew, the shrew is listed in the easement agreement as a "species of concern" (ARCO and CDFG 1992a, p. 9, Exhibit G p. 5). This qualifies it for certain additional protections beyond those applicable under the agreement to native species generally (ARCO and CDFG 1992a, pp. 7–9). However, these additional measures primarily cover actions that must be taken in association with groundbreaking activities, and do not add protections beyond those typically required for an incidental take permit under the Act.

None of the provisions of the conservation easement, or its associated documents such as the management permit, require or mention a year-round water supply for the artificial pond near which shrews were first found on the unit.

(8) *Comment:* Two commenters asked us to exclude Unit 4 based on: (1) a habitat conservation plan (Elk Hills HCP), which they indicated is being prepared for the nearby Elk Hills Oil Fields; and (2) the location of the unit within the confines of the Coles Levee Ecosystem Preserve.

Our Response: The Elk Hills HCP has been in preparation since approximately 2005, and is likely to require several more years for completion. Although the Buena Vista Lake shrew is likely to be a covered species, the Elk Hills HCP is intended primarily to minimize and mitigate impacts to upland species from oil and gas production in the Elk Hills Oil Fields (Live Oak Associates (LOA), 2006, pp. 1–3, 5). The Elk Hills Oil Fields area is a 75 square-mile (sq-mi) (194 square-kilometer (sq-km)) area west of Unit 4. The Elk Hills HCP will encompass the Elk Hills Oil Fields, as

well as selected rights-of-way and conservation lands within a buffer area surrounding the oil fields (LOA 2006, pp. 5, 8, 9). Although Unit 4 lies within the buffer area, not all lands within that area will be covered by the Elk Hills HCP. The best information currently available to us does not indicate whether Unit 4 will be among those areas afforded protection or not. Because the Elk Hills HCP is still unfinished with no expected date of completion and because it is unclear at this time whether the Elk Hills HCP will apply to the Coles Levee Unit, we do not consider the Elk Hills HCP to add to the benefits of excluding the unit from critical habitat designation. Accordingly, we are not recommending and the Secretary is not considering that the areas identified as critical habitat within the proposed Elk Hills HCP be excluded under section 4(b)(2) of the Act.

The 6,059-ac (2,452-ha) Coles Levee Ecosystem Preserve was established in 1992 (Aera Energy 2011, p. 1), and is covered by a conservation easement held by the California Department of Fish and Wildlife (CDFW) (formerly the California Department of Fish and Game (CDFG)). Approximately 143 ac (58 ha) of the 270 ac (109 ha) in Unit 4 are within the Preserve. We interpret the comment to apply only to those areas of overlap. The purpose of the easement is to preserve the property in a natural condition, subject to oil and gas operations of the property owner (ARCO and CDFG 1992a, pp. 1, 2; ARCO and CDFG 1992b, p. 1). The easement includes terms under which habitat disrupted or destroyed by oil and gas operations can be mitigated by designation of lands within the property as compensation lands, (ARCO and CDFG 1992a, pp. 3, 4). All lands not otherwise being used for oil and gas operations are subject to various wildlife protection provisions, some of which likely benefit the shrew. Such provisions include: (1) Restrictions on use of the property to wildlife conservation, and to oil and gas exploration and production; (2) various operation restrictions designed to minimize impacts to wildlife; (3) reclamation provisions for areas no longer needed for oil or gas extraction; and (4) phasing out of then-existing agricultural leases (ARCO and CDFG 1992a, pp. 2, 4–6, 10).

A management permit attached to the easement also requires biological monitoring for implementation of the wildlife mitigation measures, and an annual management meeting between CDFW and the landowner (ARCO and CDFG 1992a, Exhibit D, pp. 5, 6). These

provisions are still being carried out by Aera Energy, which obtained ownership of the property from ARCO in 1998 (Occidental of Elk Hills 2009, p. 3; Vance 2013, p. 1). However, Aera Energy does not have an active management permit for the area (Vance 2013, p. 1), so the requirements established by the management permit written for ARCO (Exhibit D) are presumably not enforceable against Aera.

In considering whether to exclude a particular area from designation, such as those portions of Unit 4 that are within the Coles Levee Ecosystem Preserve, we compare the benefits for the listed species of including the area, to the benefits for the listed species of excluding the area (see Exclusions, below). In this case, the shrew would be unlikely to benefit from exclusion. The conservation easement establishing the Coles Levee Ecosystem Preserve was not designed to protect or enhance riparian and wetland habitat. No partnerships exist between ourselves and other entities to advance shrew conservation in the area, so designation does not have the potential to disrupt such partnerships; and the Preserve will continue to operate in the same manner whether we exclude it from designation or not.

We have expressed concern in the past regarding the potential impacts of designation on CDFW's ability to manage for the shrew (70 FR 3457). CDFW is not currently managing for the shrew in the area, with the exception of avoidance measures established by the easement agreement related to groundbreaking activities (as discussed in our response to the previous comment) (Vance 2013, p. 1). Additionally, we expect incremental costs resulting from critical habitat designation in Unit 4 (in the form of additional time spent for Section 7 consultation) to be low, and to be borne primarily by ourselves, any other involved Federal agency, and the project proponent rather than by CDFW (IEC 2013, pp. 4–4, 4–5, 4–9, 4–10). We therefore expect any additional regulatory burden of critical habitat on CDFW to be minimal. In contrast, designation of the area may benefit the shrew by publicizing the shrew's presence and habitat requirements at the site, thereby allowing present and future landowners to better take those requirements into account in their land-use planning. Accordingly, we are not recommending and the Secretary is not considering that the areas identified as critical habitat within the Coles Levee Unit be excluded under section 4(b)(2) of the Act.

(9) *Comment:* Several commenters stated that certain proposed units should not be included in the final critical habitat designation because they are already subject to adequate management or protection, and therefore fail to meet the Act's definition of critical habitat as areas that "may require special management considerations or protection" (15 U.S.C. 1532(5)(A)(i)). Another commenter asked us to include all proposed areas, regardless of adequate management. The commenter noted that two courts, including the 9th Circuit, have indicated that adequate management is not a valid reason to avoid designation.

Our Response: We no longer consider adequate management or protections to be a sufficient basis for not designating an area as critical habitat. However, if an area has adequate management or protections, and if designation of critical habitat in the area may compromise the conservation of the species in some manner, then the Secretary may determine that the benefits of excluding the area from designation outweigh the benefits of inclusion (see Exclusions Based on Other Relevant Impacts, below).

(10) *Comment:* Several commenters asked us to exclude portions of Units 2 through 5 based on expected economic impacts, and on perceived impacts to public health and safety. The commenters were concerned that health and safety impacts would result from potential disruptions to water conveyance through the units, and to operation and maintenance of existing facilities such as natural gas pipelines. Other commenters asked us to designate all proposed critical habitat, and to make no exclusions.

Our Response: We are required by section 4(b)(2) of the Act to take into account the economic and other relevant impacts of critical habitat designation. The Secretary may account for those impacts by excluding any area for which the benefits of exclusion outweigh the benefits of designation, so long as this will not result in extinction of the species. Areas that do not contain any physical or biological features for the species, but that are within critical habitat units, do not constitute critical habitat and need not be excluded.

Critical habitat only directly affects Federal agencies. It does not affect the normal operation, maintenance, repair, or replacement of existing non-Federal facilities unless activities involve Federal agencies (permitting, funding). The delivery of water through existing canals, or of natural gas through existing pipes, on private or state land constitutes the normal operation of

those structures, and would not trigger section 7 consultation regardless of whether those structures were located within critical habitat. Additionally, some facilities for which exclusions were requested lack all the physical or biological features identified for the shrew, and so do not constitute critical habitat despite being located within the boundaries of a unit (see comment 11, below). These areas were included within the boundaries of the units because of the difficulty of removing these areas due to mapping constraints. Accordingly, with the exception of Unit 3 (see Exclusions below) the Secretary is not exercising her discretion to exclude any areas based on economic or other impacts.

(11) *Comment:* Various commenters asked us to redraw portions of Units 2 through 5 to avoid areas without any physical or biological features or their specific PCEs, such as vegetation-free canals, roads, and pipeline right-of-ways. Additionally, one commenter provided survey information to indicate that several basin areas in Unit 3 are without PCEs for the shrew. Another commenter stated that, based on his first-hand knowledge of the area, most of Unit 2 lacks an overstory of willows and cottonwoods, and that therefore the area does not qualify as critical habitat due to lack of a PCE.

Our Response: Based on the information provided, we reevaluated the proposed critical habitat boundaries in Units 2 through 5. As a result, we redrew the maps for Units 2 and 5 to remove two large, primarily concrete-lined canals that do not contain the physical or biological features required by the shrew, or any specific PCEs. In most cases, however, the redrawing of critical habitat units to avoid individual requested areas would require the use of impracticably fine mapping scales. Accordingly, we have removed such areas lacking the physical or biological features from the designation textually, by including the following paragraph in the regulatory description of Buena Vista Lake shrew critical habitat under the Regulation Promulgation section below: "Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located" as of the effective date of the designation.

An overstory of willows and cottonwoods is not a PCE for the Buena Vista Lake shrew. Rather, it is an example of plants that may be present in areas exhibiting the first PCE: riparian or wetland communities containing a complex vegetative structure, with a thick cover of leaf litter

or dense mats of low-lying vegetation. Additionally, a given area need only support one of the three PCEs in order to be eligible for designation as critical habitat. As discussed under *Unit 2: Goose Lake Unit*, below, Unit 2 provides suitable moisture for the shrew (PCE 2), as indicated by its scattered freshwater marsh and riparian areas (some of which have been recently restored), and by the intermittent use of the area as a groundwater recharge basin. It also supports a complex vegetative structure (PCE 1) in many areas, including *Frankenia* spp. (*frankeniania*), *Allenrolfea occidentalis* (*iodine bush*), and *Suaeda* spp. (*seepweed*) along the slough channels; *Typha* spp. (*cattails*), *Scirpus* spp. (*bulrushes*), and *Distichlis* spp. (*saltgrass*) in intermittently saturated areas; and dense mats of saltgrass and other shrubs in the southern portion of the unit. As is true of all the units, we lack direct evidence of a consistent and diverse supply of prey for the shrew in the unit (PCE 3), but reasonably infer such a supply based on the existence in the unit of habitat that would support it. Such habitat is demonstrated by the presence of the other two PCEs.

Because we are excluding Unit 3 in its entirety under section 4(b)(2) (see Exclusions, below), we do not reach the question of whether the unit should be redrawn to reflect a lack of PCEs in certain basins.

(12) *Comment:* Several commenters asked us to redraw Unit 5 to avoid the New Rim Ditch, levee, and adjacent roadway. One commenter also disagreed with our statement in the proposed designation that the moisture regime in Unit 5 is maintained by runoff from the New Rim Ditch, and submitted a report from an engineer who inspected the site and concluded such runoff or seepage was unlikely because, based on the high water mark in the ditch, the water in the ditch remains lower than the surrounding land.

Our Response: The bounds of Unit 5, as drawn for the proposed rule and finalized here, do not include the New Rim Ditch and its associated levee and roadway. We have removed reference to runoff from the New Rim Ditch as a contributing factor to the moisture regime in the unit.

(13) *Comment:* Several commenters expressed concern that critical habitat designation would limit various land use practices including: mosquito abatement procedures; groundwater recharge practices around Bakersfield; water conveyance to surrounding farmland; oil and gas development; and flood management.

Our Response: Critical habitat designations do not affect ongoing land

use practices conducted without the involvement of a Federal agency. Consultation on critical habitat is only triggered when there is a Federal nexus (action carried out, funded, or authorized by a Federal agency). None of the activities listed above require Federal permits or other direct Federal action when carried out on non-Federal lands. Accordingly, we do not expect critical habitat designation to affect these activities.

(14) *Comment:* One commenter indicated that, based on recent trapping surveys, only 6.5 ac (2.6 ha) of habitat in Unit 2 was occupied by the shrew, and the shrew trapped at those locations may have been the adorned ornate shrew (*Sorex ornatus ornatus*).

Our Response: The report for the trapping survey in question states that it was not possible from the trapping effort to determine the abundance or distribution of shrews on the site, but that the distance between capture points suggested they may be widely distributed (Uptain *et al.* 2004, p. 8). We drew the bounds of Unit 2 to encompass those areas in the vicinity of the trapping locations that exhibit at least one of the three PCEs essential to the Buena Vista Lake shrew. We characterize shrews trapped in that area as Buena Vista Lake shrews because the area is within the mesic (moist) lower elevation range of the Buena Vista Lake shrew rather than the semi-arid higher elevation range of the adorned ornate shrew (77 FR 40709). Genetic tests conducted in 2006 on samples from the Goose Lake population are consistent with this characterization (Maldonado 2008, p. i; Service 2011, pp. 9, 10).

(15) *Comment:* One commenter expressed concern that no standardized survey methodology was employed for the identification of areas occupied by Buena Vista Lake shrews.

Our Response: We are required by section 4(b)(2) of the Act to designate critical habitat on the basis of the best scientific data available. The surveys and other information we used to determine occupied locations constitute those best data, despite the lack of a standardized survey methodology.

(16) *Comment:* Two commenters thought we should include additional habitat in the designation to provide for recovery. One of those commenters noted that the areas proposed do not meet the recovery recommendations of our recovery plan for Upland Species of the San Joaquin Valley, California ("Recovery Plan", Service 1998, p. 192).

Our Response: We note that, normally, it is not necessary for critical habitat to coincide with recovery plan recommendations in order to meet its

requirements under the Act. Recovery plans, when available, constitute part of the best scientific evidence that we must consider when designating critical habitat. However, recovery plans do not themselves identify areas with features essential to the conservation of a species. They can therefore inform, but may not determine, the critical habitat designation process.

In addition, the comment regarding the recovery plan was made in response to our 2009 proposed designation, which included approximately 4,649 ac (1,881 ha) in five units. The Recovery Plan recommended three or more disjunct occupied sites comprising a total of 4,940 ac (2,000 ha). Our revised proposed designation of July, 2012 (77 FR 40705) included two additional units, and also increased the acreage of one of the existing units (Unit 4). Accordingly, the revised proposal included approximately 5,182 ac (2,098 ha) in 7 units, and thus met the acreage recommendations of the Recovery Plan. We are completely excluding one of those units (Unit 3) from critical habitat designation (see Exclusions, below), but the site retains the physical and biological habitat features that the shrew requires, and will be managed for the shrew's conservation. We therefore consider the final critical habitat designation to comport well with the recovery plan recommendations.

(17) *Comment:* One commenter requested the legal descriptions of the units.

Our Response: The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <http://criticalhabitat.fws.gov/crithab/>, and at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0062, and at the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**, above).

(18) *Comment:* One commenter noted that the DEA was not available during the comment period immediately following publication of the 2012 revised proposed critical habitat designation (77 FR 40705). The commenter was concerned that: (1) We would proceed with critical habitat designation without completing the DEA; (2) commenters on the proposed rule would not have the benefit of information provided by the DEA; and (3) the opening of a separate comment period subsequent to completion of the DEA would improperly incrementalize the notice and comment process.

Our Response: We published a notice in the **Federal Register** making available our completed DEA on March 5, 2013 (78 FR 14245). The notice opened a 60-day comment period for comments on either the DEA or on the July 10, 2012, proposed designation (77 FR 40706). Commenters therefore have had the benefit of reviewing both the proposed designation and a completed DEA during an open comment period and were able to comment on the proposed rule, the revised proposed rule, the DEA, and all associated documents in a nonincrementalized fashion.

(19) *Comment:* Several commenters stated that the critical habitat designation provides no conservation benefit for the shrew, as indicated both by our statements to that effect in our 2004 proposed and 2005 final designations, and by the fact that the DEA estimates critical habitat to result in no additional conservation actions beyond those that would have been implemented due to the shrew's status as an endangered species.

Our Response: Our 2004 and 2005 documents indicated our opinion at the time that critical habitat provides "little" additional protection "in most circumstances." The statement thus does not indicate that critical habitat provides no additional protection to the shrew. Additionally, while the DEA does state that we are "unable to foresee a circumstance in which critical habitat would change the conservation efforts recommended for the shrew" (IEc 2013, p. ES-4), that does not account for benefits resulting from the educational and notification value of critical habitat. For instance, by identifying and publishing here the physical and biological habitat features required by the shrew, we inform landowners and Federal agencies of the shrew's habitat needs prior to the beginning of any subsequent consultations, thereby allowing them to plan for, and better incorporate, appropriate avoidance and minimization measures into their initial project descriptions.

(20) *Comment:* Several commenters noted that section 2(c)(2) of the Act requires us to "cooperate with State and local agencies to resolve water resource issues in concert with the conservation of endangered species." The commenters stated that critical habitat designation for the shrew would raise such issues, and that we must therefore cooperate with State and local agencies (to a greater extent than we have already) in order to resolve them.

Our Response: We do not expect this designation of critical habitat for the shrew to raise water resource issues. Water deliveries through existing canals

in designated units constitute non-Federal actions, and so do not require consultation for impacts to critical habitat. Construction of new canals within critical habitat would potentially affect the shrew directly, and so would trigger consultation regardless of critical habitat designation.

(21) *Comment:* One commenter stated that we did not vigorously defend our 2005 final critical habitat designation, and that in reaching a settlement agreement to repropose critical habitat we excluded many affected parties from the process.

Our Response: By reaching a settlement agreement on the designation of critical habitat, we have not excluded any affected parties from the overall process of critical habitat designation. In fact the opposite may be true as we have had four comment periods totaling 140 days and two public hearings on the 2009 proposed critical habitat and 2012 revision.

(22) *Comment:* One comment stated that the economic analysis should provide an analysis of the monetary benefits of critical habitat designation. The comment describes, that while Executive Order 12866 directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions, the Draft Economic Analysis (DEA) fails to evaluate the benefits and only calculates the costs. The comment further stated that methodologies exist to calculate both direct and ancillary benefits, such as maintaining open space, maintaining or revegetating riparian areas for protecting and improving water quality and quantity, preservation of native habitat and migration corridors for other species, and protection of clean air. Because these and other benefits of critical habitat designation were not quantified or detailed qualitatively, the comment asserted that the DEA is inadequate and the Secretary should not rely on it to exclude any areas from critical habitat.

Our Response: As described in Chapter 5 of the DEA, critical habitat designation is not expected to generate: (1) Additional conservation measures for the Buena Vista Lake shrew; (2) changes in economic activity; or (3) changes to land management. Absent any changes in the above, incremental economic benefits are not expected to result from the designation of critical habitat.

(23) *Comment:* One comment stated that the term "ancillary benefits" in the DEA appears to minimize the importance of all coincident benefits of critical habitat designation.

Our Response: The DEA defines "ancillary benefits" consistent with the Office of Management and Budget's (OMB's) Circular A-4, which provides Federal Agencies with guidelines for conducting economic analyses of regulations. Specifically section 2.3.3 of the DEA defines ancillary benefits as, "favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking." Chapter 5 of the DEA clarifies that the primary intended purpose of the critical habitat designation is to support the conservation of the Buena Vista Lake shrew. Thus, any other potential benefits would be considered ancillary benefits of the rulemaking.

(24) *Comment:* Two comments stated that the DEA does not analyze the cumulative effects of critical habitat designation. One commenter stated that there would be indirect and cumulative economic and social effects of lost local water resources. In addition, a comment stated that there will be cumulative effects on water management activities, farming, and other activities on neighboring properties of designating all four units collectively.

Our Response: Chapter 1 of the DEA describes that the geographic scope of the analysis includes all the units of proposed critical habitat, as described in the proposed rule. The analysis therefore considers the potential economic impact of designating all units as critical habitat for the species. Further, as discussed in Chapter 4 of the DEA, we are unable to foresee a circumstance in which critical habitat designation would change the conservation efforts recommended for the shrew. Consequently, the incremental impacts quantified in the DEA are limited to additional administrative costs of section 7 consultation. Critical habitat designation is not anticipated to affect water management, farming and other activities within or adjacent to the critical habitat area.

(25) *Comment:* One comment stated that the economic analysis should include all occupied and suitable unoccupied habitat and not rely on the draft critical habitat as described in the proposed rule. Another comment asserted that the economic analysis fails to include all critical habitat areas for the recovery of the species.

Our Response: The economic analysis evaluates potential impacts of critical habitat designation in the areas in which we have proposed critical habitat in the proposed rule. The proposed rule did not include any proposed, unoccupied habitat for the species;

accordingly, the economic analysis does not consider impacts of designating these areas as critical habitat. We have determined that the areas designated as critical habitat are sufficient to meet the standards of conserving the species and its habitat and other unoccupied areas were not needed for the species.

(26) *Comment:* One comment stated that the conclusion in the DEA that conservation efforts under the Draft Kern County Valley Floor Habitat Conservation Plan (HCP) are unlikely to change due to critical habitat designation is incorrect. The comment asserts that, when critical habitat is designated, we and California Department of Fish and Wildlife staff review designated lands under heightened scrutiny, resulting in greater survey, take avoidance, and mitigation requirements for any potential project. Similarly, the comment states, both agencies will view properties that are proximate to critical habitat lands as being subject to similar scrutiny and will be concerned about higher mitigation and avoidance requirements.

Our Response: As discussed in Section 4.2.6 of the DEA, we anticipate that the same conservation efforts for the shrew will be recommended for the Kern County Valley Floor HCP regardless of whether critical habitat is designated. Specifically, because locations occupied by the shrew are so rare, we expect to recommend protection of such locations for the HCP whether or not CH is designated. As such, critical habitat is not expected to change any survey, mitigation, or other conservation efforts that we recommend be incorporated into the HCP for the shrew.

(27) *Comment:* According to one comment provided on the DEA, critical habitat could adversely affect agricultural productivity and the ability of the affected agricultural and urban water districts to operate if water deliveries are restricted. The comment further stated that the entire City of Bakersfield Kern Fan Water Recharge Unit is proposed for designation and that designation would result in restricted groundwater recharge practices that would adversely affect the ability of the City to provide adequate public drinking water supplies. The commenter stated that the analysis should consider the economic impacts of restricting water supply operations and maintenance upstream of the proposed critical habitat.

Our Response: As described in Section 3.3 of the DEA, the City of Bakersfield owns all acres included in proposed Unit 3, which is located entirely within the Kern Fan Water

Recharge Area (KFWRA). The City operates the site for the purposes of flood control, wildlife conservation, limited access public uses, water conservation, and mineral production. In 2004, the City developed a Buena Vista Lake shrew management plan for the site and has managed the area according to this plan since 2005, including surveying for the species, limiting public access, terminating livestock grazing, zoning and managing the entire area as open space, and engaging in water-spreading activities. We do not expect review of this management plan following critical habitat to result in recommendations for changes in shrew conservation. As a result, no additional restrictions to groundwater recharge practices or water supply operations and maintenance are anticipated to result from the designation of critical habitat for the shrew.

(28) *Comment:* One comment expressed concern that the critical habitat designation may adversely affect the duties of the District to manage the Outlet Canal of the Coles Levee in Unit 4 for the purposes of water delivery and flood control. The comment noted that the current management regime of the Canal and Coles Levee Preserve already provide conservation benefits to the shrew and that the District is in the process of preparing a detailed management plan for the shrew. In addition, the comment stated that the current management of the artificial pond on the Coles Levee Preserve according to a conservation easement held by the California Department of Fish and Wildlife is designated to benefit the shrew.

Our Response: Section 3.4 of the DEA identifies Aera Energy, Inc. as the manager of 223 ac (90 ha) of proposed critical habitat in Unit 4. Consistent with this comment letter, the Environmental Health and Safety Advisor of Aera Energy, Inc. confirmed that the proposed critical habitat is located in a slough within which preserve managers implement conservation for several species, including the shrew. The DEA also describes that wells within the proposed Unit are managed under a conservation easement agreement that incorporates conservation practices that are similar to those that we recommended through section 7 consultation for other activities. This comment letter adds that management of the Outlet Canal also considers impacts on shrews. It is because activities in Unit 4 are already managed for the conservation of the species that no section 7 consultations have taken place in Unit 4 that consider

the shrew. In the case that a Federal nexus exists triggering section 7 consultation on activities in this area in the future, we may review these activities, including operations of the Outlet Canal or management of the artificial pond or energy developments. However, we do not anticipate that critical habitat designation will significantly change the outcome of any section 7 consultations. Although we will fully evaluate the effects of future Federal actions being consulted upon to ensure that the action does not result in adverse modification to designated critical habitat, we expect any recommendations we make to avoid jeopardy to the species will also in most instances avoid adverse modification to critical habitat.

(29) *Comment:* One comment noted that the DEA statement in section 3.4 that, "Unit 4 is located entirely within the Coles Levee Ecosystem Preserve," is incorrect. The commenter stated that therefore the economic analysis likely ignores economic impacts to other landowners and easement holders in Unit 4.

Our Response: The referenced sentence in Section 3.4 is corrected in the Final Economic Analysis (FEA) to reflect that Aera Energy manages a portion of Unit 4 as the Coles Levee Ecosystem Preserve. Activities occurring within Unit 4, however, are currently managed with shrew conservation in mind under various conservation easements and management plans, as described above. Further, we expect that any conservation recommendations we may make as part of consultation on activities in this area in the future would be made regardless of critical habitat designation. Consequently, the error highlighted in this comment does not affect the conclusions of the DEA.

(30) *Comment:* A comment stated that the DEA underestimates economic impacts of critical habitat designation, asserting that critical habitat designation restricts the free use of property, including water and water rights, and therefore imposes an opportunity cost on property owners.

Our Response: Chapter 2 of the DEA describes the regulatory requirements of critical habitat designation as follows: "When critical habitat is designated, section 7 requires Federal agencies to ensure that their actions will not result in the destruction or adverse modification of critical habitat (in addition to considering whether the actions are likely to jeopardize the continued existence of the species)." As such, critical habitat designation does not directly restrict or regulate private activities occurring on private lands

absent Federal funding or permitting. In the case of Buena Vista Lake shrew critical habitat, activities that may result in the destruction or adverse modification of critical habitat would likely also result in jeopardy to the species. Critical habitat is therefore not expected to result in additional recommendations for conservation for the species and does not further restrict, for example water rights, beyond effects generated by the listing of the species. The DEA acknowledges that, in some cases, critical habitat may generate indirect impacts on property owners, for example in the case that the designation triggers changes in State or local regulations or land management practices. The DEA did not, however, identify such changes as likely to result from critical habitat designation for the Buena Vista Lake shrew.

(31) *Comment:* A comment stated that the DEA fails to address the economic report prepared by Dr. Sunding and submitted as a comment to the previous (2004) proposed critical habitat and associated economic analysis. Dr. Sunding concluded that critical habitat for the Buena Vista Lake shrew could "have the potential to exceed \$21.8 million annually with a present value of over \$311 million."

Our Response: The analysis developed by Dr. Sunding is based on assumptions regarding restrictions on water access due to the designation of critical habitat. Specifically, the analysis considers a scenario in which the banked water from the Kern River and Friant-Kern Canal in Unit 3 are made unavailable to the Pioneer Project, Kern Water Bank, and Berrenda Mesa Project. The analysis then estimates the "replacement value" of this water at a rate of \$209 per acre-foot for a total of \$9.1 million per year (43,337 acre-foot banked annually). The analysis then evaluates "secondary impacts" resulting from timing of water supply and economic dislocation, assuming a revenue multiplier of 2.2 (essentially bringing the \$209 per acre-foot estimate to \$500 per acre-foot). The resulting present-value impacts are in excess of \$311 million (\$21.8 million annually).

As described above and detailed in Chapter 4 of the DEA, critical habitat designation is not anticipated to result in additional conservation for the shrew (i.e., we do not anticipate critical habitat to result in additional restrictions on water access). The assumption that the banked water from the Kern River and Friant-Kern Canal in Unit 3 would be inaccessible because of critical habitat designation is therefore not an expected impact of critical habitat designation. Consequently, the results of Dr.

Sunding's evaluation are not considered impacts of critical habitat designation in the DEA.

(33) *Comment:* According to one comment, proposed Unit 5 consists of two separate legal parcels separated by a north south canal that is capable of receiving water flows through the New Rim Ditch and conveying supplemental water to 940 ac (380 ha) of nearby land. In the case that the designation results in the canal becoming not usable, up to 6,400 ac (2,590 ha) of farm ground will be affected. The comment asserted that this could result in hundreds of thousands of dollars in reconstruction costs for an alternate delivery system in addition to the impact on the 6,400 ac (2,590 ha) of farmland.

Our Response: As described above and in Chapter 4 of the DEA, critical habitat designation for the shrew is not expected to result in additional restrictions on water use or access. As such, we do not anticipate the need to reconstruct alternate delivery systems because of critical habitat designation.

(34) *Comment:* One comment stated that the DEA fails to appreciate the loss inherent in the need for buffer zones around the critical habitat, which in essence become "unofficial" critical habitat requiring another buffer and so on.

Our Response: The DEA evaluates potential economic impacts on projects or activities that may result in the destruction or adverse modification of critical habitat. This includes projects or activities outside of the critical habitat area that may affect the primary constituent elements within the critical habitat area. The designation of critical habitat does not inherently result in the creation of buffer zones in areas adjacent to the designated critical habitat, and so would not properly be a subject of analysis in the Economic Analysis at either the draft or final stage.

(35) *Comment:* A comment submitted by Southern California Gas (SoCalGas) clarifies that the San Joaquin Valley (SJV) HCP, if finalized, will incorporate conservation for the Buena Vista Lake shrew as the species is known to occur in this area. The comment notes that page 3–13 of the DEA describes our uncertainty with respect to the nature of Buena Vista Lake shrew conservation measures that SoCalGas plans to incorporate into the HCP. SoCalGas commented that it intends to perform preactivity surveys in suitable Buena Vista Lake shrew habitat, establish exclusion zones around suitable habitat, and provide biological monitors during construction, as well as restore or compensate for disturbed habitat.

Our Response: The FEA incorporates the clarifications from SoCalGas with respect to the SJV HCP.

(36) *Comment:* One comment stated that the DEA does not recognize costs to ourselves resulting from the cycle of critical habitat rulemaking and litigation that we identified in the 2005 final rule as taking up a significant portion of the our budget.

Our Response: The purpose of the economic analysis is to identify the incremental impacts associated with the designation of critical habitat. Although the costs of revising or re-doing critical habitat based on litigation is of concern and can require significant time and resources, we cannot predict when these costs may occur or to what degree in the future. Additionally, identifying and including these types of costs are outside the scope of our requirements for determining the economic impacts for a specific critical habitat designation.

Summary of Changes From the Proposed Rule

In preparing our final designation of critical habitat for the Buena Vista Lake shrew, we reviewed comments received regarding the 2009 proposed designation, the 2012 revised proposed designation, the initial DEA of 2011, and the revised DEA of 2013. We revised the map unit labels in our 2013 document noticing the availability of the revised DEA, and we keep those revised labels in this final designation. Additionally, this final designation reflects minor clarifications in the text of the 2012 revised proposal, as well as the following more substantive changes:

(1) Under section 4(b)(2) of the Act, the Secretary is excluding proposed Unit 3 (the Kern Fan Recharge Unit). For more information, refer to Exclusions Based on Other Relevant Impacts, below.

(2) We have refined our mapping boundaries by removing large canals lacking PCEs from Units 2 and 5 (Goose Lake and Coles Levee Units).

(3) We evaluated any suggested changes and clarifications we received from the public during our public comment periods and incorporated those changes into this final designation as appropriate.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are

found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with ourselves, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or

biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the *Federal Register* on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat,

our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or

protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Buena Vista Lake shrew from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the revised proposed rule to designate critical habitat published in the *Federal Register* on July 10, 2012 (77 FR 40706), and in the information presented below. Additional information can be found in the final listing rule published in the *Federal Register* on March 6, 2002 (67 FR 10101); in the 2011 5-Year Review and in the Recovery Plan for Upland Species of the San Joaquin Valley, California (<http://ecos.fws.gov>). We have determined that the Buena Vista Lake shrew requires the following physical or biological features:

Space for Individual and Population Growth and Normal Behavior

Historically, the Buena Vista Lake shrew was recorded in association with perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats in the southern San Joaquin Valley of California. The shrew presumably occurred in the moist habitat surrounding wetland margins in the Kern, Buena Vista, Goose, and Tulare Lakes on the valley floor below elevations of 350 feet (ft) (107 meters (m)) (Grinnell 1932, p. 389; Hall 1981, p. 38; Williams and Kilburn 1984, p. 953; Williams 1986, p. 13; Service 1998, p. 163). With the draining and conversion of the majority of the Buena Vista Lake shrew's natural habitat from wetland to agriculture, and the channelization of riparian corridors for water conveyance structures, the vegetative communities associated with the Buena Vista Lake shrew were lost or degraded, and nonnative plant species replaced those associated with the shrew (Grinnell 1932, p. 389; Mercer and Morgan, 1991 p. 9; Griggs 1992, p. 11; Service 1998, p. 163). Open water does not appear to be necessary for the survival of the shrew. The habitat where

the shrew has been found contains areas with both open water and mesic environments (Maldonado 1992, p. 3; Williams and Harpster, 2001 p. 12). However, the availability of water contributes to improved vegetation structure and diversity, which improves cover availability. The presence of water also attracts potential prey species, improving prey diversity and availability.

Current survey information has identified eight areas where the Buena Vista Lake shrew has been found in recent years (Maldonado 2006, p. 16; Williams and Harpster 2001, p. 1; ESRP 2005, p. 11): the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan water recharge area, the Coles Levee Ecological Preserve (Coles Levee), the Kern National Wildlife Refuge (Kern NWR), the Goose Lake slough bottoms (Goose Lake), the Atwell Island land retirement demonstration site (Atwell Island), the Lemoore Wetland Reserve, and the Semitropic Ecological Reserve (also known as Main Drain or Chicca and Sons). Based on most areas in which Buena Vista Lake shrews have been found, the shrew appears to strongly prefer marshy areas or areas with moist riparian habitat.

The single occupied site lacking these characteristics is Atwell Island, which has no standing water or riparian vegetation, and which is surrounded by intensively farmed cropland. As discussed in our proposed critical habitat designation (77 FR 40706), we speculate that shrews may persist at Atwell Island by inhabiting rodent burrows and deep cracks in the soil, both of which may provide additional moisture, invertebrate prey, and cover for the shrews. However, we currently lack sufficient information to determine the long-term suitability of this habitat type for Buena Vista Lake shrews, and do not currently believe that this type of habitat is essential to the conservation of the species and so have not designated the Atwell Island site as critical habitat.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

The specific feeding and foraging habits of the Buena Vista Lake shrew are not well known. In general, shrews primarily feed on insects and other animals, mostly invertebrates (Harris 1990, p. 2; Maldonado 1992, p. 6). Food probably is not cached and stored, so the shrew must forage periodically day and night to maintain its high metabolic rate (Burt and Grossenheider 1964, p. 3).

Vegetation in the marshy and moist riparian communities described above provide a diversity of structural layers and plant species and likely contribute to the availability of prey for shrews. Therefore, conservation of the shrew should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Shrew habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nesting sites. The shrew feeds indiscriminately on available larvae and adults of several species of aquatic and terrestrial insects. An abundance of invertebrates is associated with moist habitats, such as wetland edges, riparian habitat, or edges of lakes, ponds, or drainages that possess a dense vegetative cover (Owen and Hoffmann 1983, p. 3). Therefore, based on the information above, we identify a consistent and diverse supply of invertebrate prey to be an essential component of the biological features essential for the conservation of the Buena Vista Lake shrew.

Cover or Shelter

The vegetative communities associated in general with Buena Vista Lake shrew occupancy are characterized by the presence of (but are not limited to): *Populus fremontii* (Fremont cottonwood), *Salix spp.* (willows), *Salicornia spp.* (glasswort), *Elymus spp.* (wild-rye grass), *Juncus spp.* (rush grass), and other emergent vegetation (Service 1998, p. 163). These communities are present at all sites but Atwell Island. In addition, Maldonado (1992, p. 6) found shrews in areas of moist ground that was covered with leaf litter and near other low-lying vegetation, branches, tree roots, and fallen logs; or in areas with cool, moist soil beneath dense mats of vegetation that were kept moist by proximity to the water line. He described specific habitat features that would provide suitable habitat for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus or debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001, p. 12) determined that, although moist soil in areas with an overstory of willows or cottonwoods appeared to be favored, they doubted that such overstory was essential.

The communities in which Buena Vista Lake shrews have primarily been found are characterized by dense mats

of leaf litter or herbaceous vegetation. The insect prey of the shrew also thrives in the dense matted vegetation. Although shrews have also been found at Atwell Island, in an area largely devoid of vegetation but characterized by deep cracks in the soils, little is currently known of the shrew or habitat needs at this site.

The Buena Vista Lake shrew is preyed upon by small mammalian predators as well as by avian predators (Maldonado 1992, p. 7). Dense vegetative structure provides the cover or shelter essential for evading predators. It also serves as habitat for breeding and reproduction, and allows for the protection and rearing of offspring and the growth of adult shrews. Therefore, based on the information above, we identify riparian and wetland communities, and areas with suitable soil moisture that support a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation to be the essential components of the physical and biological features essential to the conservation of the species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Little is known about the reproductive needs of the Buena Vista Lake shrew. The breeding season begins in February or March and ends in May or June, but can be extended depending on habitat quality and available moisture (Paul Collins 2000, p. 12). The edges of wetland or marshy habitat provide the shrew with a sheltered and hospitable environment, and provide a prey base that enables the shrew to give birth and raise its young. The dense vegetative understory also provides young with cover from predators. Dense vegetation also allows for the soil moisture necessary for a consistent supply of terrestrial and aquatic insect prey (Freese 1990, p. 8; Kirkland 1991, p. 15; Maldonado 1992, p. 3; Maldonado *et al.* 1998, p. 1; Ma and Talmage 2001, p. 123).

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Preserving what little habitat remains for the Buena Vista Lake shrew is crucial to the survival of the species. Many factors negatively impact and restrict the shrew and its habitat, including selenium toxicity, habitat fragmentation, urban development, and the effects of climate change. The combined effects of climate change and habitat fragmentation have put immense pressure on species in highly altered or developed areas like the San Joaquin

Valley (Hannah *et al.* 2005, p. 4). Development, draining of wetlands, or the conversion of areas to agriculture has restricted the species to small islands of habitat with little to no connectivity or opportunity for expansion of its range. Climate change is a particular challenge for a variety of species because the interaction between additional stressors associated with climate change and current stressors could push species beyond their ability to survive (Lovejoy 2005, pp. 325–326), including the Buena Vista Lake shrew.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). The term “climate” refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (such as, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions. (For these and other examples, see IPCC 2007a, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is “very likely” (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75

percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529) (also see IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation; and IPCC 2011 (entire) for a summary of observations and projections of extreme climate events).

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and

appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Current climate change projections for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; IPCC 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015; Golladay *et al.* 2004, p. 504). Climate projections for smaller subregions such as California remain uncertain. However, modeling of hydrological responses to potential climate change in the San Joaquin watershed suggests that the hydrological system is very sensitive to climatic variations on a monthly and annual basis, with changes in crop phenology and water use suggested (Ficklin *et al.* 2009, pp. 25–27).

Use of downscaled climate modeling for the Sacramento-San Joaquin River Basin shows projected warming, with substantial decadal and interannual variability and altered streamflow seasonality in the southern San Joaquin Valley, suggesting that water infrastructure modifications would be needed to address changing conditions (VanRheenen *et al.* 2004, pp. 1, 265–279). Due to the Buena Vista Lake shrew’s reliance on dense riparian vegetation and adequate moisture in wetland areas, either increased drying of its home range or changes in water delivery practices that reduce water runoff could negatively affect the shrew, while increases in runoff could benefit the shrew. Regardless of the uncertainty of the specific effects of climate change on the Buena Vista Lake shrew, the current information does point to the general negative effects of areas being dryer and more unpredictable as far as precipitation and water availability. As a result, the effects of climate change overall will most likely be negative for the shrew and its habitat.

Primary Constituent Elements for the Buena Vista Lake Shrew

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the shrew in areas occupied at the time of listing, focusing on the features’ primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species’ life-

history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the shrew are:

- Permanent and intermittent riparian or wetland communities that contain:
 - A complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation. Associated plant species can include, but are not limited to, Fremont cottonwoods, willows, glasswort, wild-rye grass, and rush grass. Although moist soil in areas with an overstory of willows or cottonwoods appears to be favored, such overstory may not be essential.
 - Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and
 - A consistent and diverse supply of prey. Although the specific prey species used by the Buena Vista Lake shrew have not been identified, ornate shrews are known to eat a variety of terrestrial and aquatic invertebrates, including amphipods, slugs, and insects.

Special Management Considerations or Protections

When designating critical habitat, we assess whether specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1536(3)(5)(A)(i)).

All designated critical habitat units will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the Buena Vista Lake shrew. Special management considerations or protection may be required to minimize habitat destruction, degradation, or fragmentation associated with such threats as the following: Changes in the water supply allocations, water diversions, flooding, oil and gas extraction, nonnative vegetation, and agriculture. For example, the Coles Levee area is within the boundaries of a proposed oil and gas exploration proposal. Agricultural pressures to convert land to agriculture remain in the southern San Joaquin Valley, with agricultural conversion to orchards noted to have occurred recently in the general area.

The designated units are located in areas characterized by large-scale

agricultural production, and consequently, the units may be exposed to a number of pesticides, which could detrimentally impact the species. The Buena Vista Lake shrew currently exists on small remnant patches of natural habitat in and around the margins of a landscape that is otherwise dominated by agriculture. The Buena Vista Lake shrew could be indirectly exposed to pesticides from drift during spraying of crops where pesticide application measures to prevent drift are not followed, or potentially directly exposed during herbicide treatment of canal zones and ditch banks, wetland or riparian edges, or roadsides where shrews might exist. Reduced reproduction in Buena Vista Lake shrews could be directly caused by pesticides ingested through grooming, and secondarily from feeding on contaminated insects (Sheffield and Lochmiller 2001, p. 284). A variety of toxicants, including pesticides and heavy metals, have been shown to negatively affect insectivores, including shrews, that have a high basal metabolism and tight energy balance. Treatment-related decreases in invertebrate prey availability may be especially significant to such insectivore populations (Ma and Talmage 2001, pp. 133–152).

The Buena Vista Lake shrew also faces high risks from random catastrophic events (such as floods or drought) (Service 1998, p. 163). The low numbers of Buena Vista Lake shrews located in small isolated areas increases the risk of a random catastrophic event eliminating entire populations or severely diminishing Buena Vista Lake shrew numbers to the point that recovery is precluded. These threats and others mentioned above could render the habitat less suitable for the Buena Vista Lake shrew by washing away leaf litter and complex vegetation structure (floods) or drying wetland habitat so that vegetative and prey communities die (drought), and special management may be needed to address these threats.

In summary, the critical habitat units identified in this designation may require special management considerations or protection to provide a functioning hydrological regime to maintain the requisite riparian and wetland habitat, which is essential in providing the space and cover necessary to sustain the entire life-cycle needs of the shrew, as well as its invertebrate prey. Changes in water supply could result in the alteration of the moisture regime, which could lead to reduced water quality or hydroperiod, loss of suitable invertebrate supply for feeding, and loss of complex vegetative structure

for cover. The units may also require special management considerations due to ongoing pressures for agricultural conversion and oil and gas exploration, and pesticide use, and vulnerabilities associated with low population size and population fragmentation.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. We designated units based on their possession of sufficient elements of physical or biological features being present to support the shrew's life processes.

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those occupied at the time of listing—would be necessary to ensure the conservation of the species. At the time of listing, we were aware of four locations (Kern Lake, Kern National Wildlife Refuge, Coles Levee, and the Kern Fan Water Recharge Area) where the Buena Vista Lake shrew was extant, but we also noted that additional remnant patches of wetland and riparian habitat within the Tulare Basin had not been surveyed and might support the shrew (67 FR 10101, 10103). We considered the geographical area occupied by the species to include all areas of remnant wetland and riparian habitat within the Tulare Basin. Shrews were also known from Atwell Island, Tulare County (Williams and Harpster 2001, pp. 13, 14), but had not been identified as Buena Vista Lake shrews at that time. In January 2003, a fifth site, Goose Lake, was surveyed and Buena Vista Lake shrews were also identified at this location (ESRP 2004, p. 8). The Goose Lake Unit was included in the original proposal to designate critical habitat (69 FR 69578). The Lemoore and Semitropic sites were first surveyed for the Buena Vista Lake shrew in April 2005, and Buena Vista Lake shrews were captured at these sites (ESRP 2005, p. 11, 12).

We are only designating areas within the geographical area occupied by the species at the time of listing in 2002. We include as occupied those areas that meet the following two conditions: (1) They contain the physical or biological features that are essential to the conservation of the species, and (2) they were identified as occupied in the original listing documents or later confirmed to be occupied after 2002.

We consider critical habitat units in which shrews were first found after 2002 (units 2, 6 and 7) to have been occupied at time of listing, because the likelihood of dispersal to such areas after listing is very low, and because no surveys had been conducted in those areas prior to listing. Shrews, in general, have small home ranges in which they spend most of their lives, and generally exhibit a high degree of site-attachment. Males and juveniles of some species have been documented to disperse during the breeding season, with movement within a season varying between species from under 10 feet (a few meters) to, in one case, documented movement of 0.5 mi (800 meters) within a year (Churchfield 1990, pp. 55, 56). Because shrews generally only live a single year, half a mile would be the most we would reasonably expect a group of shrews (or a pregnant female) to disperse. No critical habitat unit is in such close proximity to other units or occupied areas. Accordingly, any shrew populations found in a given unit after listing can be assumed to have been present in those areas prior to listing, barring evidence to the contrary such as prelisting surveys. All proposed units retain wetland or riparian features and are within the Tulare Basin, the described historical range of the Buena Vista Lake shrew.

We identified the designated lands based on the presence of the primary constituent elements described above, coupled with occupancy by the shrew (as established by sighting of shrews at the location). These criteria yielded seven units, which we proposed for designation on July 10, 2012 (77 FR 40706). As discussed above, the only occupied site not proposed for designation was Atwell Island, because of its lack of the physical or biological features determined to be essential to the conservation of the species. Because we consider all designated units to have been occupied at the time of listing, we consider them to meet all the first prong of the Act's definition of critical habitat (16 U.S.C. (3)(5)(A)(i), see Background section above).

We also consider all such designated areas to be essential for the conservation of the shrew. Within the historical range of the shrew, these seven units represent the only known remaining areas that contain both extant shrew populations and the PCEs on which the conservation of those populations depends. Additionally, by protecting a variety of habitats and conditions that contain the PCEs, we will increase the ability of the shrew to survive stochastic environmental events (fire, drought, or flood), or demographic (low

recruitment), or genetic (inbreeding) problems. Suitable habitat within the historical range is limited, although conservation of substantial areas of remaining habitat in the Semitropic area is expected to benefit the shrew. Remaining habitats are vulnerable to both anthropogenic and natural threats. Also, these areas provide habitats essential for the maintenance and growth of self-sustaining populations of shrews throughout their range. Because all the units are essential to the conservation of the shrew, any units that may subsequently be determined to have been unoccupied at time of listing (based on new information, for instance), will continue to function as critical habitat under the second prong of the Act's critical habitat definition (16 U.S.C. (3)(5)(A)(ii)).

Methodology Overview

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial data available to determine the specific areas within the geographical area occupied by the species at the time of listing, on which are found those physical and biological features that are essential to the conservation of the shrew and which may require special management. This included data and information contained in, but not limited to, the proposed and final rules listing the shrew (65 FR 35033, June 1, 2000; 67 FR 10101, March 6, 2002); the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998); the original proposed critical habitat designation (69 FR 51417, August 19, 2004); the 5-year status review for the shrew (Buena Vista Lake Ornate Shrew 5-Year Review: Summary and Evaluation, Service 2011); research and survey observations published in peer-reviewed articles (Grinnell 1932, 1933; Hall 1981; Owen and Hoffman 1983; Williams and Kilburn 1984; Williams 1986; Maldonado *et al.* 2001; and Maldonado *et al.* 2004); habitat and wetland mapping and other data collected and reports submitted by biologists holding section 10(a)(1)(A) recovery permits; biological assessments provided to us through section 7 consultations; reports and documents that are on file in our field office (Center for Conservation Biology 1990; Maldonado *et al.* 1998; ESRP 1999; ESRP 2004; ESRP 2005; and Maldonado 2006); personal discussions with experts inside and outside of our agency with extensive knowledge of the shrew and habitat in the area; and information received during all previous comment periods.

The five critical habitat units that we originally proposed were delineated by creating roughly defined areas for each unit by screen-digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc. (ESRI)), a computer Geographic Information System (GIS) program. The polygons were created by overlaying current and historical species location points (California Natural Diversity Database (CNDDB) 2004), and mapped wetland habitats (California Department of Water Resources 1998) or other wetland location information, onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) and Digital Ortho-rectified Quarter Quadrangles (DOQQs) (USGS 1993–1998) for areas containing the Buena Vista Lake shrew. We utilized GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where essential habitat for the shrew occurs, we evaluated the GIS habitat mapping and species occurrence information from the CNDDB (2004). We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files, including section 10(a)(1)(A) reports and biological assessments, on site visits, and on visual habitat evaluation in areas known to have shrews, and in areas within the historical ranges that had potential to contain shrew habitat.

For the five units, the polygons of identified habitat were further evaluated. Several factors were used to more precisely delineate the proposed critical habitat units from within these roughly defined areas. We reviewed any information in the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), other peer-reviewed literature or expert opinion for the shrew to determine if the designated areas would meet the species' needs for conservation and whether these areas contained the appropriate primary constituent elements. We refined boundaries using satellite imagery, soil type coverages, vegetation land cover data, and agricultural or urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, development, and other areas that are unlikely to contribute to the conservation of the shrew.

For the revision of the Coles Levee Unit, and the addition of the Lemoore

and Semitropic Units, we used shrew occurrence data collected by ESRP (Maldonado 2006, pp. 24–27; Phillips 2011), projected data within ArcView (ESRI), and delineated unit polygons. The polygons were created by overlaying species location points (Phillips 2011) onto NAIP imagery (aerial photography) (National Agriculture Imagery Program 2012) to identify wetland and vegetation features, such as vegetated canals, canals with cleared vegetation, vegetated sloughs, agricultural fields, and general changes in vegetation and land type. We also projected the original proposed units onto NAIP imagery and again used additional GIS data derived from a variety of Federal, State, and local agencies.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the shrew. The scale of the maps we

prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on [http://](http://www.regulations.gov)

www.regulations.gov at Docket No. FWS–R8–ES–2009–0062, on our Internet sites <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=A0DV>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We are designating six units as critical habitat for the Buena Vista Lake shrew. The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Those six units are: (1) Kern National Wildlife Refuge Unit, (2) Goose Lake Unit, (4) Coles Levee Unit, (5) Kern Lake Unit, (6) Semitropic Ecological Reserve Unit, and (7) Lemoore Wetland Reserve Unit. Note that proposed Unit 3 (the Kern Fan Water Recharge Unit) has been excluded from final designation due to the existing habitat conservation plan (see Exclusions, below). All units are occupied by the subspecies.

TABLE 1—CRITICAL HABITAT UNITS FOR THE BUENA VISTA LAKE SHREW
[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Size of area in acres (Hectares)				
	Total	Federal	State	Local	Private
1. Kern National Wildlife Refuge Unit					
Subunit 1A	274 (111)	274 (111)			
Subunit 1B	66 (27)	66 (27)			
Subunit 1C	47 (19)	47 (19)			
2. Goose Lake Unit					
Subunit 2A	159 (64)				159 (64)
Subunit 2B	1,115 (451)				1,115 (451)
Coles Levee Unit	270 (109)		46 (19)	6 (2)	217 (88)
5. Kern Lake Unit					
Subunit 5A	34 (14)				34 (14)
Subunit 5B	51 (21)				51 (21)
6. Semitropic Ecological Reserve Unit	372 (151)		3456 (140)		27 (11)
7. Lemoore Wetland Reserve Unit	97 (39)				97 (39)
Total	2,485 (1,006)	387 (157)	391 (159)	6 (2)	1,700 (688)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Buena Vista Lake shrew, below.

Unit 1: Kern National Wildlife Refuge Unit

Unit 1 consists of a total of approximately 387 ac (157 ha). The Kern NWR Unit is completely comprised of Federal lands, and is located within the Kern NWR in northwestern Kern County. The Kern NWR Critical Habitat Unit consists of three subunits: Subunit 1A is approximately 274 ac (111 ha); subunit

1B is 66 ac (27 ha); and subunit 1C is 47 ac (19 ha). The unit was occupied at the time of listing, is currently occupied, and contains the physical and biological features that are essential to the conservation of the shrew. Shrew habitat in Unit 1 receives water from the California Aqueduct. One of the areas where Buena Vista Lake shrews are present has standing water from September 1 through approximately April 15. After that time, the trees in the area may receive irrigation water so the area may possibly remain damp through May, but the area is dry for approximately 3 months during the

summer. Another area of known Buena Vista Lake shrew occurrences has standing water from the second week of August through the winter and into early July, and is only dry for a short time during the summer. Buena Vista Lake shrew have been captured in remnant riparian and slough habitat at the Refuge (Service 2005, pp. 48, 49).

Like all the critical habitat units we are designating here (see *Criteria Used to Designate Critical Habitat*, above), this unit is essential to the conservation of the shrew because it is occupied, and because the subunits include riparian habitat that contain the appropriate

physical or biological features and primary constituent elements for the shrew. *Populus fremontii* trees (Fremont cottonwood) and *Salix spp.* (willow) are the dominant woody plants in riparian areas. Additional plants include bulrushes, cattails, *Juncus spp.* (rushes), *Heleocharis palustris* (spike rush), and *Sagittaria longiloba* (arrowhead). Other plant communities on the refuge that support shrews are valley iodine bush scrub, dominated by iodine bush, seepweed, *Frankenia salina* (alkali heath), and salt-cedar scrub, which is dominated by *Tamarix spp.* (salt cedar). Both of these communities occupy sites with moist, alkaline soils.

The Kern NWR completed a Comprehensive Conservation Plan (CCP) for the Kern and Pixley NWRs in February 2005 (Service 2005, pp. 1–103). The CCP provides objectives for maintenance and restoration of Buena Vista Lake shrew habitat on the Kern NWR. Objectives listed in the CCP include: completing baseline censuses and monitoring for the shrew; enhancement and maintenance of the 215-ac (87-ha) riparian habitat through regular watering to provide habitat for riparian species including the shrew; and additional restoration of 15 ac (6 ha) of riparian habitat along canals in a portion of the Refuge to benefit the shrew and riparian bird species (Service 2005, pp. 84, 85). The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, and from changes in hydrology due to offsite water management.

Unit 2: Goose Lake Unit

The Goose Lake Unit consists of a total of approximately 1,274 ac (515 ha) of private land, and is located about 10 mi (16 km) south of Kern NWR in northwestern Kern County, in the historical lake bed of Goose Lake. The Goose Lake Unit consists of two subunits: Subunit 2A contains 159 ac (64 ha), and Subunit 2B contains 1,115 ac (451 ha). We consider that the unit was occupied at the time of listing and assume that it was not identified as occupied at that time because it had not yet been surveyed for small mammals. In January 2003, when the area was first surveyed for small mammals, approximately 6.5 ac (2.6 ha) of potential shrew habitat located along the Goose Lake sloughs were surveyed (ESRP 2004, p. 8), resulting in the capture of five Buena Vista Lake shrews. The maximum distance between two shrew captures was 1.6 mi (2.6 km),

suggesting that Buena Vista Lake shrews are widely distributed on the site. The unit has been determined to have the necessary physical or biological features present and therefore meets the definition of critical habitat under section 3(5)(A)(i) of the Act. The unit was included in the 2004 proposed critical habitat designation.

Although we continue to presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act (prong 1), we are also designating the unit under section 3(5)(A)(ii) of the Act (prong 2). As discussed above under *Criteria Used To Identify Critical Habitat*, even if subsequent evidence were to indicate that the unit was not occupied at the time of listing, it would remain critical habitat under the second prong of the Act's definition. The unit is essential for the conservation of the shrew because it is among the very few remaining areas that support both an extant shrew population and the physical and biological features necessary to conserve that population.

In the past, Buena Vista Lake shrew habitat in this unit experienced widespread losses due to the diversion of water for agricultural purposes. However, small, degraded examples of freshwater marsh and riparian communities still exist in the area of Goose Lake and Jerry Slough (a portion of historical Goose Slough, an overflow channel of the Kern River), allowing shrews to persist in the area. Dominant vegetation along the slough channels includes frankenia, iodine bush, and seepweed. The northern portion of the unit consists of scattered mature iodine bush shrubs in an area that has relatively moist soils. The southern portion of the unit is characterized by a dense mat of saltgrass and clumps of iodine bush and seepweed. A portion of the unit currently exhibits inundation and saturation during the winter months. Dominant vegetation in these areas has included cattails, bulrushes, and saltgrass.

The area consisting of the former bed of Goose Lake is managed by the Semitropic Water Storage District (WSD) as a ground-water recharge basin. Water from the California Aqueduct is transferred to the Goose Lake area in years of abundant water, where it is allowed to recharge the aquifer that is used for irrigated agriculture. At the time that the unit was originally proposed, the landowners, in cooperation with Ducks Unlimited, Inc. and Semitropic WSD, proposed to create and restore habitat for waterfowl in the unit area; wetland restoration that we expected to substantially increase the

quantity and quality of Buena Vista Lake shrew habitat on the site. Restoration activities were completed in the last 6 years. The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from nonnative species such as salt cedar, from recreational use, and from changes in hydrology due to water management and maintenance of water conveyance facilities. No conservation agreements currently cover this land.

Unit 3: Kern Fan Recharge Unit

The Kern Fan Recharge Unit was excluded under section 4(b)(2) of the Act. See Exclusions section below.

Unit 4: Coles Levee Unit

The Coles Levee Unit is approximately 270 ac (109 ha) in Kern County, of which 217 ac (88 ha) is owned by Aera Energy. An additional 46 ac (19 ha) are State lands within the Tule Elk Reserve, and 6 ac (2 ha) are part of a Kern County park. The unit is located northeast of Tupman Road near the town of Tupman, is directly northeast of the California Aqueduct, and is largely within the Coles Levee Ecosystem Preserve, which was established as a mitigation bank in 1992, in an agreement between Atlantic Richfield Company (ARCO) and CDFW. The preserve serves as a mitigation bank to compensate for the loss of habitat for listed upland species; the Buena Vista Lake shrew is not a covered species. ARCO had been issued an incidental take permit under section 10(a)(1)(B) of the Act for the Coles Levee Ecological Preserve Area (Service 2001, p. 1). However, the take authorization provided by the permit lapsed when ARCO sold the property to the current owner and the permit was not transferred. Habitat on the preserve consists mostly of highly degraded upland saltbush and mesquite scrub, and is interlaced with slough channels for the historical Kern River fan where the river entered Buena Vista Lake from the northeast. Most slough channels are dry except in times of heavy flooding. This site runs parallel to the Kern River bed and contains approximately 2 mi (3.2 km) of much-degraded riparian vegetation along the Kern River.

A manmade pond, which was constructed in the late 1990s or early 2000s, is located within the unit. Water from the adjacent oil fields is constantly pumped into the basin. Vegetation includes bulrushes, *Urtica dioica* (stinging nettle), *Baccharis salicifolia* (mulefat), salt grass, *Atriplex lentiformis* (quailbush), and *Conium maculatum*

(poison hemlock). A few willows and Fremont cottonwoods are scattered throughout the area.

In the 2009 proposed rule (74 FR 53999, October 21, 2009), we re-proposed 214 ac (87 ha) of critical habitat as the Coles Levee Unit. In this unit, Buena Vista Lake shrews were originally captured along a nature trail that was adjacent to a slough, and were close to the water's edge where there was abundant ground cover but little or no canopy cover. The unit is delineated in a general southeast to northwest direction, along both sides of the Kern River Flood Channel and Outlet Canal, which runs through the Preserve. During a construction project in the summer of 2011, two Buena Vista Lake shrews were found just north of the previous northerly boundary of the unit. We have therefore extended the unit boundary along both sides of the canal to encompass the contiguous riparian habitat to the point where water is no longer retained and riparian vegetation essentially stops, thereby including riparian habitat along the Outlet Canal within the Tule Elk Reserve.

This unit is essential to the conservation of the species because it was occupied at the time of listing (67 FR 10102), is considered currently occupied, and includes willow-cottonwood riparian habitat that contains the PCEs. The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from construction activities associated with projects to tie-in water conveyance facilities to the California Aqueduct and oil and gas-related activities, including pipeline projects. The area adjacent to Coles Levee is a site of active gas and oil production, and the Coles Levee Unit is within an area that was recently proposed for additional oil and gas exploration.

Unit 5: Kern Lake Unit

The Kern Lake Unit is approximately 85 ac (35 ha) in size, and is located at the edge of the historical Kern Lake, approximately 16 miles south of Bakersfield in southwestern Kern County. This unit lies between Hwy 99 and Interstate 5, south of Herring Road near the New Rim Ditch. The Kern Lake Unit consists of two subunits: Subunit 5A contains 34 ac (14 ha), and Subunit 5B contains 51 ac (21 ha). The unit was occupied at the time of listing, is considered currently occupied, and contains the physical and biological features that are essential to the conservation of the Buena Vista Lake shrew. Since the advent of reclamation

and development, the surrounding lands have seen intensive cattle and sheep ranching and, more recently, cotton and alfalfa farming. Currently, Kern Lake itself is generally a dry lake bed; however, the unit contains wet alkali meadows and a spring-fed pond known as "Gator Pond," which is located near the shoreline of the lake bed. A portion of the runoff from the surrounding hills travels through underground aquifers, surfacing as artesian springs at the pond. The heavy clay soils support a distinctive assemblage of native species, providing an island of native vegetation situated among agricultural lands. The unit contains three ecologically significant natural communities: freshwater marsh, alkali meadow, and iodine bush scrub.

This unit is essential to the conservation of the species because it is currently occupied and includes habitat that contains the PCEs identified for the shrew. The Kern Lake area was formerly managed by the Nature Conservancy for the J.G. Boswell Company, and was once thought to contain the last remaining population of the Buena Vista Lake shrew.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from reductions in water delivery, from effects of surrounding agricultural use, and from industrial and commercial development. This area does not have a conservation easement and is managed by the landowners. We are unaware of any plans to develop this site; however, it is within a matrix of lands managed for agricultural production.

Unit 6: Semitropic Ecological Reserve Unit

The Semitropic Ecological Reserve Unit is approximately 372 ac (151 ha) in size and is located about 7 mi (11 km) south of Kern NWR and 7 mi (11 km) north of the Goose Lake Unit along the Main Drain Canal in Kern County. It is bordered on the south by State Route 46, approximately 2 mi (3 km) east of the intersection with Interstate 5. The CDFW holds 345 ac (140 ha) under fee title, and manages the area as part of the Semitropic Ecological Reserve. An additional 27 ac (11 ha) of the unit are private land.

We consider that the unit was occupied at the time of listing and assume that it was not identified as occupied at that time because it had not yet been surveyed for small mammals (see Criteria Used To Identify Critical Habitat). Buena Vista Lake shrews were identified in the unit on April 27, 2005,

when it was first surveyed for small mammals (ESRP 2005, pp. 10–13). At that time, Buena Vista Lake shrews were found in the southwestern portion of the unit, next to the Main Drain Canal. The unit has been determined to have the necessary PCEs present and therefore meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Although we presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also designating the unit under section 3(5)(A)(ii) of the Act. Even if the unit was not occupied at the time of listing, it is essential for the conservation of the Buena Vista Lake shrew due to its location approximately midway between Units 1 and 2, and location near the southern edge of remnant natural wetland and riparian habitat. The unit is also essential for the conservation of the shrew because it is considered to be currently occupied, and contains a matrix of riparian and wetland habitat, including riparian habitat both along the canal and within and adjacent to oxbow and slough features.

The major vegetative associations at the site are valley saltbush scrub and valley sink scrub. Valley saltbush scrub is found within the relatively well-drained soils at slightly higher elevations, and the valley sink scrub is found in the heavier clay soils. Dominant vegetation at the site includes *Bromus diandrus* (ripgut brome), *Bromus madritensis ssp. rubens* (red brome), *Carex spp.* (sedges), *Juncus spp.* (rushes), *Polygonum spp.* (knotweed), *Polypogon monspeliensis* (rabbitfoot grass), *Humex crispus* (curly dock), and *Vulpia myuros* (foxtail fescue). There is a light overstory of cottonwoods at the trapping location where the most Buena Vista Lake shrews have been observed.

The physical and biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats from ongoing oil and gas exploration and development, ongoing conversion of natural lands for agricultural development, changes in water management, weed control activities including use of herbicides, and the occurrence of range trespass in an open range area. Semitropic reserve lands are not fenced and are subject to occasional range trespass by sheep and cattle (CDFW 2012). State lands in the unit were acquired under the provisions of the Metro Bakersfield Habitat Conservation Plan (HCP), and are managed for listed upland species. Location of the Main Drain Canal in the unit, and the presence of wetland

features are expected to benefit the shrew, although the shrew is not a covered species under the HCP. The State does not yet have a management plan for the Semitropic Ecological Reserve.

Unit 7: Lemoore Wetland Reserve Unit

The Lemoore Wetland Reserve Unit, 97 ac (39 ha) in size, is located east of the Lemoore Naval Air Station and is 4 mi (6 km) west of the City of Lemoore in Kings County. The unit is bounded along the southern border by State Route 198, and on the north and west sides by a bare water-conveyance canal. The unit is managed by the Natural Resources Conservation Service for waterfowl enhancement.

We consider that the unit was occupied at the time of listing and that it was not identified as occupied at that time because it had not yet been surveyed for small mammals (see *Criteria Used To Identify Critical Habitat*). Buena Vista Lake shrews were identified in the unit in April 2005, when it was first surveyed for small mammals (ESRP 2005, pp. 10–13). The unit has been determined to have the necessary PCEs present and, therefore, meets the definition of critical habitat under section 3(5)(A)(i) of the Act. Although we presume that the unit meets the definition of critical habitat under section 3(5)(A)(i) of the Act, we are also designating the unit under section 3(5)(A)(ii) of the Act. The unit is essential for the conservation of the shrew due to its location at the northernmost extent of the subspecies' range and its geographic isolation from other units, due to occupancy, and due to remnant natural wetland and riparian habitat that contains the PCEs.

The site is part of an area that was created to provide a place for city storm water to percolate and drop potential contaminants to shield the Kings River during years of flood runoff. Portions of the area are flooded periodically, forming fragmented wetland communities throughout the area.

The plant communities of the Lemoore Wetland Reserve Unit include a mixture of vegetation communities: nonnative grassland, vernal marsh, and elements of valley sink scrub. Commonly occurring plants include *Brassica nigra* (black mustard), red brome, *B. hordeaceus* (soft choss), saltgrass, alkali heath, rushes, *Lactuca serriola* (prickly lettuce), rabbitfoot grass, cottonwood, *Rumex crispus* (curly dock), *Salix ssp.* (willow), *Scirpus ssp.* (bulrush), *Sonchus oleraceus* (common sowthistle), cattails, foxtail fescue and *Xanthium strumarium* (cocklebur). This unit is essential to the conservation of

the species because it is currently occupied and contains the PCEs identified for the shrew.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including ourselves, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with us on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001) and *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from ourselves under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species, or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives for the project, if any are identifiable. The alternatives identify how the likelihood of jeopardy to the species, or destruction or adverse modification of critical habitat, may be avoided. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinstatement of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the essential physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Buena Vista Lake shrew.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. We list examples of such activities below. All such activities would also trigger consultation in the absence of critical habitat, as required by section 7(a)(2) of the Act, in order to avoid jeopardizing the continued existence of the subspecies. Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the shrew. These activities include, but are not limited to:

(1) Actions carried out, permitted or funded by Federal agencies that would affect the delivery of water to riparian or wetland areas within critical habitat. Such activities could include damming, diversion, and channelization. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Buena Vista Lake shrews.

(2) Groundbreaking activities within critical habitat, as carried out, permitted, or funded by Federal agencies. Such activities could include construction of roads or communication towers, Superfund site cleanup, and projects to control erosion or flooding. These activities could eliminate or reduce the complex vegetative structure, soil moisture, or prey base necessary for reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

(3) Activities carried out, permitted, or funded by Federal agencies that could affect water quality within critical habitat, including the deposition of silt. Such activities could include placement of fill into wetlands or discharge of oil or other pollutants into streams. These activities could eliminate or reduce the habitat and prey base necessary for the reproduction, feeding, or growth of Buena Vista Lake shrews.

(4) Activities carried out on critical habitat designated on Federal lands (Unit 1) that could reduce the complex vegetative structure, soil moisture, or prey base of critical habitat. Such activities could include fire management actions or invasive species removal. These activities could eliminate or reduce the habitat or prey base necessary for reproduction, sheltering, foraging, or growth of Buena Vista Lake shrews.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical

habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for the Buena Vista Lake shrew pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Buena Vista Lake shrew, the benefits of critical habitat include public awareness of the shrew's presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the shrew due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a management plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Summary of Exclusions

Based on the information provided by entities seeking exclusion, as well as additional public comments and information received, we evaluated whether certain lands in the proposed critical habitat (Units 2, 3, 4, and 7 in their entirety, and portions of Units 2, 3, 4, 5, and 7) were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We identified Unit 3 (Kern Fan Water Recharge Unit) in its entirety (2,687 ac (1,088 ha)) for exclusion from critical habitat designation for the shrew.

We are excluding this area because we believe that:

(1) Its value for conservation will be preserved for the foreseeable future by existing protective actions, and, therefore:

(2) It is appropriate for exclusion under the "other relevant impacts" provisions of section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of

specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis (DEA) of the proposed critical habitat designation and related factors (Industrial Economics (IEc) 2013a) (available at <http://www.regulations.gov>, Docket No. FWS-R8-ES-2009-0062). We then opened a public comment period announcing the availability of the DEA (78 FR 14245; March 5, 2013), and subsequently completed a final economic analysis (FEA) (IEc 2013b) (also available at <http://www.regulations.gov>, Docket No. FWS-R8-ES-2009-0062), on which we base our determination of economic exclusions.

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for the Buena Vista Lake shrew. Some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on

water management and transportation projects, Federal lands, small entities, and the energy industry. Decisionmakers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2002 (the year of the species' listing) (67 FR 10101), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

The FEA quantifies economic impacts of Buena Vista Lake shrew conservation efforts associated with various economic activities, including: (1) Water management; (2) agricultural production; and (3) energy development. Incremental impacts (attributable to critical habitat) are expected to result from the need for additional consultations between ourselves and other Federal agencies seeking to fund or permit new projects in critical habitat units. The total estimated incremental economic impact for all areas proposed as revised critical habitat over the next 20 years is \$130,000 (\$11,000 annualized), assuming a 7 percent discount rate. More than half of those impacts (\$79,000) are estimated to apply to Unit 3, which we are excluding based on an established habitat management plan for the area (see Exclusions Based on Other Relevant Impacts below). Please refer to the FEA for a comprehensive discussion of all potential impacts.

Because the impacts of critical habitat estimated by the FEA are relatively low, and not distributed in such a way as to unduly burden any particular area or group, the Secretary is not exercising her discretion to exclude any units based on economic impacts. A copy of the FEA with supporting documents may be obtained by contacting the Sacramento Fish and Wildlife Office (see ADDRESSES) or by downloading from the Internet at www.regulations.gov, (Docket No. FWS-R8-ES-2009-0062).

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We have determined that the lands within Buena Vista Lake shrew critical habitat units are not owned or managed by the Department of

Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether any conservation partnerships would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements based on Conservation Partnerships

We consider a current land management or conservation plan to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We consider the habitat management plan operated by the City of Bakersfield for the Kern Fan Water Recharge Area (Kern Fan Habitat Management Plan (HMP)) to fulfill the above criteria, and the Secretary is therefore excluding non-Federal lands covered by this plan (all of Unit 3) that provide for the conservation of the Buena Vista Lake shrew.

Exclusions Under Section 4(b)(2) of the Act—Kern Fan Water Recharge Area

Proposed Unit 3 is covered in its entirety by the Kern Fan Water Recharge Area, which is owned and operated by the City of Bakersfield. The Water Recharge Area consists of approximately

2,800 ac (1,133 ha) west of Bakersfield, on which the City spreads water, as available, from the Kern River and State Water Project (LOA 2004, p. 8). By spreading water over the Recharge Area, the City is able to buffer downstream flooding and allow for the recharge of underground aquifers. Water used in this fashion also supports the physical or biological features essential to the shrew. The City has worked closely with us since 2004 to develop and implement a habitat management plan (Kern Fan HMP) for the conservation of the shrew (LOA 2004, entire).

The Kern Fan HMP benefits the shrew in several ways. First, it incorporates several preexisting beneficial management practices, thereby making those practices more likely to persist, and giving us input regarding any future proposals to change them. The practices include limitation of public access to the site, cessation of livestock grazing, and maintenance of the site as open space left predominantly in its natural vegetative state (LOA 2004, pp. 20, 21). Second, it applies the results of a baseline habitat survey to establish priorities according to which available waters will be spread so as to most benefit the shrew (LOA 2004, pp. 22–24). Third, it establishes a monitoring program involving yearly habitat surveys (LOA 2004, pp. 25–27). And fourth, it incorporates adaptive management provisions by establishing goals for various areas and adjusting management to meet those goals as necessary (LOA 2004, pp. 24, 27–28). The plan requires monitoring results to be shared with us, and provides for yearly meetings between ourselves and the City to discuss adaptive management options (LOA 2004, p. 28).

The City of Bakersfield has carried out the terms of this plan since 2005 (LOA 2005, entire; LOA 2006, entire; LOA 2007, entire; LOA 2008, entire; LOA 2009, entire; LOA 2010, entire; LOA 2012a, entire; LOA 2012b, entire). In 2011, with our input, the City proposed an addendum, referred to as the “Enhanced Management Plan,” under which monitoring efforts would be expanded to include prey-base surveys and trapping surveys for presence of the shrew (LOA 2011, p. 8). The Enhanced Management Plan also provided additional assurances that the plan would continue to be carried out, by calling for funding provisions and for the establishment of a City resolution to codify the City’s long-term commitment (LOA 2011, p. 7). That resolution has been passed, subject to a condition that we exclude the Kern Fan Water Recharge Area from critical habitat

designation (Bakersfield Water Board Committee 2011, entire).

Benefits of Inclusion—Kern Fan Water Recharge Area

The potential benefits to the shrew of designating the proposed Kern Fan Water Recharge Unit as critical habitat include increased oversight of Federal agencies to assure that they do not permit, fund, or carry out actions in the area that could destroy or adversely modify critical habitat. However, because Buena Vista Lake shrews occur in the proposed unit, Federal agencies carrying out actions affecting the area would be required to consult with us if their actions might affect the shrew, even in the absence of critical habitat (IEc 2013, p. 4–3). Critical habitat may result in additional protective measures from consultation due to the additional emphasis it places on habitat, and due to the different standard used under the Act for judging impacts to that habitat. However, in this particular case, we expect that additional protective measures resulting from critical habitat would be rare. Any such benefits would also be limited to ameliorating the potential impacts of Federal actions. They would not extend to proactive, ongoing management of the habitat to maintain or increase essential habitat features.

Critical habitat designation would also serve to alert the public and State agencies of the presence of the shrew in the area. However, the City of Bakersfield’s habitat management plan for the shrew would also serve that purpose to some extent.

Benefits of Exclusion—Kern Fan Water Recharge Area

The benefits of exclusion, in this case, would include the continued participation of the City of Bakersfield in its established habitat management plan (LOA 2004, entire), and the adoption by the city of additional improvements as specified in the Enhanced Management Plan (LOA 2011, entire). As discussed above, this would mean habitat protection, monitoring of conditions, and adaptive management to benefit the shrew on an ongoing basis, regardless of actions by Federal agencies in the area. In considering the potential benefits of any management plan we must also consider the likelihood that the plan will continue to be implemented in the future. The City of Bakersfield has demonstrated a commitment to continued implementation by consistently carrying out the terms of the 2004 management plan since its inception. The City’s prospective adoption of the Enhanced

Management Plan, and its passage of a conditional resolution indicating commitment to that plan and continued funding, also provide strong indications that the City will implement the plan into the indefinite future.

Additional benefits of exclusion include the building of a working relationship between ourselves and the City of Bakersfield, which may foster an atmosphere of mutual trust and input by both sides into shrew conservation actions. Successful establishment of such a relationship can increase the likelihood that other landowners may be willing to enter similar relationships for the benefit of threatened and endangered species.

Benefits of Exclusion Outweigh Benefits of Inclusion—Kern Fan Water Recharge Area

Both designation and exclusion of the Kern Fan Recharge Area provide direct and indirect benefits for the shrew, which we must weigh against each other while taking into account the likelihood that such benefits will actually be realized. In this case, we consider the direct benefits of exclusion to outweigh those of designation, because exclusion can lead to ongoing adaptive conservation management under the Kern Fan HMP. In contrast, designation can only protect the shrew against certain Federal actions, and because the area is occupied year-round by the shrew, most of those actions are already covered by the Act's prohibition against jeopardizing the continued existence of a listed species (16 U.S.C. 1536(7)(a)(2)).

Similarly, the indirect benefits of exclusion (the fostering of a working relationship with the City of Bakersfield to provide for the conservation of the shrew), outweigh the indirect benefits of designation (alerting the public to the shrew's presence in the area). Another indirect benefit of critical habitat is the establishment and general publication of the habitat needs of the species, but this benefit can be realized through this designation without need to designate the Kern Fan Water Recharge Area specifically.

Finally, although the benefits of designating the Kern Fan area are essentially certain, the benefits of exclusion are also very likely to occur. The City of Bakersfield has established a long-standing practice of following its habitat management plan for the conservation benefit of the shrew. They have also worked closely with us to improve the plan, and have passed a city ordinance to codify their intent to carry out the terms of the improved plan into the indefinite future. Accordingly, we find that the conservation benefits of

excluding the Kern Fan Water Recharge Area from critical habitat designation outweigh the conservation benefits of specifying the area as part of the shrew's critical habitat.

Exclusion Will Not Result in Extinction of the Subspecies

Because of the conservation benefits and habitat protections discussed above that the City of Bakersfield will implement, with our input, in the absence of critical habitat designation and because the shrew is known from seven existing locations, six of which we are designating as critical habitat, we conclude that exclusion of the Kern Fan Water Recharge Area (proposed Unit 3) will not result in extinction of the subspecies. Therefore, based on the above discussion, the Secretary is exercising her discretion to exclude approximately 2,687 ac (1,088 ha) of land in the Kern Fan Water Recharge Area from this final revised critical habitat designation.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 et seq.),

whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the Buena Vista Lake shrew will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the final designation of critical habitat for the shrew would significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., energy, local government). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number"

or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Buena Vista Lake shrew. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinstate consultation for ongoing Federal activities (see *Application of the "Adverse Modification Standard"* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Buena Vista Lake shrew and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 3 through 5 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Water management (availability and delivery); (2) agricultural production; and (3) energy development.

The incremental impacts for this designation are expected to consist almost entirely of administrative costs. These costs are likely to be borne by city and county governmental jurisdictions, as well as several energy utilities. Exhibit A-1 of the FEA describes entities that may potentially be affected by critical habitat designation and assesses whether they are considered small entities under the RFA based on the applicable small entity thresholds by North American Industry Classification System (NAICS) code. While there is a potential for other third

party involvement, these are the entities we foresee potentially participating in consultation. As shown in Exhibit A-1, none of the entities expected to bear incremental impacts is considered to be small under the RFA. Potentially, some incremental impacts borne by the energy utilities may be passed on to individual customers in the form of increased energy prices. However, given the small size of the impacts, such an outcome is unlikely.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. None of the entities potentially affected in any significant way by such costs qualify as small entities under the SBREFA. Therefore, we are certifying that the designation of critical habitat for the Buena Vista Lake shrew will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration:

- Reductions in crude oil supply in excess of 10,000 barrels per day (bbls);
 - Reductions in fuel production in excess of 4,000 barrels per day;
 - Reductions in coal production in excess of 5 million tons per year;
 - Reductions in natural gas production in excess of 25 million mcf per year;
 - Reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity;
 - Increases in energy use required by the regulatory action that exceed the thresholds above;
 - Increases in the cost of energy production in excess of one percent;
 - Increases in the cost of energy distribution in excess of one percent; or
 - Other similarly adverse outcomes.
- Although two energy companies operate facilities within the designation

(Pacific Gas and Electric (PG&E) and Southern California Gas Company (SoCal Gas)), we do not anticipate recommending additional shrew conservation measures on their activities due to the designation of critical habitat. As a result, we do not anticipate critical habitat designation to affect energy use, production, or distribution. Additional administrative time spent consulting with us due to critical habitat may cost these companies \$2,000 on an annualized basis, which is less than 0.01 percent of the annual revenues of either PG&E or SoCal Gas.

In addition, our analysis concludes that it is possible that solar energy developments and oil and gas exploration may be proposed in the future within the critical habitat. No current plans exist for these activities, however. In the case that future solar energy project or oil and gas developments are proposed, we do not expect the presence of critical habitat for the shrew to change our recommendations with respect to shrew conservation. That is, all conservation efforts recommended via section 7 consultation on these projects would be made regardless of whether critical habitat is designated. Consequently, the only costs would be from the relatively minor administrative effort to consider critical habitat as part of future consultations.

Accordingly, the FEA finds that none of the potential outcomes listed above are likely to result from this designation of critical habitat (IEc 2013, Appendix A). Thus, based on information in the economic analysis, energy-related impacts associated with Buena Vista Lake shrew conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

- (1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental

mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care; Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because the designation of critical habitat imposes no obligations on State or local governments. By definition, Federal

agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Also, this rule would not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations; however, these are not expected to significantly affect small governments.

Consequently, we do not believe that this critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Buena Vista Lake shrew in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The FEA has concluded that this critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Buena Vista Lake shrew does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we specifically met with, requested information from, and coordinated development of this critical habitat designation with appropriate State

resource agencies in California. We did not receive comments from State agencies. The designation of critical habitat in areas currently occupied by the Buena Vista Lake shrew may impose nominal additional restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Buena Vista Lake shrew. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired,

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.) This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We determined that there are no tribal lands occupied by the Buena Vista Lake shrew at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the shrew that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the shrew on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this rulemaking are the staff members of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.95, amend paragraph (a) by revising the entry for “Buena Vista Lake Shrew (*Sorex ornatus relictus*)”, to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

(1) Critical habitat units are depicted for Kings and Kern Counties, California, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or

biological features essential to the conservation of the Buena Vista Lake shrew consist of permanent and intermittent riparian or wetland communities that contain:

(i) A complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation. Associated plant species can include, but are not limited to, Fremont cottonwoods, willows, glasswort, wild-rye grass, and rush grass. Although moist soil in areas with an overstory of willows or cottonwoods appears to be favored, such overstory may not be essential.

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water.

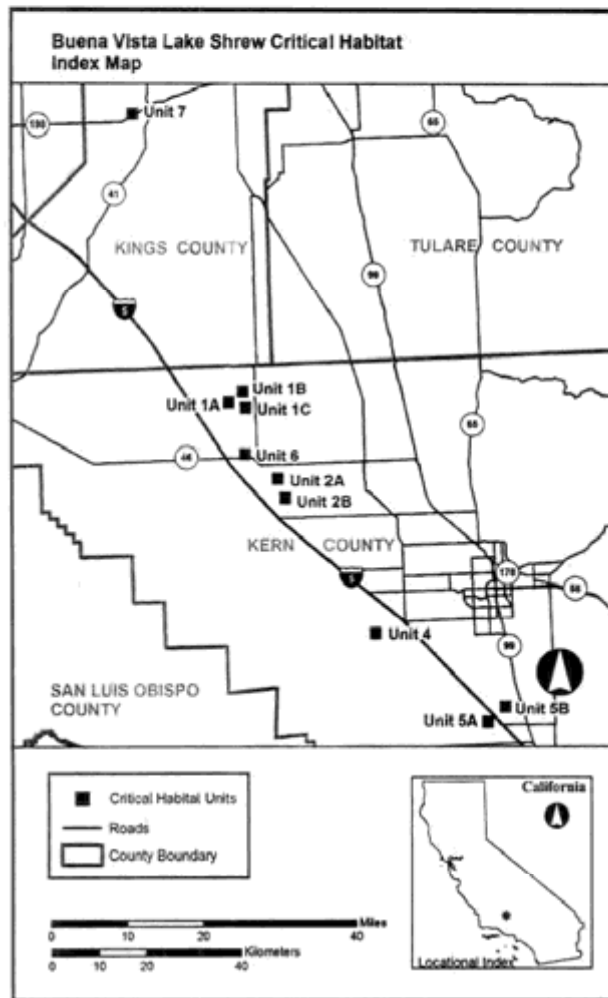
(iii) A consistent and diverse supply of prey. Although the specific prey species used by the Buena Vista Lake shrew have not been identified, ornate shrews are known to eat a variety of terrestrial and aquatic invertebrates, including amphipods, slugs, and insects.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <http://criticalhabitat.fws.gov/crithab/>, and at <http://www.regulations.gov> at Docket No. FWS–R8–ES–2009–0062, and at the field office responsible for this designation. You may obtain field office location information by contacting one of our regional offices, the addresses of which are listed at 50 CFR 2.2.

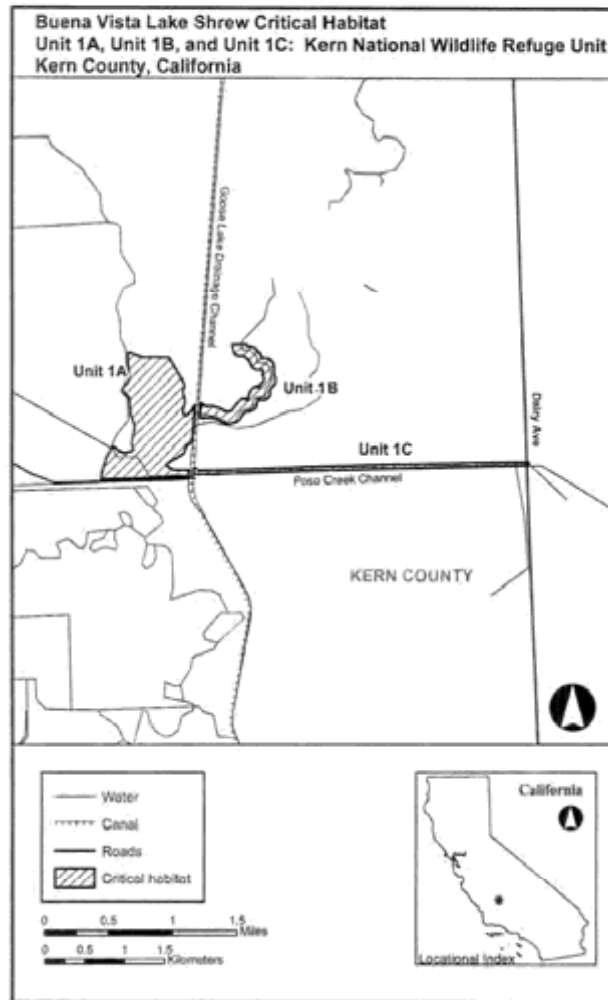
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(5) Index map of Buena Vista Lake shrew critical habitat units follows:

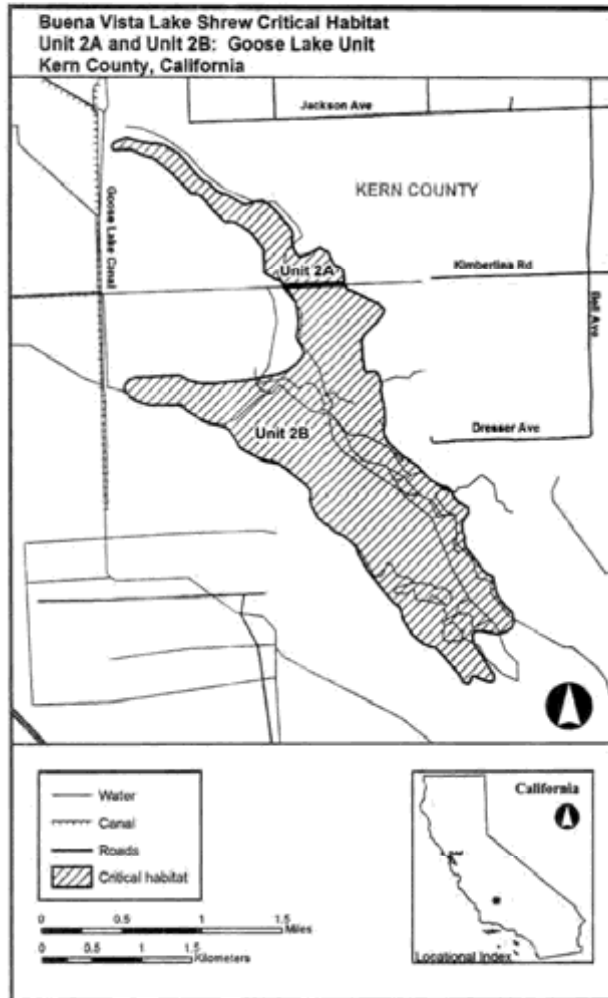


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(6) Unit 1: Kern National Wildlife Refuge Unit, Kern County, California. Note: Map of Unit 1, Kern National Wildlife Refuge Unit, follows:

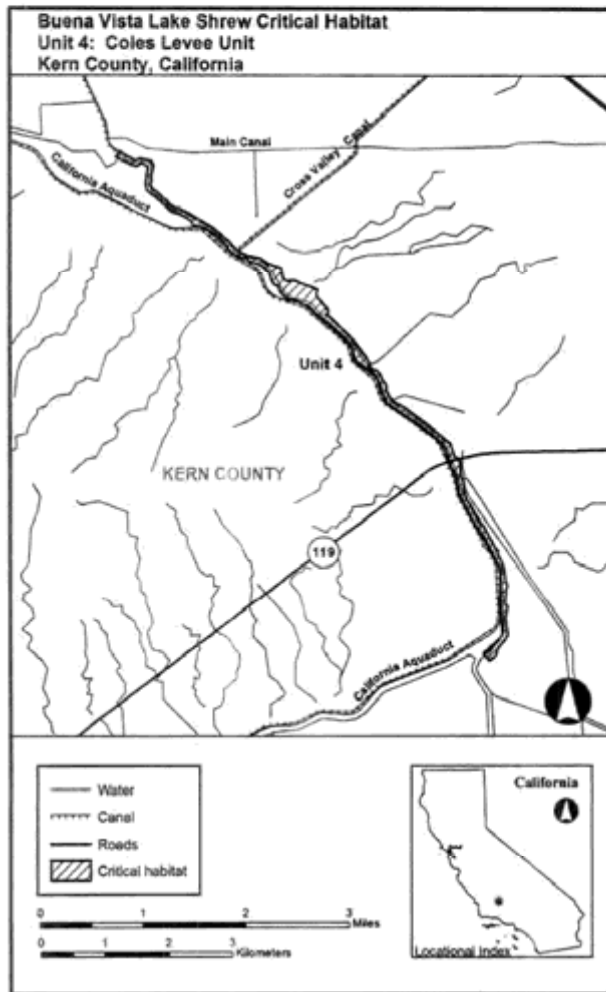


(7) Unit 2: Goose Lake Unit, Kern County, California. Note: Map of Unit 2, Goose Lake Unit, follows:



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(8) Unit 4: Coles Levee Unit, Kern County, California. Note: Map of Unit 4, Coles Levee Unit, follows:



(9) Unit 5: Kern Lake Unit, Kern County, California. Note: Map of Unit 5, Kern Lake Unit, follows:



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(10) Unit 6: Semitropic Ecological Reserve Unit, Kern County, California. Note: Map of Unit 6, Semitropic Ecological Reserve Unit, follows:



(11) Unit 7: Lemoore Wetland Reserve Map of Unit 7, Lemoore Wetland
 Unit, Kings County, California. Note: Reserve Unit, follows;



* * * * *

Dated: June 20, 2013.
Rachel Jaconson,
*Principal Deputy Assistant Secretary for Fish
 and Wildlife and Parks.*
 [FR Doc. 2013-15586 Filed 7-1-13; 8:45 am]
BILLING CODE 4310-55-C

CHAPTER 10

Responses to Comments

The comment letters received during the public review period for the Draft EIR are included in Chapter 9. In this Chapter 10, Rosedale provides individual responses to the bracketed comments in each letter. In some instances, in response to the comment, Rosedale has made additions or deletions to the text of Draft EIR; additions are included as underlined text and deletions as ~~stricken text~~.

Letter 1: Department of Conservation, Division of Land Resource Protection

DOC-1

The comment provides an overview of the proposed project and details the location of the Stockdale East and Stockdale West properties within Kern County. The comment states that both Stockdale East and Stockdale West properties are located within Kern County's Agricultural Preserve Program, are under Williamson Act contracts, and are classified as Prime Farmland by the Farmland Mapping and Monitoring Program (FMMP), and that the third project site will undergo project-level environmental review when determined.

The comment's assessment is consistent with the Draft EIR analysis in Section 3.2 on pages 3.2-9 through 3.2-12. Due to the fact that the location of the third Stockdale project site is unknown at this time, Mitigation Measure AGR-1 would require compliance with Kern County's *Agricultural Preserve Standard Uniform Rules* as applicable to avoid conflict with agricultural zoning or potential Williamson Act contracts.

DOC-2

The comment states that approximately 165 acres of the Stockdale East site is subject to a Restrictive Covenant and Equitable Servitude Agreement for Agricultural Land Preservation (Agreement) between Rosedale and SunEdison, as part of SunEdison's effort to mitigate the loss of Important Farmland due to implementation of its Adobe Solar project. The comment also states that water recharge facilities may be compatible with agricultural use under provisions in the *Agricultural Preserve Standard Uniform Rules* (Uniform Rules).

Section 3.2 of the Draft EIR on page 3.2-10 states that approximately 165 acres of Stockdale East is subject to the Agreement, which requires Rosedale to use the land for commercial agricultural purposes for seven months out of each twelve month period, subject to Rosedale's right to use the property for water management and water recharge purposes. The Agreement also allows for the construction of recharge ponds, wells, pumps, pipelines and any other facilities for the production, generation, storage or transmission of water. As such, the proposed project would be

consistent with the Agreement by maintaining commercial agricultural uses at Stockdale East when not otherwise in use for water management or water recharge purposes.

DOC-3

The comment suggests that the Draft EIR state that uses on the project site meet the requirements of Kern County's Uniform Rules. The comment also suggests that the Draft EIR should address how Rosedale will document that the mitigation land is being used in a manner that is consistent with the Restrictive Covenant and Equitable Servitude Agreement for Agricultural Land Preservation (Agreement) between Rosedale and SunEdison.

"Compatible Uses" under the Uniform Rules include "[t]he erection, construction, alteration, operation, and maintenance of...water...facilities and similar public service facilities by ... public agencies" (Draft EIR, Section 3.2.2, page 3.2-6). The proposed project will include such facilities, which are thus compatible as stated under the Uniform Rules. In addition, Rosedale will comply with all provisions of said Agreement as required in the operation of the proposed project (Section 3.2.3 pages 3.2-9 to 3.2-10). No formal documentation or reporting is required.

DOC-4

The comment requests notification of future hearing dates and staff reports regarding the proposed project.

The commenting party will be added to the mailing list for the proposed project.

Letter 2: San Joaquin Valley Air Pollution Control District**APCD-1**

The comment states that the San Joaquin Valley Air Pollution Control District (APCD) has previously commented on the proposed project and has no additional comments. The comment states that APCD staff is available to meet with Rosedale to discuss regulatory requirements for the project.

The comment is noted for the record.

Letter 3: Kern Water Bank Authority**KWBA-1**

The comment states that the Kern Water Bank Authority (KWBA) owns and operates the Kern Water Bank groundwater banking and recovery project adjacent to and immediately south of the proposed project, and that both Rosedale and KWBA overlie a common interconnected groundwater basin. For this reason, the comment states that KWBA facilities and operations may be adversely affected by the proposed project.

Section 3.9 of the Draft EIR on pages 3.9-22 through 3.9-26 includes an assessment of impacts of the proposed project on groundwater levels surrounding Stockdale East and Stockdale West, including impacts to Kern Water Bank Well 6D03 just south of Stockdale West and north of the Cross Valley Canal (CVC). During low (2004) and historical low (2009-2010) conditions, maximum well interference at the Kern Water Bank Well 6D03 would be 17 feet in the

shallow/intermediate aquifer and 20 feet in the deep aquifer, and 28 feet in the deep aquifer, respectively.

KWBA-2

The comment cites legal principles with reference to *CEQA Guidelines* and California case law [§ 15378(a); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729-30; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1055; and *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20].

The comment does not specifically address the Draft EIR, except to state, “[w]here the project description is inadequate, as here, the EIR’s analysis cannot be relied upon to provide a full disclosure of potential impacts, or adequate analysis of alternatives or mitigation measures.” The comment is not supported by substantial evidence. The project description is contained in Chapter 2 of the Draft EIR and includes an “Overview and Project Location” in Section 2.1; a statement of project objectives in Section 2.2; an explanation of the purpose and need for the project in Section 2.3; a description of the proposed project in Section 2.4, including its recharge facilities in Section 2.4.1; its potential recharge water supplies in Section 2.4.2; its recovery facilities in Section 2.4.3; and its conveyance facilities in Section 2.4.4; a description of project construction activities in Section 2.5; a description of project operations in Section 2.6; maintenance in Section 2.7; and project approvals in Section 2.8. The project description includes all the information required by CEQA to comprise an adequate description of the project without supplying extensive detail beyond that needed for evaluation and review of the environmental impacts (*CEQA Guidelines* §15124).

KWBA-3

The comment states that Draft EIR should analyze the impacts of integrated operations with other existing extraction and recharge facilities.

The Draft EIR evaluates the individual impacts of the proposed project, as a stand-alone project, given the anticipated capacities for recharge and extraction as defined in the Project Description. The proposed project facilities will be integrated and operated in coordination with Rosedale’s other facilities as part of the Conjunctive Use Program. Operation of Rosedale’s existing facilities is part of baseline conditions for groundwater conditions, including the existing Enns Pond and Strand Ranch facilities, which include recharge basins and ten wells (Draft EIR, Section 3.9, pages 3.9-1, 3.9-9, 3.9-22, 3.9-23). Thus, assessment of the proposed project impacts using a groundwater flow model, which includes pumping from the five onsite Stockdale wells as well as regional pumping under baseline conditions (See Draft EIR Appendix E, page 11) provides an assessment of impacts due to “coordinated” operation with other existing Rosedale facilities. These are facilities with which operation of the proposed project would be coordinated and operated simultaneously.

The offsite wells for the Strand Ranch Project have been included in the Drought Relief Project and are not constructed yet. The impacts of operating wells associated with the Drought Relief

Project have been modeled, and the analysis included all existing Rosedale wells along with the proposed project wells on Stockdale East and Stockdale West. The result of this analysis is reported in the cumulative impacts analysis in the Draft EIR (Chapter 4 pages 4-7, and 4-13 to 4-16). The report documenting such results is cited in the Draft EIR (page 4-20): *Technical Memorandum: 2014 Drought Relief Project*, Prepared for Rosedale by Thomas Harder & Co, November 3, 2014 (THC, 2014). This technical memorandum is provided as an appendix to this Final EIR (see Appendix I). Therefore the Draft EIR evaluates the whole of the action for the project, by considering operation of the proposed project in conjunction with other existing and planned future projects with which the proposed project facilities would be integrated and their operation coordinated.

KWBA-4

The comment states that the Draft EIR's groundwater impact analysis does not evaluate the "whole of the action" because it only looks at the impact of operating five wells on baseline groundwater levels for about 10 months. The comment also states that the Draft EIR's groundwater impact analysis does not evaluate the "whole of the action" because it assumes extraction wells only operate one year (10 months) at a time and assumes groundwater levels will rebound before extraction wells are operated again (per Appendix E, page 15). As such, the Project Description should contain this limitation. The comment also states that during drought years, water extractions do and can occur for multiple year periods, and that the Draft EIR fails to evaluate groundwater and other impacts resulting from multiple and consecutive years of extraction operations.

Please see response to KWBA-3. The analysis conducted to assess impacts of operating recovery wells associated with the proposed project modeled 10 months of pumping as an example of a typical operational scenario for Rosedale's Conjunctive Use Program, based on estimated recovery capacities (see Draft EIR, page 3.9-23). This approach is a reasonable estimation of future project operations, based upon the experience of Rosedale and other nearby banking and recovery projects. The current drought has imposed atypical conditions and operating scenarios on water banking programs throughout the State, resulting in consecutive years of groundwater pumping. The Notice of Preparation was issued prior to these atypical conditions.

In the event that the proposed project would result in groundwater pumping for more than 10 months, a greater relative decline in groundwater levels may occur, assuming all other projects in the area continue pumping as well. As stated in the Draft EIR (page 3.9-25), drawdown associated with the proposed project may have no adverse effects on pre-existing nearby wells, particularly if drawdown results in groundwater levels at or above historic lows. In the event that project pumping would result in drawdown that would affect the ability of neighboring wells to produce water, regardless of the number of months of pumping, such an impact would be identified and mitigated through implementation of the LTOP, as explained in the Draft EIR on page 3.9-26.

KWBA-5

The comment cites legal principles with reference to California case law [*County of Inyo, supra; San Joaquin Raptor Rescue Ctr. v. County of Merced (2007) 149 Cal.App.4th 645.*].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record. See also response to KWBA-3 and KWBA-4.

KWBA-6

The comment states that the Draft EIR Project Description is lacking in detail, specifically whether the integrated nature of the project would result in unbalanced recharge and recovery operations (extract water from project wells previously banked in recharge facilities elsewhere in Rosedale's service area) thereby increasing impacts.

The primary objective of the proposed project is to provide maximum operational flexibility between various programs and facilities within Rosedale's Conjunctive Use Program. Figure 2-8 has been added to page 2-12 of the Draft EIR to clarify that the proposed project's recharge and recovery operations will be balanced within the geographic areas shown as Area A and Area B within Rosedale's service area. The following has been added to page 2-12 of the Draft EIR for clarification:

Rosedale shall balance the proposed project's recharge and recovery operations within the geographic areas shown on Figure 2-8.

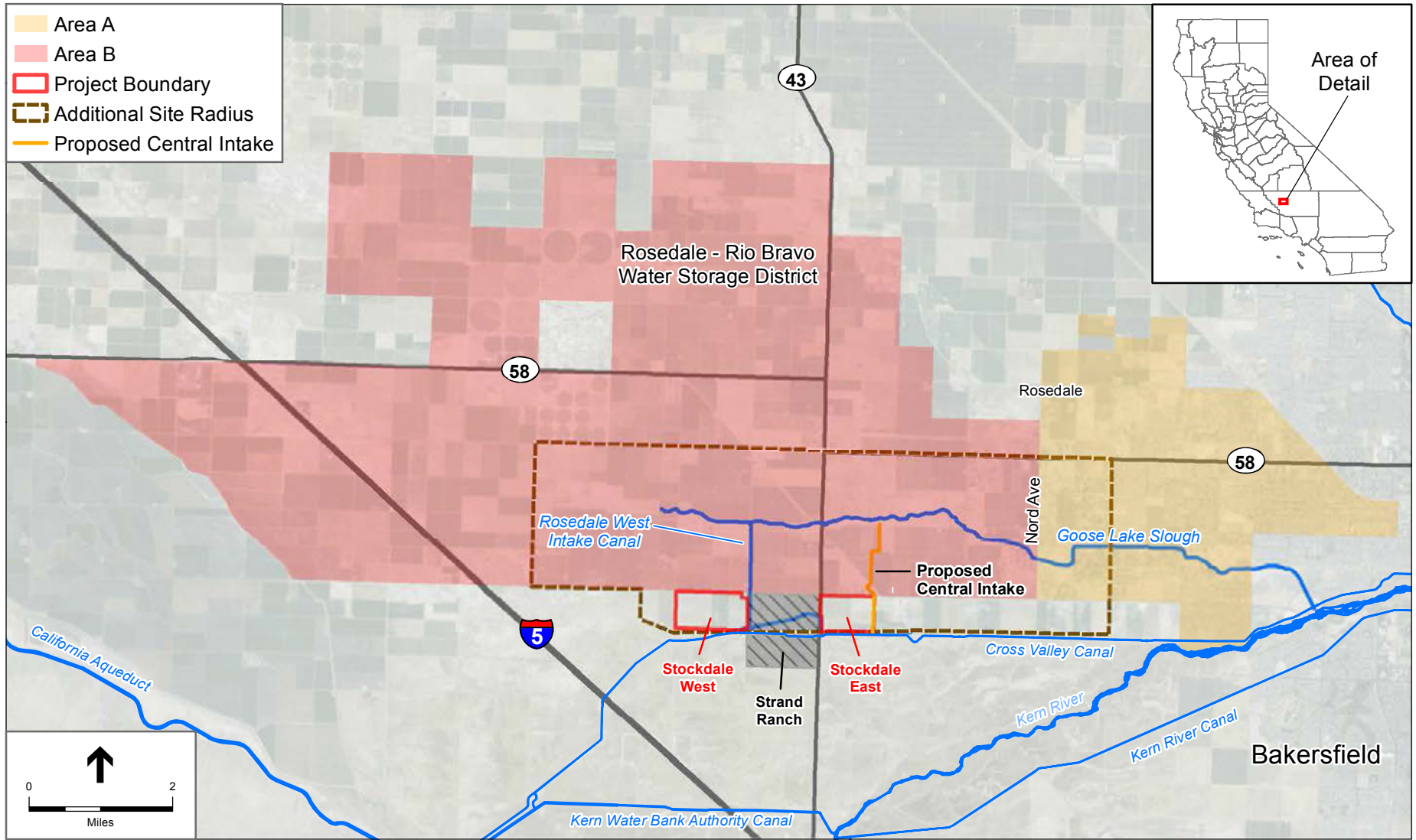
KWBA-7

The comment restates the text of the Draft EIR in Chapter 1 on page 1-2 and Chapter 2 on page 2-1 indicating that if and when a third Stockdale project site is identified, project-level review will be conducted pursuant to *CEQA Guidelines*.

The comment is correct. As identified in Chapter 1 on page 1-2 and Chapter 3 on page 3-2, if and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c). The type of CEQA document that will be used for such review will be based on the environmental impacts associated with operations at the third Stockdale project site. Depending on the type of CEQA document, public review may or may not be required (e.g., public review is not required if addendum is appropriate document, *CEQA Guidelines* §15164(c)).

KWBA-8

The comment questions whether the terms and conditions of the two Memoranda of Understanding (MOUs) between Rosedale and adjoining entities in the Kern Fan area are elements of the proposed project, or whether these conditions are intended to be mitigation measures.



SOURCE: ESRI 2013

Stockdale Integrated Banking Project . 211181

Figure 2-8

Recharge and Recovery Operations Associated with Groundwater Banking

The comment correctly states that, as provided in the Draft EIR on page 1-12, the MOUs provide guidelines for operation and monitoring of Rosedale's groundwater banking programs, and the proposed project would be subject to and consistent with the conditions of these MOUs, which are provided in Appendix B to the Draft EIR. The MOUs stipulate that modifications to Rosedale's Conjunctive Use Program would be subject to an environmental review pursuant to CEQA. Since the proposed project would be coordinated with Rosedale's Conjunctive Use Program, this EIR satisfies the CEQA requirements indicated in the MOUs (Draft EIR, page 1-12). However, the terms and conditions of the MOUs do not constitute mitigation measures for the proposed project for purposes of CEQA. Mitigation measures for the proposed project that are included in the Draft EIR are separate from the MOUs and are related only to the Stockdale Integrated Banking Project. Mitigation measures for the proposed project are found in the Summary in Table S-1.

KWBA-9

The comment questions whether the Long Term Operations Plan (LTOP) will apply only to operation of the three project sites and five extraction wells included in the proposed project, or whether the LTOP applies to all Rosedale and/or IRWD recharge and recovery facilities. The comment also states that the Final EIR should state all projects (including wells and other facilities) that would be operated in accordance with the LTOP.

The LTOP, which implements the provisions of the MOU, is specific to operations associated with the proposed project for the purposes of this EIR. The LTOP does, however, state, "All Rosedale projects which are subject to an MOU with adjoining entities shall be subject to and operated consistent with this Plan." Rosedale intends to develop and enter into an LTOP, substantially similar to the one provided in the Draft EIR, to cover all of its existing and future projects and facilities, subject to agreement with adjoining water banking interests. For more information about the type of projects and facilities, refer to the Draft EIR Appendix B-1, Exhibit 2 – Project Description.

KWBA-10

The comment states that the modeling and Draft EIR analysis of groundwater is deficient because it assumes extraction will only occur for 10 months at a time. The comment states that if the 10 month period is correct, the Project Description should be updated and/or a mitigation measure added. The comment also states that the analysis neglects to consider short-term, mid-term and long-term project impacts, and cites the Smart Rail case.

Please see response to KWBA-4. In regard to the determination of baseline for the analysis of groundwater impacts, and for a discussion of the applicability of the *Smart Rail* decision, see response to KCWA-24.

KWBA-11

The comment states that the Draft EIR is deficient in that the modeling only considers one year or ten months of recharge operations, not multiple years as would be expected in a consecutive wet year analysis.

The analysis conducted to assess impacts of operating recharge basins associated with the proposed project modeled 10 months of recharge as an example of a typical operational scenario for Rosedale's Conjunctive Use Program, based on estimated recharge capacities (see Draft EIR, page 3.9-23). This approach is a reasonable estimation of future project operations, based upon the experience of Rosedale and other nearby banking and recovery projects.

In the event that the proposed project would result in groundwater recharge for more than 10 months, a greater relative mounding of groundwater levels may occur, as long as other projects in the area continue to recharge as well. Such mounding may have no adverse effects on underground structures, particularly if mounding results in groundwater levels below historic high levels. However, the Draft EIR includes Mitigation Measure HYDRO-2, the implementation of which would serve to avoid impacts to the CVC due to shallow groundwater. This mitigation measure would apply to the project regardless of the length of time recharge would occur.

KWBA-12

The comment states that mitigation measures should be imposed for Impact HYDRO-2 since a similar conclusion is reached for Impact CUM-1. The comment further suggests that the Draft EIR explain why mitigation should not be imposed for the HYDRO-2 analysis.

The Draft EIR concludes that project-specific impacts are less than significant under Impact HYDRO-2 and as such no mitigation is required (page 3.9-26). Please refer to response to KWBA-4. The Draft EIR concludes under Impact CUM-2 that implementation of Rosedale's LTOP, as required by **Mitigation Measure CUM-2**, would serve to mitigate the proposed project's incremental contribution to cumulative groundwater impacts and associated effects to wells serving overlying land uses (page 4-16).

KWBA-13

The comment states that the Draft EIR does not include an analysis of impacts related to project recharge activities on KWBA's nearby recharge facilities or operations. The comment states that project recharge and resulting shallower groundwater conditions could significantly affect groundwater levels in proximity to the CVC and require KWBA to curtail recharge, which has not been the case historically.

The analysis of how operation of proposed recharge facilities could affect neighboring KWBA recharge basins during historical high water levels is provided in the Draft EIR, Section 3.9 on page 3.9-27 through 3.9-30. The Draft EIR concludes on page 3.9-29 that the resulting effects of groundwater mounding on the operation of neighboring basins "would be no different than existing conditions under high water levels, whereby recharge rates decline over time as recharge occurs." Therefore impacts to neighboring basins are considered less than significant.

KWBA-14

The comment presents an overview of requirements of the analysis of cumulative impacts as required by CEQA, including *CEQA Guidelines* Section 15130 and 15355. The comment also states that the cumulative impacts analysis in the Draft EIR does not comply with CEQA with respect to the groundwater impact analysis.

The Draft EIR presents the same CEQA requirements for the cumulative impacts analysis on page 4-1. For specific responses to the groundwater cumulative impacts discussion, please see the response to KWBA-15 and KWBA-16.

KWBA-15

The comment states that the Draft EIR includes and refers to two separate “drawdown” analyses on page 4-15 and 4-16 of the Draft EIR, neither of which includes a cumulative impacts analysis. The comment also states that the assessment of whether the project’s contribution to the cumulative impacts is considered “cumulatively considerable” is also deficient.

The first drawdown analysis mentioned of page 4-15 of the Draft EIR is the project-specific analysis prepared for operation of the proposed wells on Stockdale East and Stockdale West. The text of the Draft EIR on page 4-15 provides an overview of the results of the impact analysis as described in Chapter 3.9 Hydrology and Water Quality. The second drawdown analysis described on pages 4-15 and 4-16 provides a cumulative assessment of the impacts of the proposed project together with the additional wells planned for the Drought Relief Project. As mentioned in KWBA-3, the technical memorandum supporting the cumulative impacts analysis has been added to this FINAL EIR as Appendix I.

Regarding the claim that the assessment of the project’s incremental contribution is deficient, the assessment is clearly presented in Chapter 4 on pages 4-16 to 4-18: the LTOP and Mitigation Measure CUM-2 would serve to mitigate the proposed project’s incremental contribution to cumulative groundwater impacts and associated effects to wells serving overlying land uses to a less than significant level, which would make impacts not cumulatively considerable.

KWBA-16

The comment states that, as a result of a narrow scope of the project, the cumulative impacts analysis is deficient and understated. The comment states that use of 31 extraction wells including the 5 project wells, needs to be considered in the cumulative impact analysis. The remaining 26 wells include the 7 Strand Ranch onsite wells, 3 Enns Basin wells, 9 Drought Relief Project wells, and 7 JURP/Allen Road wells. The comment also states that the wells to be constructed on the third Stockdale project site needs to be considered as a probable future project.

As explained in response to KWBA-3, the drawdown analysis for the Drought Relief Project was used to support the analysis of cumulative impacts and is described in the Draft EIR on pages 4-13 to 4-18. All 31 wells mentioned in the comment have been accounted for in the cumulative analysis. The technical memorandum supporting the cumulative impacts analysis has been added as Appendix I.

In response to the comment the following modification has been made to the text of the Draft EIR on page 4-16:

The cumulative analysis assumes that all 14 recovery wells are operating for eight months and approximately 44,100 AF of groundwater is extracted (THC, 2014, Appendix I).

Regarding the third site, in response to the comment, the following modification to the text of Draft EIR has been made on page 4-16:

However, historical low groundwater levels may have recently been exceeded in 2014 due to ongoing drought conditions (Kern Fan Monitoring Committee, 2015), and development of the third Stockdale site, together with other future groundwater banking projects may ~~be developed that~~ increase cumulative recovery capacity in the project area. Therefore, implementation of Rosedale's Long Term Operations Plan, as required by **Mitigation Measure CUM-2**, would serve to mitigate the proposed project's incremental contribution to cumulative groundwater impacts and associated effects to wells serving overlying land uses.

KWBA-17

The comment states that the Draft EIR does not identify the existing projects and pumpers incorporated into the analysis, and does not explain how and where they have been incorporated.

All existing recharge and recovery operations in the Kern Fan region are included in the modeled baseline conditions as explained in the Draft EIR on page 4-15. The regional groundwater flow model used for the cumulative impacts analysis includes all past and present groundwater banking projects in the Kern Fan. See also response to KWBA-16.

KWBA-18

The comment states that without an adequate cumulative impacts analysis, it is unknown whether Mitigation Measure CUM-2 is adequate. The comment also states that it is unclear which facilities and operations will be subject to the mitigation measure.

The cumulative impact analysis is adequate as explained in responses to KWBA-14 through KWBA-17 above. Regarding facilities and operations subject to the LTOP described in Mitigation Measure CUM-2, please refer to response to KWBA-9.

Letter 4: Kern County Water Agency

KCWA-1

The comment states that it is unclear how many separate sites comprise the proposed project, whether it is three or four project sites including the Central Intake Pipeline. The comment also states it is unclear how the project is comprised of three sites given that the third Stockdale project site may be made up of multiple non-contiguous parcels. The commenter requests that the Project Description be revised to reflect the accurate number of project components and sites.

The number of sites is accurately described on page S-1 of the Summary and on page 1-1 of the Introduction as follows:

As shown in **Figure 1-1**, the proposed project would include the Stockdale East property, which is owned by Rosedale, the Stockdale West property, which is owned by IRWD, and a potential third project site that would be located within a designated radius around both properties (collectively referred to as the "Stockdale Properties").

The proposed project would also include a new Central Intake Pipeline conveyance system and new turnouts along the Cross Valley Canal.

Thus, the proposed project consists of the three Stockdale Properties and the Central Intake Pipeline. As explained in the Summary on page S-5 and in Chapter 2 on pages 2-1 and 2-4, the term “third Stockdale project site,” which is used throughout the analysis of the Draft EIR, is defined as potentially having multiple non-contiguous parcels.

In response to the comment, the following clarification is made to page S-5 of the Draft EIR:

The proposed project consists of ~~three sites: Stockdale East, Stockdale West, the Central Intake Pipeline alignment,~~ and a third project site that may be made up of non-contiguous parcels and that has yet to be specifically located, and the Central Intake Pipeline.

KCWA-2

The comment questions which components of the proposed project are analyzed at a programmatic level and states that Rosedale has an obligation to analyze programmatic components to the extent feasible.

An overview of the project-level and program-level analyses in the Draft EIR is provided on page 1-2 of Chapter 1 under Section 1.2, Project-level and Program-level Analyses in this Draft EIR. As stated on page 1-2, the third Stockdale site is the project component analyzed at the programmatic level. Program level assessment is defined by *CEQA Guidelines* for a series of actions related geographically and as logical parts in a chain of contemplated actions (Draft EIR, page 1-2), which applies to the proposed project. The Draft EIR explains that the third Stockdale site is also included in order to evaluate the “whole of the action” (Draft EIR, page 1-2) as required by CEQA. The third Stockdale site cannot be evaluated at the project level, because the exact location has not yet been identified.

Each impact statement of the Draft EIR indicates which project component is being analyzed. For example, in Section 3.10 Land Use, the analysis for Threshold 3 is combined for all project components, while the analysis for Threshold 2 is separated out by project component: Stockdale East and Stockdale West, Third Stockdale Site, and the Central Intake Pipeline. Headings are used to help the reader find the analysis for each project component.

KCWA-3

The comment states that it is unclear which programs and facilities are being referred to within the project objectives identified on page 2-3. Specifically, in the first and second objectives, the comment states that it is unclear what the term “operational/operating flexibility” refers to; what type of flexibility is needed, or the purpose for which it is needed. For the third objective, the comment states it is unclear what properties are considered to be “IRWD’s and Rosedale’s respective properties.”

In the context of the proposed project, operational flexibility is the ability of Rosedale to operate its system to maximize the benefits of its operations and to minimize potential localized impacts

from the same. The proposed project would provide operational flexibility by augmenting the recharge, storage, and extraction capacity of Rosedale's Conjunctive Use Program to assist with fulfillment of its mission of maintaining groundwater levels within its service area and its obligations to existing participants in its Conjunctive Use Program.

In response to the comment requesting further clarification of property ownership mentioned in the third objective, please refer to page S-1 of the Draft EIR which indicates which project properties are owned by each agency: "...Stockdale East property, which is owned by Rosedale, the Stockdale West property, which is owned by IRWD."

KCWA-4

The comment requests a description of the size and radius in which the third Stockdale site is located and potential environmental effects associated with the site.

The third Stockdale project site is described in Chapter 2 on page 2-1. Please refer to the scale presented on Figure 2-1.

The potential environmental effects associated with the third Stockdale project site are included in all of the resource categories included in Chapter 3 and Chapter 4 of the Draft EIR. Headings are used throughout the analysis to help the reader find the analysis for the third Stockdale project site, such as in Section 3.1 on page 3.1-7. As identified in Chapter 1 on page 1-2 and Chapter 3 on page 3-2, if and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c). See also response to KWBA-7.

KCWA-5

The comment states that the Draft EIR does not provide adequate environmental analysis associated with the third Stockdale project site because the site has yet to be located and may be more than one contiguous parcel. The comment states that the location must be disclosed to allow for informed public comment, disclosure, and informed decision making and to analyze the "whole of the action" as required by CEQA. The comment suggests that the Draft EIR should indicate the locations and conditions of the third Stockdale site in order to fully analyze all reasonably foreseeable impacts, particularly related to hydrology, agriculture, water quality, noise and sensitive receptors.

The Draft EIR evaluates the proposed project as described in Chapter 2 Project Description, which includes a radius for the potential location of the third Stockdale site (see Figures 2-1 and 2-2). As stated above in response to KCWA-2 the evaluation of environmental impacts included in the Draft EIR includes the third Stockdale site to ensure the "whole of the action" is considered as required by CEQA. Impacts related to the third Stockdale site are assessed throughout the Draft EIR, for all environmental resource at a programmatic level as described above in response to KCWA-2 and KCWA-4. As identified in Chapter 1 on page 1-2, if and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c).

The analysis of impacts associated with the third Stockdale site was commensurate with the level of detail available about the project component at the time the Draft EIR was released. In particular the analyses of impacts to resources mentioned in the comment can be found in the Draft EIR as follows:

- Agricultural Resources: See Draft EIR pages 3.2-10, 3.2-11, and 3.2-13.
- Hydrology and Water Quality: See Draft EIR pages 3.9-21 through 3.9-32.
- Sensitive Receptors and air emissions: See Draft EIR page 3.3-18 and 3.3-19.
- Noise: See Draft EIR pages 3.12-6 through 3.12-12 including Mitigation Measure NOISE-1 specifically for the third Stockdale site.

In response to the comment, the text of the Draft EIR on page 3.9-26 has been modified to make the analysis of impacts to hydrology consistent with the document format for the third Stockdale project site:

Subsequent implementation of the third Stockdale project site may contribute to lower groundwater levels in the project area. If and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to CEQA Guidelines Section 15168(c) to determine site-specific effects to groundwater. However, with implementation of Rosedale's LTOP, as described below, impacts to groundwater levels and corresponding impacts to operation of neighboring wells would be considered less than significant.

KCWA-6

The comment suggests that a worst case scenario analysis be conducted for impacts to the third Stockdale project site if a specific location for the site cannot be analyzed. The comment also states that if the location of the third Stockdale project site is identified prior to project approval, Rosedale and IRWD will be required to recirculate the Draft EIR for further review and comment.

The analysis of impacts associated with the third Stockdale project site was commensurate with the level of detail available about the project component at the time the Draft EIR was released. In some cases the analysis may be the “worst-case” scenario, although such is not required in CEQA analyses.

If and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c), as stated in the Draft EIR on page 3-2. See also response to KWBA-7.

KCWA-7

The comment questions whether the construction of embankments and/or additional transfer structures is considered in the Draft EIR's analysis, specifically regarding hydrology and agricultural impacts.

The embankments and transfer structures are accounted for in the assessment of impacts related to constructing the project, within the designated project area boundaries and footprint of Stockdale East, Stockdale West, and the third Stockdale project site, as described in the Summary on page ES-1; Chapter 1 on page 1-18; Chapter 2 on pages 2-15 and 2-17.

KCWA-8

The comment questions how agricultural uses are compatible with recharge basins; whether water used for farming purposes will be deducted from Rosedale's share of the banked water or if water will be from the basin; states that farming could increase the risk of nitrate and other fertilizer contamination into the groundwater basin; and that if Rosedale decides to remove farming from the project then a revised analysis would be required.

As described in Section 3.2 of the Draft EIR on page 3.2-12, the Kern County *Agriculture Preserve Standard Uniform Rules* (Uniform Rules) state that groundwater recharge is compatible with agricultural land use on agricultural preserves. When the basins are not being used for recharge, they may be made available to contract farmers for agricultural uses, similar to Rosedale's management of its other existing recharge basins.

Regarding the use of groundwater for agricultural use at the Stockdale properties, the project shall be operated to be consistent with the MOU (Appendix B-2, Section 2.b(5)).

As described on page 2-24 of Chapter 2 Project Description, all agricultural users on the properties would be prohibited from using chemicals that have been designated or suspected of having the potential to pollute groundwater, as determined by the California Department of Pesticide Regulation, California Environmental Protection Agency, the United States Environmental Protection Agency, and the Kern County Agricultural Commissioners. An analysis of such impacts is provided in the Draft EIR as part of Impact HAZ-1 and Impact HAZ-2 starting on page 3.8-11. The potential impacts to groundwater quality from nitrates and other fertilizers are assessed in Section 3.9 on pages 3.9-8, 3.9-11, and 3.9-31 to 3.9-32. As stated on page 3.9-31, any residual pesticides in the surface soils of former agricultural areas would be scraped off the recharge basin floor. As such, the potential for residual pesticides to be transported to the groundwater by the recharge water would be minimal. In addition, the proposed project would reduce nitrogen loading on Stockdale East and Stockdale West relative to baseline conditions, due to reduced farming activities during periods when the properties are used for groundwater recharge. Such would be the case for the third Stockdale site as well, if the existing land use includes agricultural uses.

KCWA-9

The comment states that the Draft EIR includes no information on the ongoing drought and availability of water sources for the proposed project, and that the project may exacerbate the drought. The comment also states that the project's potential use of Kern River water is questionable as it would result in the export of native surface water, and that this should be discussed in the Draft EIR.

As described in Chapter 2 of the Draft EIR on page 2-4, the proposed project supports Governor Jerry Brown's conservation initiatives by providing water supply reliability for future conditions. The proposed project will not affect the availability of water during the current and ongoing drought because water must be recharged prior to extraction; and water for recharge is not expected to be available during dry conditions. The proposed project would not compete for limited dry-year water supplies. It is not possible for the proposed project to effect the allocation of SWP water, drought or otherwise, since allocations are based on availability of supply from the Sacramento Delta. Recharge of water would not exacerbate the drought. The project would provide benefits during future drought periods by providing additional opportunities to replenish the basin when supplies are available for recharge in project facilities.

As to the use of Kern River water for project purposes, it is only proposed when available from water right holders under banking or temporary water service agreements (Section 2.4.2 page 2-9) or when the Kern River is in high-flow conditions (Section 2.4.2 page 2-10). See also the response to the City of Bakersfield comments: City-2, City-8, City-21, and City-77.

KCWA-10

The comment states that the analysis presented in Section 3.9 and Appendix E to the Draft EIR does not include impacts associated with additional recovery from existing agricultural wells. The comment questions whether additional recovery capacity from existing wells is needed.

Recovery facilities are described in Section 2.4.3 on page 2-10, including the number of wells, size, and anticipated capacity. The agricultural wells mentioned in the comment will not be used to increase recovery capacity, but may be used for operational flexibility or water quality blending purposes (Section 2.4.3, page 2-10).

KCWA-11

The comment states that the description of recovery scenarios does not contain sufficient information to determine the project's maximum recovery operations from the Stockdale properties. The comment also states that the analysis does not cover use of existing agricultural wells.

The anticipated recovery capacity from Stockdale East and Stockdale West is stated in Chapter 2 on page 2-5 and 2-10, as is the anticipated recovery capacity from the third Stockdale site. As identified in Chapter 1 on page 1-2 and Chapter 3 on page 3-2, if and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c). Please refer to response to KCWA-10 for a discussion of recovery from existing agricultural wells.

KCWA-12

The comment states that the project will operate as a "two for one" program similar to the Strand Ranch Project, and requests an explanation for why there would still be a "net benefit" to the aquifer. The comment also states that without identifying the terms and conditions of reciprocal use for the third Stockdale project site, it is impossible for the Draft EIR to determine whether the project will benefit water levels.

The Draft EIR does not state that the project will operate as a “two for one” program; it mentions “two for one” in the context of the Strand Ranch Project and/or potential water management programs, but not by way of limitation. The project benefits the aquifer because water is banked prior to extraction and not all water recharged is extracted. In addition, Rosedale banks water itself specifically for overdraft correction. In response to the comment, the following text has been added to Chapter 1 on page 1-17:

A review of the existing Strand Ranch Project has demonstrated that the groundwater banking program between IRWD and Rosedale has a benefit to the overall water balance within the groundwater basin. Operations of the facilities during the 2011 recharge cycle enabled Rosedale to recharge approximately 45,000 acre-feet of water that would not have otherwise come into the basin. Of this amount, Rosedale retained 25,000 acre-feet. Additional benefits to the basin include the loss factors applied to water banked by IRWD, which represents water that will be retained within the basin and may not be recovered.

KCWA-13

The comment questions whether the terms and conditions of the MOU are elements of the project or whether they are intended to be mitigation measures.

As provided in the Draft EIR on page 1-12, the MOUs provide guidelines for operation and monitoring of Rosedale’s groundwater banking programs. The MOUs stipulate that modifications to Rosedale’s Conjunctive Use Program would be subject to an environmental review pursuant to CEQA. Since the proposed project would be coordinated with Rosedale’s Conjunctive Use Program, this EIR satisfies the CEQA requirements indicated in the MOUs (Draft EIR, page 1-12). However, the terms and conditions of the MOUs do not constitute mitigation measures for the proposed project for purposes of CEQA. Mitigation measures for the proposed project that are included in the Draft EIR are separate and related only to the Stockdale Integrated Banking Project. Mitigation measures for the proposed project are found in the Summary in Table S-1.

The Long Term Project Recovery Operations Plan Regarding Rosedale-Rio Bravo Water Storage District Projects (Long Term Operations Plan; LTOP) implements some of the requirements of the MOU. As stated in the Draft EIR on page 1-13, the proposed project will be operated in accordance with the LTOP. The LTOP requires monitoring of groundwater conditions; annual predictions of project-related groundwater declines in the area; definition of negative project impact (NPI) to neighboring wells relative to no-project conditions; triggers for implementation of mitigation measures based on NPI that affects neighboring well operation; and mitigation measures to be implemented for different categories of wells.

To summarize, the proposed project is subject to the provisions of both the MOUs and LTOP. The MOU itself does not constitute mitigation measures for the proposed project. The LTOP is included as a mitigation measure for potential impacts to groundwater levels during recovery operations.

KCWA-14

The commenter states that potential impacts to groundwater and groundwater contamination related to use of the Stockdale properties for farming should be analyzed in the agricultural section as well as the hydrology section.

The analysis of operational project impacts to groundwater quality due to use of the Stockdale Properties for farming activities is included in the Draft EIR on pages 3.9-31 and 3.9-32. In response to the comment, the following cross reference has been added to page 3.2-13 of the Draft EIR in order to link the analysis related to groundwater contamination found in Chapter 3.9 Hydrology and Water Quality to the analysis in Chapter 3.2 for Agricultural Resources:

Furthermore, agricultural land uses, such as annual farming, grazing, or fallowing, would be allowed within the basins at the Stockdale Properties when not operated for water recharge or water management purposes. For a discussion of water quality related to farming use, please refer to Section 3.9, Hydrology and Water Quality, from page 3.9-31 to 3.9-32.

KCWA-15

The comment questions the type and quantity of plant cover described in the Draft EIR as reducing the amount of soil erosion.

Erosion is discussed in the Draft EIR on page 3.6-15 and page 3.9-30. In response to the comment, the analysis in the Draft EIR on page 3.6-15 has been modified to be consistent with the analysis on page 3.9-30 as follows:

During operation of the groundwater recharge basins, the recharge basins would contain water, which would inhibit erosion; during periods of non-recharge, the recharge basins would be subject to wind erosion. However, when not used for recharge, the basins would continue to be used for agricultural purposes. With the continuation of farming, grazing, or fallowing, the existing land cover would not be substantially altered from existing conditions and would not alter the conditions that affect erosion. ~~Plant cover at the project site would minimize wind erosion.~~ Operation of the Central Intake Pipeline would not contribute to wind erosion since the pipeline would be underground running along the edge of Stockdale East and then primarily beneath an existing dirt road between existing agricultural parcels. The dirt road is already denuded of vegetation and would be restored back to existing conditions, resulting in no change in erosion potential.

KCWA-16

The comment states that the Draft EIR does not discuss how the conversion of the Stockdale project sites from agricultural use to basin use will impact soil cover, loss of topsoil, and soil erosion.

The impacts related to soil erosion and the loss of topsoil is discussed in Chapter 3.6 on page 3.6-14 under Threshold 2 Soil Erosion. Potential impacts are reduced to a less than significant level

with implementation of a Storm Water Pollution Prevention Plan and Mitigation Measure HYDRO-1. Please also see response to KCWA-15 above.

KCWA-17

The comment requests further explanation about how the proposed project, specifically production wells and spreading basins, will avoid the oilfield near the Stockdale East site, and what steps will be taken to ensure that contamination will not spread to groundwater. The comment suggests adding a mitigation measure in addition to Mitigation Measure HAZ-1 to incorporate soil samples and removal to prevent future migration of contaminants when the project is operational.

The proposed project facilities on Stockdale East will be sited to avoid the oilfield facilities and provide for a buffer area between oilfield and groundwater banking facilities. Implementation of HAZ-1 will ensure that existing contaminated soils are either avoided or removed in order to ensure such contamination does not migrate beyond the boundaries of the oilfield area.

As described on page 3.8-8 of the Draft EIR, the Division of Oil, Gas, and Geothermal Resources (DOGGR) regulates statewide oil and gas activities. DOGGR supervises the drilling, operation, maintenance, and plugging and abandonment of onshore and offshore oil, gas, and geothermal wells, preventing damage to: (1) life, health, property, and natural resources; (2) underground and surface waters suitable for irrigation or domestic use; and (3) oil, gas, and geothermal reservoirs. DOGGR's programs include: well permitting and testing; safety inspections; oversight of production and injection projects; environmental lease inspections; idle-well testing; inspecting oilfield tanks, pipelines, and sumps; hazardous and orphan well plugging and abandonment contracts; and subsidence monitoring. DOGGR's regulation of the injection well near Stockdale East, in accordance with DOGGR's Underground Injection Control Program, is described in the Draft EIR on pages 3.8-12 and 3.8-13. In addition, DOGGR implements other rules and regulations that apply to oilfields and surface oil spills. For example, DOGGR's San Joaquin Valley Oil Spill Reporting Criteria (ftp://ftp.consrv.ca.gov/pub/oil/regulations/field_rule.pdf) would ensure that oilfield operators notify the State Office of Emergency Services within 24 hours of any discharge of one barrel of oil or petroleum products to land (DOGGR, 1998). The operators of the oilfield facilities on Stockdale East would be required to comply with all applicable regulations, including those pertaining to hazardous material spills and remediation.

KCWA-18

The comment states that Mitigation Measure HAZ-3 (preparation of a Phase I Environmental Site Assessment (ESA)) is deferral of analysis because the measure might not be effective at reducing potential impacts to the third Stockdale project site.

The full text of Mitigation Measure HAZ-3 is included on page 3.8-16 of the Draft EIR, and indicates that after a Phase I ESA is prepared, "the construction contractor shall be informed of potential hazards and shall develop appropriate plans to avoid or remediate hazards," which would reduce any potential impact. Also, The Phase I ESA would be used to determine whether a future site is feasible for groundwater recharge. If there are hazards and contamination identified through the Phase I ESA that cannot be remediated, the site would not be acquired for the

project. Further, as identified in Chapter 1 on page 1-2 and Chapter 3 on page 3-2, if and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c).

KCWA-19

The comment states that there is no citation for the following statement on page 3.9-4 of the Draft EIR: “Recharge and recovery activities will generally increase the gradient during the early period of a recharge event due to the effective mounding of the groundwater table and decrease, flatten, or even reverse during a recovery period.” The comment requests a citation and further explanation for this conclusion.

In response to the comment, a citation has been added to Section 3.9 on page 3.9-4 as follows:

Recharge and recovery activities will generally increase the gradient during the early period of a recharge event due to the effective mounding of the groundwater table and decrease, flatten, or even reverse during a recovery period (THC, 2011).

KCWA-20

The comment states that there is no explanation or citation in the Draft EIR for the following statement on page 3.9-7: “Aquitards at depth can impede recharge efforts; however on the Kern Fan and in the project area, these layers impede but do not prevent recharge and recovery operations.” The comment states that further explanation is needed in light of the fact that the third Stockdale project site has not been identified.

In response to the comment, the text of the Draft EIR has been modified for clarity on page 3.9-7 as follows:

Volumetric recharge rates are controlled by the porosity and permeability of the subsurface materials and total pond area. Throughout the Kern Fan Area and including the area of the third Stockdale project site, existing borehole lithologic data shows that subsurface sediments are highly stratified (i.e. layered) with layers of permeable sand and gravel interbedded with less permeable silt and clay (THC, 2011). The less permeable layers are referred to as aquitards, which impede the vertical flow of water (recharge) but do not prevent it. ~~Aquitards at depth can impede recharge efforts; however on the Kern Fan and in the project area, these layers impede but do not prevent recharge and recovery operations.~~ The porosity of near surface soils tend to be very important to sustaining long term recharges operations. Pore spaces can eventually become clogged with finer grained material transported by the recharge water or by bio-growths found within the recharge water. Local project operators periodically scrape or treat their ponds to remove clogging deposits and encourage the growth of certain types of plants which keep the near-surface soil structure open and porous.

Successful recharge of the regional aquifer system has been demonstrated in the area of the third Stockdale project site through historical recharge and recovery operations at Rosedale’s West Basins, Enns Ponds, and Superior Basins, despite the presence of aquitards in the subsurface.

KCWA-21

The comment states that the Draft EIR should identify areas where Corcoran clay exists within the third Stockdale project site boundary identified on Figure 2-1. The comment states that if the third Stockdale project site is to be located in an area with Corcoran clay, stormwater runoff may be created and less recharge will be able to occur on the site.

As stated on pages 3.9-3 and 3.9-9 of the Draft EIR, Corcoran Clay is not present in the Kern Fan area west of Bakersfield and does not underlie the project area. Comparison of the third Stockdale project site boundary with the extent of the Corcoran Clay as depicted in the Regional Geologic Structure Related to Ground Water Aquifers in the Southern San Joaquin Valley Ground Water Basin (KCWA, 1991), shows that the entire site boundary is outside the limits of the Corcoran Clay.

KCWA-22

The comment states that the Draft EIR improperly assumes that water quality samples taken from two wells Stockdale East and Stockdale West adequately reflect the water quality for the third Stockdale project site. The comment states that the Draft EIR should analyze water quality at the third Stockdale project site in order to analyze the potential for groundwater contamination from an existing oil well or some other source, such as the Hondo Chemical plant. The comment states the analysis should be based on a broader range of well samples. The comment also states that the potential impacts of farming on banking lands may increase the risk of groundwater contamination and such an impact should be analyzed, or farming should not be allowed on banking lands.

A description of groundwater quality and the factors affecting regional groundwater quality in the vicinity of the Stockdale properties is included in the Draft EIR on page 3.9-8. The wells on Stockdale East and Stockdale West were sampled to provide more specific information about water quality directly beneath the project sites. As discussed in Chapter 3.9 on page 3.9-11, given the proximity of the two wells to the identified radius of the third Stockdale site, they are also assumed to be reflective of water quality constituents that would be experienced at the third site. This is reasonable given the distance between Stockdale East and Stockdale West relative to the scale of the third site radius and the similarity of existing land uses at Stockdale East and Stockdale West relative to land uses within the third site radius (i.e., primarily agriculture). Once the third Stockdale project site is identified however, additional analysis related to water quality would be required and a Phase I Environmental Site Assessment also would be required in accordance with Mitigation Measure HAZ-1. During selection of the third Stockdale site, water quality and any contamination would be a critical factor in determining feasibility of a project location, since as stated on page 3.9-21 of the Draft EIR, once extracted, any groundwater pumped from the Stockdale properties would be introduced into the CVC and the California Aqueduct and would be subject to the pump-in water quality requirements imposed by the KCWA and DWR. Proximity to the Hondo Chemical site is addressed in the Draft EIR on page 3.8-2 and 3.9-11.

Please refer to response to KCWA-8 for a discussion of potential impacts to groundwater related to farming.

KCWA-23

The comment states that water quality for wells tested for the proposed project exceed or are at the maximum containment level (MCL) for gross alpha, and expresses concern about introduction of such contaminants into the Cross Valley Canal (CVC). The comment also states that Rosedale should notify Improvement District No. 4 (ID4) of any water entering the CVC that is above MCLs, and that the EIR should analyze whether introduction of such water will require treatment or mitigation as a result of increase of gross alpha levels.

The gross alpha levels in the groundwater underlying the project area are just at or slightly above the MCL requirements; the groundwater could benefit from the high quality surface water to be used for recharge (see Draft EIR page 3.9-21). As explained on page 3.9-21, it is IRWD's and Rosedale's responsibility to ensure that the water quality introduced into the CVC is sufficient to meet KCWA and DWR requirements. Any water that does not meet water quality requirements, or could not be blended to meet such requirements, as imposed by the conveyance facility operators, would not be conveyed within the canals. As such, no treatment facilities are proposed as part of the proposed project.

KCWA-24

The comment cites legal principles with reference to California case law [*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439] which decided the issue of whether an agency may omit environmental analysis of impacts on existing conditions and instead use only a baseline of projected future conditions. This comment also questions whether the Draft EIR relies upon projected future conditions as the baseline in its analysis of project-related groundwater level impacts.

The Draft EIR does not use projected future conditions as the baseline for evaluating impacts on groundwater (or any other resource), and thus, the cited case law is not applicable. The baseline used to determine the projects impacts on groundwater levels was from 2004 through 2010. The reasons for selecting this baseline are explained in the Draft EIR (Section 1.4.2 pages 1-6 and 1-7; Section 3.9.1 pages 3.9.1, 3.9.8-3.9.9; Section 4.3 page 4-15). As is explained in the Draft EIR, groundwater levels in the project area can be highly variable (Section 3.9.1 page 3.9.9). Use of the 2004 through 2010 time period ensures that an outlier or transitory condition is not used as the baseline condition out of context and provides the public with more accurate information about potential impacts resulting from project operations. Groundwater levels in the project area experienced both historical highs and lows during the subject period. Superimposing the project's recharge and recovery operations onto the historical highs and lows ensures that the potential impacts are realistically considered.

In response to the comment the text of the Draft EIR has been modified for clarity on page 3.9-9 as follows:

Significant changes in groundwater levels have occurred during the various recharge and recovery cycles in the project area since 1995 when the Kern Water Bank and Pioneer Project began operations. Extreme changes occurred between 2007 and 2010 when groundwater levels fluctuated as much as 246 feet between historical high levels

in 2007 and historical low levels in 2010 (THC, 2015). These conditions have been recorded at nested monitoring wells in the project area where water levels fluctuated from highs of approximately 282 to 305 feet amsl to lows of approximately 36 to 73 feet amsl (**Figure 3.9-2**); given ground surface elevations are approximately 314 to 328 amsl at the monitoring well locations, this translates into high groundwater levels of approximately 31 to 32 feet below ground surface (bgs) and low groundwater levels of approximately 253 to 273 bgs. For the purpose of identifying the potential effects of the proposed project on a range of conditions, including historical low groundwater levels, the period from 2004 through 2010 is selected as the baseline on which to superimpose proposed recharge and recovery conditions in order to determine the greatest potential impacts on water levels ~~assuming the historical groundwater record represents the range of potential groundwater level conditions that could be expected in the future.~~ Use of the 2004 through 2010 time period ensures that an outlier or transitory condition is not used as the baseline condition out of context and provides the public with more accurate information about potential impacts resulting from project operations. The baseline historical groundwater conditions include recharge and recovery operations from nearby existing banking projects (e.g., Kern Water Bank, Pioneer Project, Rosedale-Rio Bravo Water Service District, etc.) including the more recently operating Strand Ranch Project.

KCWA-25

The comment states that the analysis of water quality for Impact HYDRO-5 relies on water quality samples from just two wells on Stockdale East and Stockdale West which may not reflect actual water quality beneath the third Stockdale site. The comment states that without additional water quality studies the conclusion that the introduction of surface water into the shallow zone will improve water quality is not based on substantial evidence. The comment also expresses concern about potential water quality impacts related to migration of known contaminants due to proximity to Hondo Chemical.

Please refer to response to KCWA-22 for a discussion of the use of water quality samples from Stockdale East and Stockdale West to characterize groundwater quality in the project area, including the third Stockdale site. The comment cites an impact conclusion for HYDRO-1 on page 3.9-22 rather than the impact conclusion for HYDRO-5. The discussion under Impact HYDRO-5 includes a comparison of water quality constituents in surface water supplies to be used for recharge to groundwater quality at Stockdale East and Stockdale West (Table 3.9-2, page 3.9-31). The data demonstrate that the water quality of the surface water sources for groundwater banking is in general lower in constituent concentrations than that of the local groundwater. This is the justification for the conclusion that proposed recharge with surface water supplies may improve groundwater quality.

In response to the comment, language has been added to clarify the impact conclusion for Impact HYDRO-1 as follows:

Page 3.9-22:

The proposed recharge activities ~~would likely~~ may improve underlying groundwater quality through the blending of high quality surface water such that no adverse effect on water quality would be anticipated (see discussion under Impact HYDRO-5). In addition, the pump-in water quality requirements would ensure that water introduced into the CVC and California Aqueduct would meet KCWA and DWR requirements.

In response to the comment, language has been added to clarify the impact conclusion for Impact HYDRO-5 as follows:

Page 3.9-32:

The surface water sources for recharge generally have constituent concentrations that are lower than the underlying groundwater or well below drinking water MCLs, and therefore with blending, recharge would not substantially degrade water quality below drinking water standards and may improve groundwater quality ~~would likely improve~~. The transport, use, and disposal of pesticides at Stockdale East, Stockdale West, and the third Stockdale project site would also be done in accordance with applicable regulatory requirements, including regulations specific to application of pesticides within recharge basins and in proximity to wellheads. Mitigation Measure HAZ-1 would require that samples of soils at the Stockdale East property are analyzed and removed appropriately if soils contain hazardous quantities of contaminants. Therefore impacts to water quality would be considered less than significant with mitigation.

Proximity to the Hondo Chemical site is addressed in Section 3.8 on page 3.8-2 and in Section 3.9 on page 3.9-11.

KCWA-26

The comment states that for Mitigation Measure HYDRO-2, the use of a geotechnical engineer to determine whether conditions might pose a risk to subsurface structures is deferral of analysis. The comment states that the mitigation measure should state how and under what circumstances subsurface structures will be determined to be at risk through use of performance standards. The comment states that the mitigation measure does not state how or who will determine that a threat no longer exists before the project may continue operations, and that the mitigation measure should include specific performance standards for resuming operations.

Mitigation Measure HYDRO-2 states that the geotechnical engineer will identify “the critical depth at which shallow groundwater would pose a threat to the stability of CVC structures.” Since KCWA will approve the monitoring plan, KCWA will have ultimate approval authority over such performance standards. The mitigation measure requires specific monitoring protocols to be developed to prevent groundwater from reaching such a critical depth. The measure states that “the monitoring plan also shall identify the depth at which project operation would cease such that the critical depth would not be reached and the conditions under which project operation could resume.” Since KCWA will approve the monitoring plan, KCWA will have ultimate approval authority over such performance standards.

KCWA-27

The comment states that there is no discussion of the impacts related to continuing agricultural operations and groundwater contamination at the Stockdale properties.

This potential impact is discussed in the Draft EIR on pages 3.8-11 to 3.8-13 and 3.9-31 to 3.9-32. See also response to KCWA-8 and KCWA-14.

KCWA-28

The comment references and summarizes some of the issues decided in a 2010 lawsuit initiated by Rosedale against the Kern Water Bank Authority (and others) challenging the extent and level of CEQA review for the Kern Water Bank project.

In the litigation the Court ruled that the Department of Water Resources' EIR for the Kern Water Bank project failed to adequately describe, analyze, and (as appropriate) mitigate the potential impacts of the project associated with the anticipated use and operation of the Kern Water Bank, particularly as to potential groundwater and water quality impacts. The Court also ruled that the mitigation measures in the MOU cannot, by themselves, serve to mitigate any potentially significant impacts that may be identified (emphasis added). The Draft EIR does not conclude that the mitigation measures in the MOU do, by themselves, serve to mitigate potentially significant impacts from the project. Instead, the Draft EIR reaffirms Rosedale's commitment to abide by the terms of the MOU (Section 1.5.2 page 1-12). Please refer to response to KCWA-13 for discussion of the relationship of the MOUs and LTOP to the proposed project.

KCWA-29

The comment states that Rosedale should clarify how the agency intends to comply with the MOU's requirements, if the MOU is indeed a project feature and not a mitigation measure. The comment also states that if the MOU requirements are non-binding, the EIR should be clarified to identify the worst-case scenario impacts.

Please refer to response to KCWA-13.

KCWA-30

The comment states that the groundwater modeling analysis in Appendix E of the Draft EIR does not take into consideration the third Stockdale project site, and that the Draft EIR should clarify how the impacts to groundwater due to operation of the third Stockdale project site are accounted for.

Please refer to response to KCWA-4 through KCWA-6, KWBA-4, KWBA-11, and KWBA-16.

KCWA-31

The comment requests clarification regarding the proximity of the Kern River and associated floodplain to the third Stockdale project site.

The comment mentions the reference to the floodplain in Chapter 3.10 Land use and Planning. Impacts related to flood hazards are discussed in Chapter 3.9 Hydrology and Water Quality, as part of Threshold 8. 100-Year Flood Hazard Areas on page 3.9-33. The analysis concludes that

except for a small area in the northwest corner of the third Stockdale site radius the project area is not located within a 100-year flood hazard area. Mitigation Measure HYDRO-3 would ensure that any new development associated with the third Stockdale site would not impede or redirect flood flows, either by requiring the project design to avoid flood hazard areas or by designing the project in accordance with the Kern County Floodplain Management Ordinance to ensure flood hazards or flood elevations on neighboring parcels are not significantly altered.

The Draft EIR has been modified as follows on page 3.10-1 to delete reference to the Kern River floodplain from Chapter 3.10 Land Use and Planning:

The Kern River ~~and floodplain~~, the dominant natural feature in the vicinity of the Stockdale Properties, is located approximately 2.5 miles south and east of the project sites.

KCWA-32

The comment states that little information is provided in the Draft EIR on zoning of land within the third Stockdale site radius. The comment states that the Draft EIR does not indicate whether the third Stockdale project site is actually used for agriculture, and whether the General Plan land use designation is different from zoning. The comment also states that the Draft EIR does not address how the project conforms or conflicts with any applicable habitat conservation plan, specifically the Metropolitan Bakersfield Habitat Conservation Plan.

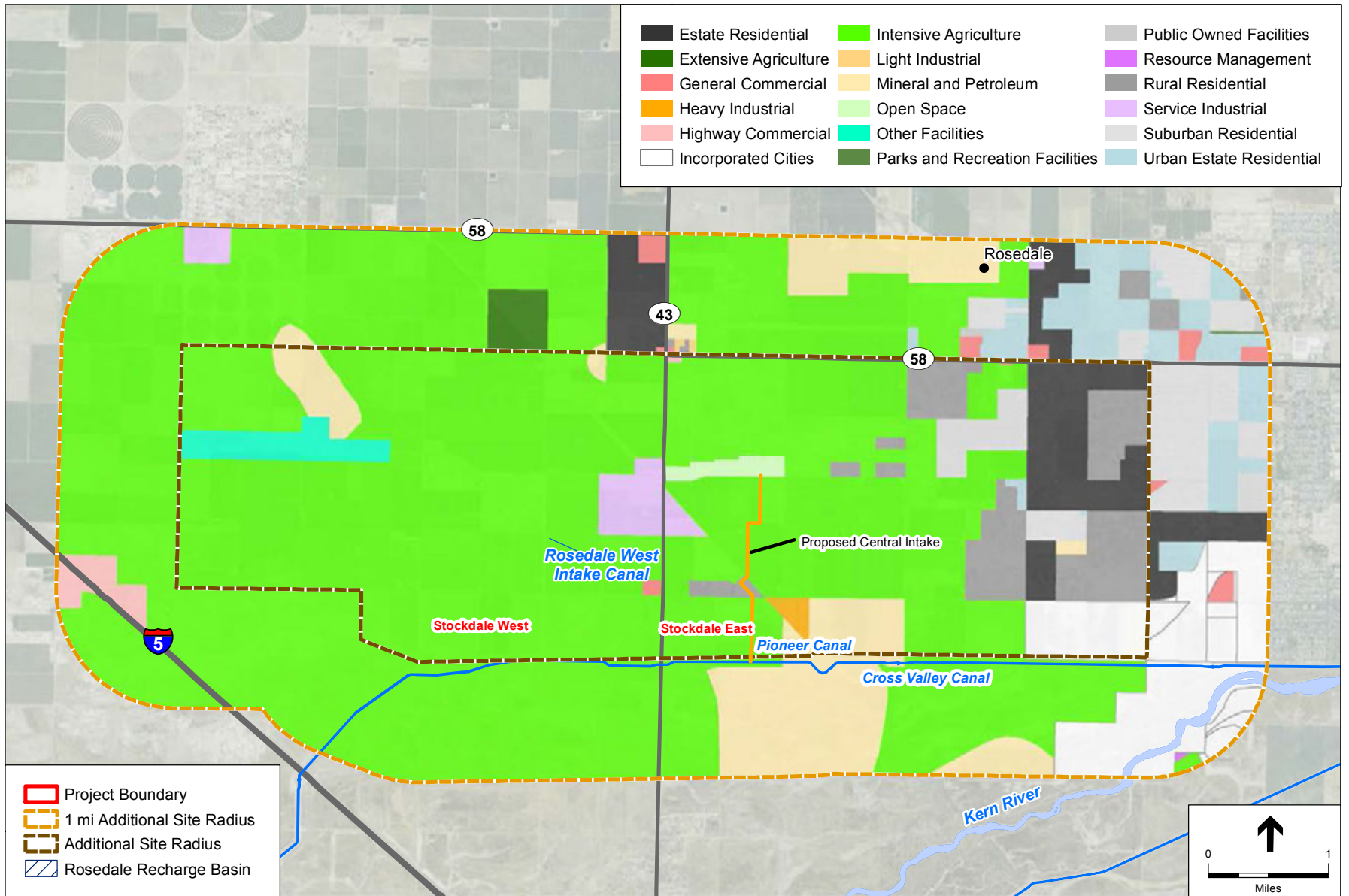
The majority of lands within the third Stockdale project site boundary are currently being used for agriculture (see aerial photo in Figure 2-1). If and when the third Stockdale project site is identified, the specific zoning for that site and General Plan land use designation will be analyzed. The General Plan land use designations and zoning designations within the third Stockdale site radius are shown in the Draft EIR in Figures 3.10-1 and 3.10-2. According to the land use and planning *CEQA Guidelines* thresholds, zoning and General Plan land use classifications are required to be consistent.

Figure 3.10-3 shows the Metropolitan Bakersfield Habitat Conservation Plan boundaries. Potential conflicts with the Metropolitan Bakersfield Habitat Conservation Plan are discussed on page 3.10-11 and 3.10-12, under Threshold 3.

KCWA-33

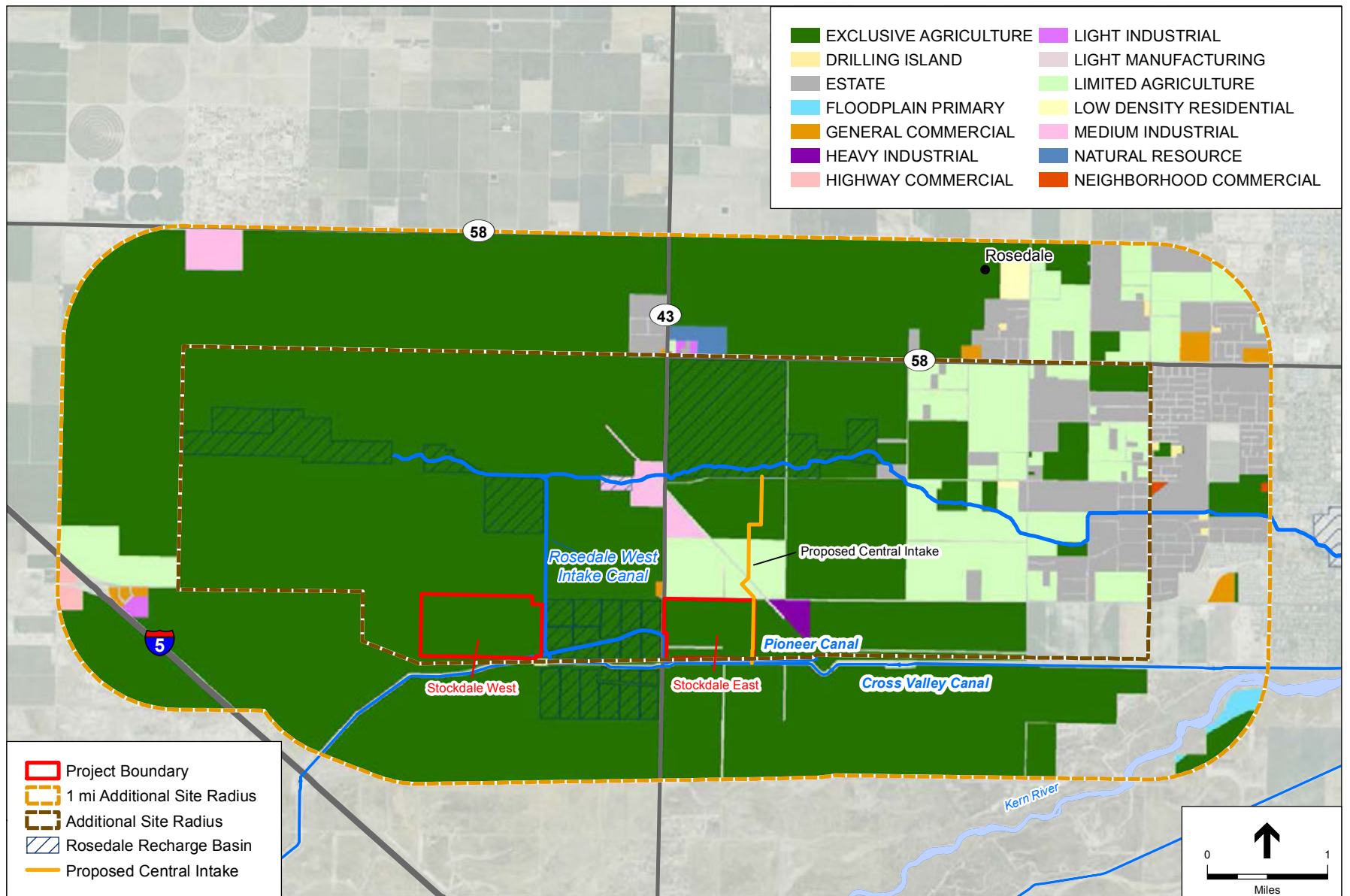
The comment states that Figures 3.10-1 and 3.10-2 should also include land use designations for the property directly adjacent to the outside border of the radius for the third Stockdale project site, in the event that the location of the third Stockdale project site is on the border of the radius shown. The comment also recommends including a discussion of surrounding land uses on properties adjacent to the border for the third Stockdale project site, so that impacts with applicable land use plans can be assessed in Impact LU-1.

In response to the comment, Figures 3.10-1 and 3.10-2 have been revised in Section 3.10, and a discussion of land uses extending one mile from the third Stockdale project site boundary has been added to pages 3.10-3 and 3.10-10, as follows:



SOURCE: ESRI 2013, Kern County 2013

Stockdale Integrated Banking Project . 211181
Figure 3.10-1
 General Plan Land Use Designation



SOURCE: ESRI 2013, Kern County 2013

Stockdale Integrated Banking Project . 211181

Figure 3.10-2
Kern County Zoning Designation

Third Stockdale Site

The third Stockdale project site would be located within a site radius as shown on Figure 3.10-1, and is anticipated to be primarily agricultural land. The majority of land within and adjacent to the outside border of the radius is designated Intensive Agriculture by the Kern County General Plan and is zoned Exclusive Agriculture, similar to Stockdale East and Stockdale West.

Third Stockdale Site

The location of the third Stockdale project site has not yet been determined. Land within the site radius shown on Figure 3.10-1 is primarily Intensive Agriculture, similar to both the Stockdale East and Stockdale West properties. As shown on revised Figure 3.10-1, land on the outside border of the radius for the third Stockdale project site is similar to land designated within the radius: Intensive Agriculture. As shown on Figure 3.10-2, land within the site radius is zoned primarily Exclusive Agriculture. As shown on Figure 3.10-2, land on the outside border of the radius for the third Stockdale project site is similar to land zoned within the radius: Exclusive Agriculture. It is anticipated that the third Stockdale project site would be located on agricultural land designated as Intensive Agriculture by the Kern County General Plan, which allows for groundwater recharge facilities. Kern County Setback and mid-section line requirements would be adhered to, similar to Stockdale East and Stockdale West.

KCWA-34

The comment states that the Draft EIR indicates that light industrial, commercial use, and mineral extraction use exist in the project area. The commenter requests that these uses be identified and whether the project would interfere with them.

These land use categories and specific locations are shown in Figures 3.10-1 and 3.10-2. The figures include land use categories for industrial, commercial, and mineral and petroleum as shown in the legends. Project features would not interfere with these land uses.

KCWA-35

The comment states that the discussion under Land Use Impact 1 does not take into account the fact that the unidentified third Stockdale project site may be located in or nearby the residential areas shown on Figure 3.10-1. The commenter suggests that the Draft EIR be updated to explain whether the proposed project would divide an established community.

The analysis on page 3.10-9 of the Draft EIR states that the project features, including the third Stockdale project site, would be located in an agricultural and rural residential community, and that construction of project facilities would be consistent with existing community land use and would not serve to divide an established community per *CEQA Guidelines* Appendix G, Land Use and Planning thresholds.

KCWA-36

The comment states that the discretionary approval identified for use and modification to the CVC should be analyzed under impact UTIL-1, specifically related to whether the project would

require new or expanded water supply resources or entitlements. The comment also questions whether modifications to the CVC would impair service and use of the canal and for how long, and questions what mitigation Rosedale intends to provide to address the impacts. The comment also questions whether the CVC has sufficient capacity to accommodate the project.

The concerns presented in the comment are not environmental issues required to be addressed under the *CEQA Guidelines* Appendix G thresholds, and are not directly applicable to impact UTIL-1 related to water supply resources or entitlements. Section 2.5.3 of the Draft EIR indicates that any proposed turnout facilities associated with the CVC would be constructed within the CVC right-of-way and subject to approval by KCWA.

KCWA-37

The comment states that the alternatives analysis should be revised to explain why each alternative either meets or does not meet the project objectives. The commenter also states that the alternatives analysis should be revised after revisions to the Draft EIR are made per the comments above.

The alternatives considered but rejected are included in the Draft EIR in Section 6.2.1. According to *CEQA Guidelines* Section 15126.6(c), factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet more of the project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts. The analysis of alternatives considered but rejected in Section 6.2.1 are substantiated by at least one of these considerations.

The revisions made to the Draft EIR in response to this comment letter do not change the alternatives analysis because new significant impacts previously unknown or recorded have not been identified.

KCWA-38

The comment states that Rosedale must provide details regarding available funding sources and budget constraints, before rejecting alternatives on economic grounds.

Information about funding and budgets is not required to be presented in the alternatives analysis. The comment is noted for the record.

KCWA-39

The comment states that KCWA objects to Rosedale's approval of the project until issues indicated in the comment letter are addressed in a manner "required by CEQA."

All comments provided by KCWA have been addressed above as required by CEQA.

Letter 5: City of Bakersfield

City-1

The comment states that the City of Bakersfield (City) generally supports the goals and purposes of the proposed project.

The comment is noted for the record.

City-2

The comment expresses concern that the proposed project would involve the transfer of local water supplies out of Kern County to a large Southern California urban water district, and that the project proposes out-of-county water sales or transfers to the detriment of the local environment.

Neither characterization is accurate. As explained in the Draft EIR, the proposed project consists of the construction and operation of recharge and recovery facilities on certain lands owned by Rosedale and IRWD (Section S.4 page S-5 and Section 2.1 page 2-1). For Rosedale, the proposed project would augment the recharge, storage, and extraction capabilities of its Conjunctive Use Program and provide greater operational flexibility assisting Rosedale in fulfilling its mission of maintaining groundwater levels within its service area (Section 2.3 page 2-3). For IRWD, the proposed project would enhance water supply reliability by providing contingency storage to augment supplies during periods when other supply sources may be limited or unavailable (Section 2.3 page 2-3). The Project Description does not include any transfer of local water supplies to IRWD nor does it propose any out-of-county water sales or transfers at all. Therefore, the suggested impacts to the local environment associated with transfer or sale of local water supplies are non-existent.

Water recharged in the project for later recovery by IRWD may or may not include Kern River water. As to the use of Kern River water for project purposes, it is only proposed when available from water right holders under banking or temporary water service agreements (Section 2.4.2 page 2-9) or when the Kern River is in high-flow conditions (Section 2.4.2 page 2-10). As explained in the response to City-77, the entities with Kern River water rights are responsible for developing programs that demonstrate how Kern River water will be used, and for preparing environmental documentation that evaluates the impacts of such programs. In response to the comment, clarification has been made to the Draft EIR on page 2-8:

~~Should water from the sources listed below, or other sources, not suggested below be acquired for recharge, additional analysis may be required, subject to the discretion of Rosedale and IRWD.~~ Rosedale and/or IRWD will analyze the use of identified sources for project purposes to determine the need for and/or extent of future analysis under CEQA.

With regard to the comment's reference to the potential detriment to the local environment from such use of Kern River water, as mentioned above the Kern River is not the primary source, and the project is not dependent on the availability of Kern River water at any particular time or at all, to supply recharge water for the proposed project. Surface water hydrology and water quality for the Kern River are generally described in the Draft EIR on pages 3.9-2 to 3.9-3. The proposed project itself would not change patterns or practices of water diversion from the Kern River, and as such, would not affect flow in the Kern River. The proposed project may recharge Kern River water provided by agencies with existing water rights, such as the City, as described on page 2-9 to 2-10 of the Draft EIR. As stated above, agencies with rights to Kern River water are responsible for developing programs for use of Kern River water and evaluating the impacts of

such programs, which may include transfer or exchange of Kern River water with agencies such as Rosedale.

The Draft EIR discusses the potential impacts of using the water sources for groundwater recharge on pages 3.14-6 through 3.14-7. The Draft EIR states that the project does not require a new water supply and as such would not affect local water supplies. The proposed project would use water from the SWP and CVP depending on availability; such opportunistic use of water would not affect other water users or local water supplies. The proposed project would use appropriate water rights, including pre-1914 and post-1914 water rights and other Kern River water also depending on availability. As stated in the Draft EIR, pre-1914 and post-1914 water rights can be transferred to other parties as long as legal users of water are not injured (“no injury rule,” per Water Code Sections 1706 and 1702). The Draft EIR explains how the State Water Resources Control Board (SWRCB) supervises transfers of appropriate water rights, and when the SWRCB is required to make a finding that the transfer will not result in unreasonable effects on fish or wildlife or other in-stream beneficial uses. As stated in the Draft EIR on page 3.14-6:

The “no unreasonable effect” test is not the same as the evaluation of significant impacts under CEQA (SWRCB, 1999). Should the use of such post-1914 appropriate water rights require evaluation of impacts to legal users and other environmental considerations, additional analysis may be required. Otherwise, given that transfers of appropriate water rights are subject to the approval of the transferring agency, and at times the SWRCB, and that the water code requires a finding of no injury, and at times a finding of no unreasonable effect, the uses of such waters for recharge would not result in significant impacts.

The entities with Kern River water rights are responsible for developing programs that demonstrate how Kern River water will be used, and for preparing environmental documentation that evaluates the impacts of such programs. Kern River water utilized by the proposed project would occur consistent with the requirements of such environmental documentation. As such, the environment in and around the Kern River, including plant and animal life and aquifer underlying the Kern River, would not be affected by the proposed project. See also responses to City-10 and City-60.

City-3

The comment introduces the City’s concerns regarding the Draft EIR, stating that the document does not comply with CEQA and is deficient for various reasons, namely: (1) the Draft EIR does not comply with the policy, purpose or specific requirements of CEQA; (2) the Draft EIR omits or obscures details of the proposed project and as such fails to disclose all potential impacts of the project; (3) the Draft EIR and fails to consider reasonable, feasible alternatives for the proposed project including the “no project” alternative.

The Draft EIR reflects a good faith effort to investigate and disclose environmental impacts of the project in full compliance with the requirements of CEQA. The Draft EIR presents background information about the proposed project in Chapter 1 and clearly presents an overview of the proposed project – the Stockdale Integrated Banking Project – in Chapter 2, including the

project's purpose and objectives on pages 2-3 and 2-4. The environmental impacts of the project are documented in Chapters 3 through 5, along with accompanying appendices. The Draft EIR includes an Alternatives Analysis in Chapter 6, including the No Project Alternative on pages 6-7 and 6-8. As documented in the Draft EIR, the proposed project would have no significant, unavoidable, or irreversible environmental impacts to the local environment or to local or regional water resources and supplies.

CEQA does not require technical perfection in an EIR, but rather adequacy, completeness, and a good-faith effort at full disclosure. [14 Cal. Code Regs. §§ 15003(i)]. A court does not pass upon the correctness of an EIR's environmental conclusions, but only determines if the EIR is sufficient as an informational document. [*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 711]. Rosedale has complied with CEQA by providing an adequate, complete, and good-faith effort at full disclosure in the Draft EIR and supporting technical documents. [14 Cal. Code Regs. §§ 15003(i), 15151; *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862: "where a general comment is made, a general response is sufficient"; see also, *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 378: "Responses to comments need not be exhaustive; they need only demonstrate a 'good faith, reasoned analysis.' (Citations)"].

City-4

The comment states that the fundamental purpose of an EIR is to provide public agencies and general public with detailed information about the effects of a proposed project on the environment. Further, that CEQA analysis is intended to afford the fullest possible protection of the environment. The comment states that Rosedale has attempted to (i) obscure and hide the details of the proposed project; (ii) avoid addressing the actual goals and purpose of the proposed project; and (iii) avoid or minimize any real analysis of the proposed project's impact on the environment. The comment further states that the proposed project will involve the transfer of local water supplies out of the area to Southern California. The comment further states that Kern County is again faced with a potential repeat of the events that occurred in the Owens Valley in the early part of the last century regarding water removal.

To the contrary, on September 24, 2013, a Notice of Preparation (NOP) for the proposed project was mailed to interested parties, responsible and trustee agencies, and the Office of Planning and Research, as explained in Section 1.4.1 of the Draft EIR on pages 1-5 and 1-6, and in Appendix A). The NOP was published in the Bakersfield Californian and Orange County Register, and a Notice of Completion (NOC) was sent to the State Clearinghouse. The NOP was made available for public review at the Beale Memorial Library in Kern County and the Heritage Park Regional Library in Orange County, and on IRWD's internet site: www.irwd.com. The NOP provided a general description of the facilities associated with the proposed project, a summary of the probable environmental effects of the project to be addressed in the EIR, and a figure showing the project location. The NOP provided the public and interested public agencies with the opportunity to review the proposed project and to provide comments or concerns on the scope and content of the environmental review document including: the range of actions; alternatives; mitigation measures, and significant effects to be analyzed in depth in the EIR. The 30-day project scoping period, which began with the distribution of the NOP, remained open through October 24, 2013.

During the scoping period two public scoping meetings were held on October 15, 2013 at IRWD's district office and on October 16, 2013 at Rosedale's district office, to allow agency consultation and public involvement for the Draft EIR. A public notice was placed in the local newspapers of general circulation in the Rosedale and IRWD service areas, the Bakersfield Californian and Orange County Register, to inform the general public of the scoping meeting and the availability of the NOP. The purpose of the meeting was to present to the public the proposed project and its potential environmental impacts. Attendees were provided an opportunity to voice comments or concerns regarding potential effects of the proposed project. Written and oral comments received during the scoping period were addressed in and made part of the Draft EIR.

The Draft EIR was made to contain a description of the proposed project, description of the baseline environmental setting for each resource listed in the Appendices F and G of the *CEQA Guidelines*, identification of project impacts (direct, indirect, and cumulative), mitigation measures for impacts found to be significant, and an analysis of project alternatives (Section 1.3 page 1-5, and Appendices B through H). More specifically, during the public comment period and during scoping session held for the proposed project, concerns were raised regarding potential adverse impacts to the following: water quality; special status species; water supply sources for the proposed project; and adverse impacts to the City's water supply and surrounding environment. As stated in the Draft EIR, these concerns have been considered during preparation of Chapters 3 and 4 of the Draft EIR (Section S. 6 page S-7).

Regarding transfer of local water supplies, and the comment associating the proposed project with the Owens Valley, please refer to response to City-2. In fact, by increasing groundwater recharge capacity in the Kern River Fan region, it is expected that the proposed project will enhance Rosedale's ability to capture and retain Kern River water within the basin that might otherwise be lost by flowing out of the region (Section 2.4.2 pages 2-9 and 2-10).

City-5

The comment states that the City's October 23, 2013, comments to the NOP set forth the City's initial concerns with the project, that the City attaches, incorporates and refers to such comments as part of the City's comments to the Draft EIR and does so because Rosedale had not adequately addressed or responded to the concerns and questions raised by the City in those comments. Rosedale received the City's comments to the NOP and considered the comments during preparation of the Draft EIR. The comment letter from the City is included in Appendix A to the Draft EIR. CEQA does not require a lead agency to respond to comments provided during the NOP review period. CEQA only requires the lead agency to send the NOP to OPR and to responsible and trustee agencies (14 Cal. Code Regs. §15082); the City is not a responsible or trustee agency. Consultation with the City has been conducted as part of the scoping process under CEQA (14 Cal. Code Regs. §15083).

The City's NOP comments are mostly duplicative of the comments to the Draft EIR. Nonetheless, responses to the City's NOP comment letter are provided in responses to City NOP-1 through City NOP-14, which follow these responses to the City's Draft EIR comments.

City-6

The comment states that sales and transfers of local water supplies out of the county are directly contrary to the policies and interests of the City, specifically a long standing policy most recently confirmed in 2001, that Kern River water shall not be utilized outside the boundaries of the San Joaquin Valley portion of Kern County. This project is not located in the City of Bakersfield and therefore is not governed by this policy. The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-7

The comment states that one of the objectives of the project is to increase IRWD's water supply, particularly to develop IRWD's groundwater recharge, storage and recovery capacity so as to provide increased water supply reliability for IRWD's customers. The comment states that the project would allow Irvine to maintain and utilize up to 88,000 acre feet of Kern County water storage facilities for its own use. The comment urges that development of a water supply for IRWD within Kern County would involve the exportation or transfer of local water supplies out of Kern County, and that the project would therefore violate the City's policy.

The water supply mentioned in the comment will not be used to increase IRWD's normal water supply. Rather, it will be used to enhance IRWD's water supply reliability by augmenting supplies that would be available during time of shortage such as drought or catastrophic failures (Draft EIR, pages 2-3 and 2-4).

The statement, "The project would allow Irvine to maintain and utilize up to 88,000 acre feet of Kern County water storage facilities for its own use" is incorrect. The project would provide IRWD with up to 26,000 acre feet (AF) of aquifer storage capacity under IRWD's Stockdale West project site. The aquifer storage capacity was evaluated in the Draft EIR, Appendix E (Thomas Harder & Co., 2015). In addition, IRWD will have access to an additional 50,000 AF of unused aquifer storage capacity within Rosedale's Conjunctive Use Project as described in the Draft EIR on page 2-4. The reference to 88,000 AF for IRWD's own use on page 2-3 includes the existing Strand Ranch property aquifer storage capacity. To sustain a major three-year interruption in imported water supplies, IRWD has determined that it needs to develop at least 88,000 AF of water in storage in its water banking program and up to 28,000 AF per year capacity to recover water under this short term shortage scenario.

The City comments that the project will directly violate the City's policy by transferring local water supplies out of the County to Orange County and will negatively impact the residents of the City and the entire region. With respect to City's policy and the claim that the project includes the transfer of local supplies to Southern California, see response to City-2 and City-6.

City-8

The comment states that Rosedale does not have legal authority to utilize Kern River water acquired from the City and/or from Isabella Reservoir during wet years for project purposes. The comment also states that any attempt by Rosedale to transfer Kern River water to IRWD, including Kern River water recharged and banked prior to recapture, would violate contractual commitments between Rosedale and the City.

The Draft EIR identifies several potential sources of recharge water including federal, state, and local supplies which may be acquired through transfers, balanced and unbalanced exchange agreements, purchase or temporary transfers, or other means as available (emphasis added). As indicated in Section 2.4.2 page 2-8, these sources could include the Central Valley Project (CVP), the State Water Project (SWP), high-flow Kern River water depending on annual availability and appropriative (pre-1914 and post-1914) water rights (emphasis added). It is the intent of the Draft EIR to evaluate impacts of recharging water from all such sources to the extent that they are reasonably foreseeable (Section 2.4.2 page 2-8). Considering the larger project, even if some portion thereof is subject to legal challenge, avoids the pitfall of piecemeal review which is clearly prohibited. [See *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 619-620; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114; *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726]. Further, even if one or more legal challenge ultimately proves meritorious, such determination would not affect (i.e., increase) the environmental impacts of the proposed project. The Draft EIR examines the environmental effects of the larger project involving recharge water drawn from all known potential sources. If water from a particular source is unavailable for some reason, in whole or in part, recharge for project purposes may be reduced along with all associated environmental effects.

Regarding potential violation of contractual commitments, no such violation is contemplated or intended. As stated in response to City-2, the proposed project does not involve a transfer of Kern River water from Rosedale to IRWD. As stated in the Draft EIR, Rosedale intends to recharge such Kern River water as is or becomes available to it through banking and temporary water service agreements; and IRWD intends to recharge such Kern River water as is or becomes available to it through its arrangement with Buena Vista Water Storage District, which may be extended to include the proposed project (Section 2.4.2 pages 2-9 through 2-10). See also response to City-32.

Rosedale will attempt to respond to all comments. However, it should be noted that this comment seeks to raise issues which do not involve environmental impacts and are, therefore, beyond the scope and purpose of the Draft EIR. [*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1401: “The focus of CEQA, both procedurally and substantively, is ‘solely ... the potential environmental impacts of a project’]. Such comments do not warrant or require a response. [*Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 862: The EIR need not respond to each comment made during the review process, but it must specifically respond to the most significant environmental issues raised].

City-9

The comment states that neither Rosedale nor IRWD have a right or permit to divert and use Kern River flood flows which have been declared to be unappropriated water by the State Water Resources Control Board (SWRCB).

The Draft EIR addresses Kern River flood flows as a potential source of recharge water and recognizes that SWRCB involvement may be required (emphasis added) (Section 2.4.2 page 2-9, Section 3.14.3 page 3.14-7). See also response to City-8.

City-10

The comment states that, given the close relationship between Rosedale and the City, the proposed project will necessarily have significant impacts on the City and its water supply. The comment also states that the proposed project is located adjacent to the City's primary recharge facility, the 2800 Acre Recharge Facility "2800 Acres", and the Kern River, the City's primary water source. The comment also states that the City's water supplies are threatened by drought, increased pumping, and increased demand on local supplies, and opines that implementation of the proposed project will likely exacerbate the current adverse water conditions faced by the City, to the detriment of the City and its residents.

Impacts on the City resulting from the proposed project are expected to be less than significant. Among other things, the proposed project is consistent with the Metropolitan Bakersfield General Plan (December 2002), the Metropolitan Bakersfield Draft General Plan Update: Existing Conditions, Constraints, and Opportunities Report (April 2009), and the Metropolitan Bakersfield General Plan Update EIR (June 2002), as discussed in the Draft EIR in the following locations: Section 3.1.2 pages 3.1-4 to 3.1-5; Section 3.2.2 pages 3.2-7 to 3.2-8; Section 3.6.2 pages 3.6-11 to 3.6-12; Section 3.10.1 pages 3.10-1 to 3.10-2; Figure 3.10-1; Section 3.10.3 pages 3.10-10 to 3.10-11). Also, construction and operation of the proposed project does not conflict with the Metropolitan Bakersfield Habitat Conservation Plan to the extent applicable, as discussed in Section 3.4.3 pages 3.4-27 to 3.4-28; Figure 3.10-3; Section 3.10.3 pages 3.10-11 to 3.10-12. As stated in the Draft EIR, groundwater banking projects are designed to maintain a positive project balance such that no net water would be removed from the basin. The projects operate by recharging water in wet years and recovering water in dry years. Water banks only recover water up to the amount previously banked minus an amount to account for losses to the basin. Thus, long term trends have shown improvements in groundwater levels, when compared to a no-project condition (see Section 4.3 at page 4-14).

The proposed project facilities are neither adjacent to the 2800 Acre Recharge Facility nor the Kern River; they are nearly 2 miles from the 2800 Acre Recharge Facility and more than 3 miles from the nearest well that serves City citizens. Impacts to groundwater levels in areas in proximity to the project site that may affect City citizens were evaluated in Draft EIR Appendix E. At the closest well the impacts are expected to be less than 5 feet (Appendix E, Figures 15-18, 23-26). See also responses to City-83 and City-84.

Regarding threatening of water supplies and exacerbation of the City's adverse water conditions, the opposite is true. As stated in the Draft EIR, California has responded to the very concerns expressed by the City by enacting the Sustainable Groundwater Management Act of 2014. Prominent among the measures intended to avoid continued groundwater decline is the development and implementation of conjunctive use programs utilizing underground storage, such as the proposed project. Thus, it is specifically provided that every Groundwater Sustainability Plan shall include where appropriate "[a]ctivities implementing, opportunities for,

and removing impediments to, conjunctive use or underground storage” (CWC Section 10727.4(f)). (See also Draft EIR, Section 3.9.2, page 3.9-17). To repeat, water banks only recover water up to the amount previously banked minus an amount to account for losses to the basin. Thus, long term trends have shown improvements in groundwater levels, when compared to a no-project condition (Section 4.3 page 4-14). By augmenting the recharge, storage and future extraction capacities of Rosedale and IRWD, the proposed project supports Governor Jerry Brown’s conservation initiatives by providing water supply reliability for future conditions. If the residual impacts of the California drought continue into the future, the proposed project will assist in providing a reliable water source to ameliorate effects of the 2014 drought (Section 2.3 page 2-4).

City-11

The comment states that the City is concerned that Rosedale is proposing to implement a new project that will involve further extraction at already depleted and threatened local groundwater resources. The comment includes an excerpt from Governor Jerry Brown’s Executive Order from April 1, 2015, which states that California’s water supplies are severely depleted due to the drought including “shrinking supplies in underground water basins.”

As described in Chapter 2 of the Draft EIR on page 2-4, the proposed project supports Governor Jerry Brown’s conservation initiatives in response to the State of Emergency declared in January and April of 2014, by providing water supply reliability for future conditions. The proposed project will not affect the availability of water during the current and ongoing drought because water must be recharged prior to extraction; and water for recharge is not expected to be available during dry conditions. The proposed project would not compete for limited dry-year water supplies. The project would provide benefits during future drought periods by providing additional opportunities to replenish the basin when supplies are available for recharge in project facilities.

The proposed project is a groundwater banking project and would result in a net benefit to the groundwater basin, given that any water pumped from the underlying basin would be water previously recharged and stored as part of Rosedale’s Conjunctive Use Program. The proposed project serves to recharge water during average and above-average hydrologic conditions so that during future periods when water supplies are constrained, such as during the current ongoing drought, water is available to mitigate shortages.

City-12

The comment states that the State of California has recently adopted the Sustainable Groundwater Management Act (SGMA) to address and alleviate adverse groundwater conditions in the State. The comment states that the SGMA calls for sustainable management of groundwater resources and the California Department of Water Resources (DWR) has identified the Kern County sub-basin as being in a critical condition of overdraft.

The comment does not specifically address the Draft EIR. The SGMA is described in the Draft EIR on page 3.9-17 and 3.9-18. The SGMA does not preclude implementation of conjunctive use

programs such as the proposed project. For a further discussion of SGMA, please refer to response to City-10.

City-13

The comment states that the City relies on the groundwater basin as its primary source of drinking water and complains that unreasonable and unsustainable pumping of groundwater in the region threatens the quantity and quality of this supply. The comment also states that the City is concerned that a number of local water districts have reacted to recent drought conditions by pumping excessive and increasingly voluminous quantities of water from the local groundwater basin at a rapid and unsustainable rate.

The comment regarding unsustainable pumping does not specifically address the environmental analysis contained in the Draft EIR or project operations. The comment is noted for the record.

The comment expresses the view that such excessive pumping has dramatically lowered groundwater levels in the basin, negatively impacted City wells, and significantly accelerated overdraft conditions in the basin. Please refer to response to City-10.

City-14

The comment states that the City has experienced rapidly declining water levels in the 2800 acres, has had to lower well screens to keep wells operational, and has seen other wells in the vicinity of Rosedale go dry. The comment also disputes that the proposed project will only pump water that has been spread. The comment opines that banking projects (i) create demands and stresses on basins which practically have not been offset or alleviated by prior spreading; (ii) do not take into account pumping by other individuals and entities in the project area; (iii) do not take into account migration of the spread water out of the project area; and, as a result, (iv) fail to recognize that banked water is not actually available for extraction.

The comment about the City's 2800 acres wells does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

As stated in the Draft EIR, water banks only recover water up to the amount previously banked minus an amount to account for losses to the basin. Thus, long term trends have shown improvements in groundwater levels, when compared to a no-project condition (Section 4.3 page 4-14). It is not correct to say that the Draft EIR fails to take into account pumping by other individuals and entities in the project area since current pumping is included in the baseline upon which project impacts are evaluated (Chapter 3.9, page 3.9-22) and current and future pumping is included in the analysis of cumulative impacts (Chapter 4, Cumulative impacts, page 4-1). See also response to KWBA-3, City-63, and City-66. Neither is it correct to say that the Draft EIR ignores migration of stored water since the proposed project will be operated subject to Rosedale's MOUs which address, among other things, potential migration losses (Section 1.5.2 page 1-10; Appendix B-1 page 9; Appendix B-2 page 9).

City-15

The comment references a 2010 lawsuit initiated by Rosedale against the Kern Water Bank Authority (and others) challenging the extent and level of CEQA review for the Kern Water Bank project.

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-16

The comment references a 2010 lawsuit initiated by Rosedale against the Kern Water Bank Authority (and others) challenging the extent and level of CEQA review for the Kern Water Bank project.

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-17

The comment references a 2010 lawsuit initiated by Rosedale against the Kern Water Bank Authority alleging a breach of contract.

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-18

The comment questions how Rosedale can ascribe negative environmental impacts to an “adjacent, similar banking project” and then claim that its own “nearly identical banking project” will not have the same negative environmental impacts.

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment states that Rosedale has failed to comply with CEQA by (i) failing to disclose baseline conditions and (ii) failing to accurately or properly assess the impacts of its own banking and extraction program.

As required by *CEQA Guidelines* Sections 15125 and 15126, the Draft EIR in Chapter 3, beginning on page 3-1, provides an analysis of the environmental effects of the proposed project with respect to existing baseline conditions. Cumulative impacts of the proposed project are evaluated in Chapter 4. Regional and local baseline conditions were considered to be the time the NOP was published, with the exception of the baseline used to evaluate impacts to groundwater. The groundwater baseline is described in Section 3.9, Hydrology and Water Quality, beginning on page 3.9-1. The Draft EIR also assesses the impacts of the proposed project and includes, as Appendix E, a detailed “Analysis of Potential Groundwater Level Changes from Recharge and Recovery at the Stockdale West and Stockdale East Facilities” (Chapter 3 beginning on page 3-1; Appendix E). The additional analysis that supports the assessment of cumulative impacts as described in Chapter 4 of the Draft EIR has been added to this Final EIR for clarity (see Appendix I and response to KWBA-3).

City-19

The comment states that Rosedale has failed to disclose local groundwater conditions, now made worse by the current drought and increased groundwater pumping. The comment states that such failure calls into question the baseline conditions and impacts included within the entire Draft EIR.

Rosedale has, to the best of its ability, accurately described baseline groundwater levels based on historical hydrological conditions (Section 3.9, beginning on page 3.9-1). For its impact analysis, the baseline for groundwater levels is based on historical hydrological conditions during a study period that includes the maximum historical high and low groundwater levels in the project area (Section 3.9.1 page 3.9-1). The Draft EIR recognizes that, due to drought conditions, groundwater levels have dropped to historic lows in 2010 and again in 2014 in the project area (Section 3.9.1 page 3.9-4).

City-20

The comment states that the Draft EIR fails to provide clear and convincing justification for the proposed project, and, in the absence thereof, assumes that the proposed project is primarily a money making venture for Rosedale.

Project objectives are set forth in Section 2.2 of the Draft EIR. The purpose and need for the proposed project is delineated in Section 2.3 of the Draft EIR. As stated, Rosedale requires the proposed project primarily to augment the recharge, storage, and extraction capabilities of its existing Conjunctive Use Program as well as provide greater operational flexibility assisting Rosedale in fulfilling its mission of maintaining groundwater levels within its service area (Section 2.3 page 2-3). IRWD requires the proposed project primarily to enhance water supply reliability for IRWD by providing contingency storage to augment supplies during periods when other supply sources may be limited or unavailable as well as to restore storage capacity lost to unbalanced exchanges (Section 2.3 page 2-3). With respect to the claimed marketing and sale of local water resources to Southern California interests, see response to City-2.

City-21

The comment states that the project description is incomplete, vague and misleading in that Rosedale fails to describe necessary, essential and required details of the proposed project, notably, necessary and required details regarding the sources of water that will be utilized in the proposed project.

The comment is not supported by substantial evidence. Here, the project description is contained in Chapter 2 of the Draft EIR and includes an “Overview and Project Location” in Section 2.1; a statement of project objectives in Section 2.2; an explanation of the purpose and need for the project in Section 2.3; a description of the proposed project in Section 2.4, including its recharge facilities in Section 2.4.1, its recharge water supplies in Section 2.4.2, its recovery facilities in Section 2.4.3, and its conveyance facilities in Section 2.4.4; a description of project construction activities in Section 2.5; a description of project operations in Section 2.6, maintenance in Section 2.7, and approvals in Section 2.9. The sources of water that may be utilized in connection with the proposed project are identified as whatever is or becomes available to Rosedale or IRWD at

any time, and from time to time, from any source, potentially including federal, state, and local supplies (emphasis added; Section 2.4.2 page 2-8). The Draft EIR goes on to discuss in greater detail those sources of supply deemed reasonably foreseeable, namely Central Valley Project (CVP) water, the State Water Project (SWP) water, high-flow Kern River water depending on annual availability and appropriative (pre-1914 and post-1914) water rights (Section 2.4.2 page 2-8). Since this list is not exclusive, the Draft EIR states that Rosedale and/or IRWD will analyze the use of identified sources for project purposes to determine the need for and/or extent of future analysis under CEQA (Section 2.4.2 page 2-8 as modified in response to City-2). Finally, the Draft EIR acknowledges that these sources of water "...would be available only during certain conditions and subject to the requirements of DWR, SWRCB and the water rights' holders. Agreements would be made, as necessary, in advance of any water exchanges or transfers" (Section 3.14.3 page 3.14-7). The project description includes all the information required by CEQA to comprise an adequate description of the project without supplying extensive detail beyond that needed for evaluation and review of the environmental impacts (*CEQA Guidelines* §15124).

City-22

The comment cites legal principles with reference to California case law [*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192 and *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730].

The comment does not specifically address the environmental analysis in the Draft EIR. The comment is noted for the record.

City-23

The comment cites legal principles with reference to California case law [*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 533; *County of Inyo*, 71 Cal.App.3d at 192-193; and *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d. 818, 830].

The comment does not specifically address the environmental analysis in the Draft EIR. The comment is noted for the record.

City-24

The comment cites legal principles with reference to California case law [*Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal.3d 376, 399-400; *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 729; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931; and *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-25 and City-26

The comment restates language in the Draft EIR on page 2-8 regarding the sources for recharge water associated with the proposed project. The comment states that the Draft EIR provides little additional information regarding the potential sources of water for the project, and fails to provide

any details regarding the quantity of water available from the identified sources, present and past uses of the water sources, the circumstances under which Rosedale or Irvine would acquire the water from the sources and projected future use of water utilized in the project. The comment also states that it is unclear whether the water would be used within Rosedale or Irvine.

The potential sources of water for the project are described in the Draft EIR Section 2.4.2. The foreseeable sources of the water include the Central Valley Project, the State Water Project (SWP), and high-flow Kern River water. The quantity of water available from the identified sources would be subject to and dependent on availability, and SWP allocations and approval. The circumstances under which Rosedale or IRWD would recharge water for project purposes are described in the Draft EIR Section 2.6.1. Evidence of the variability of water availability is illustrated by the statement that in 2008 there were no water deliveries for banking in Rosedale's existing program, while in 2011, banking water deliveries totaled approximately 245,000 AF for recharge (Draft EIR, page 2-21). See also response to City-2 regarding the identified water supplies.

The Draft EIR describes that the project will be used to support uses within the respective service areas of Rosedale and IRWD (see Section 2.3, page 2-3). See response to City-48. As explained in Section 2.4 on page 2-5, the recharge capacities for the Stockdale Properties are estimated to be approximately 27,100 acre-feet per year (AFY) for Stockdale West and approximately 19,000 AFY for Stockdale East. Based on the characteristics of Stockdale East and Stockdale West, a third proximate site of up to 640 acres may have recharge capacities of approximately 52,500 AFY.

City-27

The comment requests additional information as to the definition of "fourth priority non-CVP South of Delta Contractor" and "CVP Section 215 flood water". The comment also states that the Draft EIR does not identify the quantity of CVP water that might be available for the project and the amount of CVP water delivered to Rosedale in the past.

Section 215 refers to a section in the Reclamation Reform Act of 1982 (Public Law 97-293) which defines temporary water supplies that are unusually large and not storable for project purposes and, among other measures, allows non-storable water to be applied to lands otherwise ineligible to receive federal water. As a fourth priority non-CVP South of Delta Contractor, if the Section 215 water is received by Rosedale via the Sacramento Delta it can only take if it can be made available at O'Neill Forebay and the Mendota Pool. These supplies are based on non-storable flood flows which makes speculation as to availability and ratios extremely difficult due to climate change and further environmental restrictions.

City-28

The comment requests additional information as to the definition of "Table A allocation," "Article 21 water" and "exchange State Water Contractor".

"Table A allocation" is the percentage (allocation) of the amount that the State Water Project has available to deliver to the various contact holders in a given water year according to the amounts

they originally contracted for according to exhibit “Table A” of the State Water Project long-term contracts. “Article 21 water” is a water supply program administered by the State Water Project per Article 21 of the same long-term contracts whereby contract holders may acquire additional supplies when non-storable supplies become available in the Sacramento Delta. The term “exchange State Water Contractor” is as an entity with a long-term contract with the State Water Project who wishes to do an exchange (swap) of water with another entity in order to acquire a water management benefit, usually in terms of improved water supply or scheduling to best meet demands. These supplies are often based on non-storable flood flows which makes speculation as to availability and ratios extremely difficult due to climate change and further environmental restrictions.

City-29

The comment cites legal principles with reference to California case law [*Laurel Heights Improvement Association of San Francisco, Inc. v. The Regents of the University of California* (1988) 47 Cal.3d 376, 405]. The comment states that, absent further explanation and definition of the “primary terms and concepts” used in the Draft EIR, the document fails as an informational document.

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

Please refer to responses to City-27 and City-28 above and City-50 below. Other than the terms identified in those comments, the comment fails to identify specific terms and concepts which are not explained or defined in the Draft EIR and is not supported by substantial evidence. The Draft EIR makes every attempt to explain and define primary terms and concepts, including acronyms (TOC page iv – viii).

City-30

The comment cites legal principles with reference to California case law [*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 908; *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722; *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1238-1239, 1244].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The cases cited are not applicable because the project is not a development project that is dependent on an annual supply. The comment is noted for the record.

City-31

The comment states that the Draft EIR fails to provide necessary details about the Metropolitan Water District of Southern California (MWD) via the Municipal Water District of Orange County (MWDOC) source, past uses, current uses, quantities, or availability of the potential water supplies. The statement that water purchased from MWD would be subject to supply and conveyance capacity availability provides no helpful, relevant or useful information regarding this water supply.

Information about MWD as a source of water for IRWD to recharge under the proposed project is provided in the Draft EIR on page 2-9. Section 5.3 of the Draft EIR describes MWD's water supplies for its entire service area through the year 2035 (see Table 5-4, MWD's single dry year supply capability and total water demand). Section 5.3 further indicates that MWD has identified local projects and conservation measures to meet demand in its service area and maintain reliability in light of increased pressure on MWD's primary supplies from the Colorado River and the Sacramento-San Joaquin Delta.

City-32

The comment states that the description of appropriative water rights potentially available for project purposes is (i) incomplete, vague and deficient and (ii) contains significant omissions and errors. The comment states that such Kern River water rights will apparently be the primary water source for the proposed project and, therefore, the lack of details is particularly problematic. The comment also states that the Draft EIR provides few details regarding water service agreements under which Kern River water would become available for project purposes. The comment states that there is no information regarding the duration, or term, of the agreements, current or alternate uses of the water, place and method of delivery, and priority and pricing information. The comment further states that there is also no information regarding the circumstances under which Kern River water would be available pursuant to the referenced agreements, the quantity of water available, when water would be available, how it would be available, and why it would be available.

The comment fails to identify any omissions and errors, significant or otherwise, and is not supported by substantial evidence. For IRWD, the Draft EIR specifically identifies pre-1914 appropriative water made available through an Exchange Program with Buena Vista Water Storage District (BVWSD) as a potential source of water if the agreement is extended to include the project lands (Section 1.5.3 page 1-17; Section 2.4.2 page 2-9). It is noted that this source of supply was used by IRWD to recharge up to 10,000 acre feet on the Stockdale West property in connection with its 2011 Pilot Project (Section 1.5.3 page 1-18). For Rosedale, the Draft EIR specifically identifies Kern River water made available to Rosedale through water service agreements with the City and from BVWSD and other Kern River interests through banking and temporary water service agreements (Section 2.4.2 page 2-9). For both it is clearly stated that the actual availability of Kern River water for project purposes may depend on appropriate arrangements with the holders of these appropriative water rights as well as entities having jurisdiction over them (Section 2.8 page 2-25; Section 3.14.3 page 3.14-7). Given these limitations, there is no reason to assume that Kern River water rights will be the primary water source for the proposed project. In addition, the Draft EIR lists multiple potential sources of water for the project in Section 2.4.2, including the Central Valley Project and the State Water Project. Please also refer to response to City-2.

Details as to how, where, when and in what quantities specific amounts of Kern River water will be or become available for project purposes depend on many variables, are speculative and cannot be provided. Neither is this information required for a project that is not dependent on the availability of Kern River water at any particular time or at all (14 Cal. Code Regs. §15124). The proposed project does not require the availability of Kern River water to function but clearly

contemplates that Rosedale and IRWD will work with, not against, the Kern River water right holders and the Kern River Watermaster to minimize any loss of local water supplies that might occur in the absence of the proposed project (Section 2.4.2 page 2-9, 2-10; Section 3.14.3 page 3.14-7).

City-33

The comment requests additional information regarding historical deliveries of Kern River water to Rosedale. The comment also requests additional information regarding the present and projected uses of the project water supplies.

As explained in the Draft EIR, Kern River water is only one potential source of water for project recharge (Draft EIR Section 3.14.3 page 3.14-7). The proposed project is not dependent on the availability of Kern River water in any particular amount, at any particular time, or at all. Thus, information regarding historical deliveries of Kern River water to Rosedale would not add any meaningful information to the environmental review that is required by CEQA. See also response to City-21.

Notwithstanding the foregoing response, Rosedale receives Kern River water from Buena Vista Water Storage District via a long-term banking arrangement whereby it provides recharge capacity for high-flows and returns water on an annual basis either via exchange of its available State Water Project supplies or recovery capacity. Rosedale also acquires Kern River water from Buena Vista Water Storage District via short-term water acquisition programs to offset in-district demands by either groundwater recharge or direct irrigation deliveries. It is expected that these practices will continue. Rosedale also receives Kern River water from the City via a water supply contract (Agreement 76-80) to offset in-district demands. It is expected that these deliveries will also continue.

City-34

The comment refers to the Kern River Water Service Agreement between Rosedale and the City, dated August 31, 1961, as amended by Agreement 76-80, dated June 30, 1976, saying that such agreement restricts the place of use of Kern River water received by Rosedale. The comment suggests that implementation of the proposed project would violate the agreement. The comment concludes that the failure of the Draft EIR to identify and discuss such restrictions and limitation violates CEQA disclosure requirements, and fails to provide an accurate, complete and proper description of the project.

With respect to the implication that the proposed project violates Rosedale's contractual obligations, the comment does not involve environmental impacts and is, therefore, beyond the scope of the Draft EIR. See response to City-8.

With respect to CEQA disclosure requirements and the adequacy of the project description, the Draft EIR specifically states that “[s]ources of water to serve as recharge waters would be available only during certain conditions and subject to the requirements of DWR, SWRCB and the water rights’ holders. Agreements would be made, as necessary, in advance of any water exchanges or transfers” (Section 3.14.3 page 3.14-7).

City-35

The comment requests additional information regarding information of deliveries of Kern River flood release water to Rosedale.

As stated above in response to City-33, the proposed project is not dependent on the availability of Kern River water in any particular amount, at any particular time, or at all. Nevertheless, from the period of 2004 to present, Rosedale received 20,688 acre-feet in 2006 and 16,180 acre-feet in 2011. Flood release water becomes available, typically in the late spring and summer months, when available Isabella Reservoir storage is, or is expected to be exceeded absent additional releases.

City-36

The comment states that the Draft EIR fails to disclose that the SWRCB has determined that the Kern River is no longer fully appropriated and that the water released from Lake Isabella for flood control purposes or under mandatory release conditions is unappropriated water. The comment further complains that the Draft EIR fails to disclose that Rosedale has filed an application with the SWRCB to appropriate these Kern River flood flows. The comment also states that the water released from Isabella Reservoir, as described in the Draft EIR, is the same unappropriated water that is the subject of Rosedale's application to appropriate and states that Rosedale's failure to disclose that fact violates the intent and specific requirements of CEQA.

With respect to any interpretation of SWRCB rulings, the comment does not involve environmental impacts and is, therefore, beyond the scope of the Draft EIR. See response to City-8. As to disclosure, the Draft EIR acknowledges that the SWRCB has determined that the Kern River is no longer fully appropriated (Section 4.2.4 page 4-7, 4-8, 4-9) and that Rosedale has filed an application to appropriate Kern River water (Section 4.2.4 page 4-9).

The assumption regarding unappropriated water released from Lake Isabella is incorrect and the failure to disclose is non-existent. Water released from Lake Isabella is only considered by the SWRCB to be unappropriated water when the Kern River – California Aqueduct Intertie is open, which allows Kern River water to flow into the California Aqueduct and out of Kern County.

City-37

The comment suggests that Rosedale's failure to disclose its application to appropriate Kern River water, by itself, establishes that the project description is incomplete and inaccurate. The comment contends that the Draft EIR should have indicated that SWRCB approval of Rosedale's application to appropriate is a necessary component of, or prerequisite for, the proposed project. The comment also states that the Draft EIR fails to disclose that several other parties, including the City, have filed applications with the SWRCB to appropriate any unappropriated Kern River water, including water released from Isabella Reservoir. The comment suggests that, if one of the other parties obtains rights to unappropriated Kern River water, including "mandatory release" water from Isabella reservoir, the water will not be available for use in the proposed project.

Regarding disclosure of Rosedale's application, see response to City-36. As to the project description, it would be inaccurate to state that the proposed project is, in any way, dependent on

SWRCB approval of Rosedale's application to appropriate Kern River water. As explained in the Draft EIR, Kern River water (flood flow or otherwise) is only one potential source of water for project recharge (emphasis added; Section 3.14.3 page 3.14-7). It is also clearly stated in the Draft EIR that "[t]he proposed project does not require a new water supply" (Section 3.14.3 page 3.14-6).

As to disclosure of other parties' applications, the Draft EIR states that the "...entities filing petitions [to appropriate Kern River water] include Rosedale, KCWA, KWBA, Buena Vista Water Storage District, the City, and North Kern Water Storage District/City of Shafter" (Section 4.2.4 page 4-9). As stated above, from a project perspective, it is immaterial which entity, if any, obtains rights to unappropriated Kern River water.

City-38

The comment states that Rosedale has failed to comply with CEQA by failing to address potential impacts and uncertainties with regard to the water supply for the proposed project. The comment also cites legal principles with reference to California case law [*Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 864, 88].

Such potential impacts and uncertainties do not exist with regard to water supply. See responses to City-41 and City-42. Impacts associated with recharge of potential water supplies included in the Draft EIR in Section 2.4.2 are evaluated in Chapter 3.9, including impacts to water levels (pages 3.9-21 to 3.9-30) and impacts to water quality (3.9-31 to 3.9-32). As previously discussed in response to City-2, additional environmental analysis may be required for the use of specific water sources for project purposes.

The comment citing legal principals and reference to case law does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-39

The comment cites legal principles with reference to California case law [*California Oak Foundation*, 133 Cal.App.4th at 1226].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-40

The comment states that, in contravention of CEQA, the Draft EIR provides insufficient information regarding Kern River water supplies potentially available or intended for use in the proposed project, especially when the same is assumed to be the primary water source for the proposed project.

Please see response to City-32 through City-37.

City-41

The comment suggests that the water supply description in the Draft EIR violates the requirements of CEQA based on the holding in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432.

With respect to the adequacy of the water supply description for the proposed project, see response to City-21 and City-32 through City-37.

The comment cites *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432 for the proposition that future water supplies must bear a likelihood of actually proving available, i.e., speculative sources and unrealistic allocations are insufficient bases for decision-making under CEQA. *Vineyard* involved construction of a large development tract. The principal disputed issue was how firmly future water supplies for the proposed project must be identified or, to put the question in reverse, what level of uncertainty regarding the availability of water supplies can be tolerated in an EIR for a land use plan. The proposed project is not a development project, and water supplies for the project are different from water supplies for a development project. As discussed in the Draft EIR Section 5.4, the proposed project would not be capable of providing water every year and therefore cannot support continuous demands associated with population growth. As also discussed in the Draft EIR Section 3.9, Threshold 2, extraction would be limited to the amount previously recharged less losses. Unlike a development project which will represent a continuous firm demand, the proposed project would not support a firm demand but an enhancement of IRWD's ability to respond to drought conditions and potential water supply interruptions, and operational flexibility for implementation of Rosedale's Conjunctive Use Program. Clearly, *Vineyard* has no application to the proposed project but, even if it did, the Draft EIR would not be deficient even if the Kern River water supply fails to materialize. The Draft EIR examines the environmental effects of the larger project, i.e., recharge and recovery of various sources of water foreseeably available. The project potentially provides IRWD with supplemental supplies that can be used under scenarios such as MWD shortage due to drought, catastrophic failures of water conveyance infrastructure, a shut-down of Delta water supply, or water quality issues in the SWP, and then only if and to the extent water has been banked in the project. It would also provide Rosedale with operational flexibility by augmenting the recharge, storage, and extraction capacity of Rosedale's Conjunctive Use Program to assist with fulfillment of its mission of maintaining groundwater levels within its service area and its obligations to existing participants in its Conjunctive Use Program. *Availability* of supplies for the project is evaluated, not as to availability to provide a part of the normal supply as they would need to be for a development project, but as opportunities for exchanges or transfers that may be available on a short term or long term basis for recharge and banking. Replenishment of the bank can be timed by Rosedale and IRWD according to these opportunities. If access to a particular source is ultimately determined to be legally impermissible for some reason, in whole or in part, project operations may be reduced along with potential environmental effects. Considering the larger project, even if the same is subject to legal challenges, avoids the pitfall of piecemeal review.

City-42

The comment suggests that the water supply description in the Draft EIR violates the requirements of CEQA based on the holding in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 as further explained in *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277 .

Please refer to response to City-41 regarding how water supply was addressed in the Draft EIR.

In the *Vineyard* case, since houses require a firm water supply, and since the proposed water supply was not firm, discussion of alternatives was considered necessary. Ultimately, the court found that in the *Vineyard* case, the FEIR's long-term water supply discussion suffered from lack of substantial evidence to support its key factual conclusion. The court stated: "On the factual question of how future surface water supplies will serve this project as well as other projected demand in the area, the project FEIR presents a jumble of seemingly inconsistent figures for future total area demand and surface water supply, with no plainly stated, coherent analysis of how the supply is to meet the demand. ... In this respect, the FEIR water supply discussion fails to disclose 'the 'analytic route the ... agency traveled from evidence to action' and is thus not 'sufficient to allow informed decision making.'" [*Vineyard*, 40 Cal.4th at pp. 444-445]. Here, the proposed project does not demand a firm water supply and, even if it did, the analytic route from evidence to action is clearly provided.

City-43

The comment states that the Draft EIR fails to describe the intended use of water extracted through the proposed project, including where the water will be used, how it will be used, and how much of the water will be used by different entities for various purposes.

As part of the project objectives and statement of purpose and need for the project (on page 2-3 of the Draft EIR), it is stated that the proposed project would provide additional recovery capacity for Rosedale's Conjunctive Use Program. Rosedale operates its Conjunctive Use Program for the benefit of landowners within its service area as well as its Conjunctive Use Program partners (Draft EIR page 1-9). Water recovered by Rosedale under the proposed project would be used by landowners within its service area or by Rosedale's Conjunctive Use Program partners.

For IRWD, the objectives state that the project would provide recovery capacity to provide IRWD customers with increased water supply reliability. Water recovered by IRWD under the proposed project would be used by IRWD customers within its service area or by IRWD's exchange partners (Draft EIR page 2-22).

City-44

The comment states that the Draft EIR indicates in Figure 2-2 that the proposed well locations on the Stockdale Properties are approximate and subject to change during final design.

The comment is noted for the record.

City-45

The comment suggests that the Draft EIR does not provide specific, detailed information regarding the recovery of banking water in the proposed project. The comment states that the Draft EIR does not identify Irvine's "program partners," or explain how or why they might receive water from the Program, and that the omission of such important details regarding the project does not comply with CEQA requirements, and prevents the Draft EIR from properly reviewing the impacts of the project on the environment.

Figure 2-2 on page 2-7 shows where the recovery wells are expected to be located. Section 2.4.3 on page 2-10 describes the design and anticipated recovery capacity. Section 1.5.3 on pages 1-15 through 1-19 includes a description of the IRWD water management program including partners. Section 1.5.1 on page 1-9 to 1-10 includes a description of the Rosedale Conjunctive Use Program and the "assessment of integrated operation" completed in 2011, which includes a summary of Rosedale projects, commitments, and partners.

It is not known what entities might become program partners with IRWD, which depends on available opportunities that are identified by IRWD from time to time as they arise for water supplies for banking. Historic IRWD program partner activity is described in the Draft EIR Section 1.5.3 – "Strand Ranch Integrated Banking Project." Currently, BVWSD is IRWD's only Strand Ranch program partner, and impacts associated with the BVWSD/IRWD Exchange Program have been evaluated pursuant to CEQA as cited in the Draft EIR on page 1-17 (i.e., Krieger & Stewart, 2009, State Clearinghouse No. 2009011008). The Draft EIR specifically identifies pre-1914 appropriative water made available through an Exchange Program with BVWSD as a potential source of water if the agreement is extended to include the project lands (Section 1.5.3 page 1-17; Section 2.4.2 page 2-9).

City-46

The comment states that the Draft EIR does not indicate how much water would be produced by the proposed project.

As the comment itself quotes, the anticipated recovery capacity of the proposed project's recovery facilities is found on page 2-10 of the Draft EIR: approximately 11,250 AFY at Stockdale West, approximately 7,500 AFY at Stockdale East, and approximately 22,500 AFY at the third site.

City-47

The comment states that the Draft EIR does not explain how much water would be extracted on an annual basis, when the water would be extracted, and under what circumstances. The comment states that the Draft EIR does not explain how much water would be put in storage prior to extraction; how Rosedale will determine how much water to extract each year; or what factors affect that decision.

Water would be recovered through the proposed project as explained in Section 2.6.3 of the Draft EIR. Additional detail is provided in response to City-43 through City-46. As discussed in the Draft EIR Section 5.4, the proposed project would not be capable of providing water on an annual

basis (every year) and therefore cannot support continuous demands. There would be no firm annual recovery of groundwater through the proposed project.

Regarding how much water needs to be put into storage prior to extraction, on page 2-22 of the Draft EIR, it is stated that “[e]xtraction would be limited to the amount previously recharged less losses and will be specified in agreements between IRWD and Rosedale.”

City-48

The comment states that the Draft EIR does not provide information about how the water recovered through the proposed project would be used, by both Rosedale and IRWD, including types of uses, location of use, and the impact of such use on the environment.

As stated in response to City-43, water recovered by Rosedale under the proposed project would be used by landowners within its service area or by Rosedale’s Conjunctive Use Program partners.

As stated in response to City-43, water recovered by IRWD under the proposed project would be used by IRWD customers within its service area or by IRWD’s exchange partners (Draft EIR page 2-3). IRWD’s normal potable supplies are a combination of local groundwater and imported water. IRWD feeds these supplies to its single, integrated distribution system, divided into pressure zones by elevation. IRWD aggregates its demands and supplies throughout its service area and does not allocate specific supplies to cities or other distinct portions of the service area. In a supply shortage scenario in which recovery from the project would be used for supply enhancement, the recovered water or water exchanged for the recovered water would reach IRWD’s distribution system through its imported water service connections and could be delivered anywhere in the service area. An operational outage within the MWD supply or delivery system is not predictable as to what areas may be affected. However, as explained in Sections 2.4.2 – “Metropolitan Water District of Southern California” and 2.6.4 of the Draft EIR, MWD, as the State Water Contractor that imports water to IRWD’s service area, would access water from the California Aqueduct at Lake Perris where it would then be conveyed to IRWD’s delivery system through a turnout approved by MWD using either the Allen-McColloch Pipeline or the East Orange County Feeder No. 2, or delivery could occur by exchange, or by wheeling under MWD’s Administrative Code. As also discussed in the Draft EIR at Section 2.6.4 and Section 3.9, Threshold 1, water recovered from the proposed bank would be subject to the pump-in water quality requirements imposed by the KCWA and DWR for introduction in the California Aqueduct, just as all other imported water transmitted through the delivery system to Southern California, and the water would travel into and through the MWD system and be mixed with other imported water. Thus the water recovered from the project bank will be in the same delivery system with other imported water, and there would be no impact on the environment in IRWD’s service area as a result of delivery to and use of the recovered water in IRWD.

City-49

The comment suggests that the Draft EIR does not describe the “entire project” and, therefore, Rosedale has engaged in improper piecemealing in violation of CEQA. The comment cites legal principles based on California case law [*City of Santee v. County of San Diego* (1989) 214

Cal.App.3d 1438, 1450; *County of Inyo*, 71 Cal.App.3d at 193; *Orinda Association v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171; *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428].

This comment does not connect the cited authority to the Draft EIR or otherwise raise any specific environmental issues. Thus, no response is required. See response to City-8. The comment is noted for the record.

City-50

The comment states that the Draft EIR's discussion of project objectives does not comply with CEQA requirements in that (i) the project objectives are vague, general, and redundant, and (ii) contain undefined terms. Vagueness is said to result from use of the term “operational flexibility” in the first two objectives. Undefined terms are identified as (1) “capacities,” (2) “redundancy” and (3) “diversification.” The comment complains that Rosedale does not “...define or explain those terms anywhere in the Draft EIR.” The comment also cites California case law for the proposition that an EIR should provide sufficient information and analysis to allow the public to discern the basis for the agency's action. [*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal.App.4th 1, 13].

CEQA Guidelines §15124(b) provides that the project description should include a statement of the objectives sought by the proposed project. The Guidelines do not specify a particular form, format or content for the statement of objectives. However, it is suggested that the statement should be clearly written, should include the underlying purpose of the project, and should not supply extensive detail beyond that necessary for the review and evaluation of environmental impacts. For the proposed project, four specific objectives are identified and oft repeated (Section S.3 page S-5; Section 2.2 page 2-3; Section 6.1.1 page 6-1, 6-2; Appendix A). These stated objectives are amplified by further discussion of the need for and purpose of the proposed project throughout the Draft EIR.

For example Objective 1 is to integrate the proposed project facilities and coordinate the proposed project operations with Rosedale’s Conjunctive Use Program, including the Strand Ranch Project, to provide for maximum “operational flexibility” between the various programs and facilities. It is elsewhere explained that such integration is expected to optimize operational flexibility by allowing Rosedale to recover groundwater on behalf of itself and/or IRWD, at any facility available to Rosedale within its Conjunctive Use Program (Section 2.3 page 2-12; Section 2.6.2 page 2-22; Appendix A page A-5).

Objective 2 is to provide additional groundwater recharge, storage, and recovery capacity in the Kern River Fan region to augment and provide “operating flexibility” for Rosedale’s existing and future programs. It is elsewhere explained that increased operating flexibility results from the mere availability of more recharge and recovery facilities which are provided by the proposed project (Section 2.3 page 2-3). Such augmentation also provides greater opportunities for water quality blending (Section 2.3 page 2-4).

Objective 3 is to develop recharge and recovery “capacities” for each of IRWD's and Rosedale's respective properties to be available for its priority use and for the other agency's use to the extent unused capacity may be available. Both recharge capacities and recovery capacities associated with the proposed project are specifically defined in and referenced throughout the Draft EIR (Section S.4 page S-5; Section 2.4 page 2-5; Section 2.4.3 page 2-10).

Objective 4 is to develop additional groundwater recharge, storage, and recovery capacity to provide IRWD customers with increased water supply reliability through “redundancy” and “diversification” during periods when other supply sources may be reduced or interrupted. It is elsewhere explained that IRWD’s participation in the proposed project recognizes IRWD’s need, in the event of an interruptible or short-term water shortage, for additional storage and recovery capacity to provide for improved reliability and redundancy in its supplies (Section 2.6.3 page 2-22). Additionally it is stated that:

“IRWD’s UWMP evaluates multiple dry-year drought supplies and identifies sources of supply to meet actual demands. Generally, during periods of drought, should MWD’s sources be stressed through multiple dry years, or suffer catastrophic failure, IRWD could augment water supplies through increased local groundwater pumping on a short-term basis, as well as reduce demands through increased conservation measures as described in IRWD’s UWMP. The proposed project would help to augment IRWD’s dry-year supply portfolio to enhance water supply reliability and redundancy. Redundant water sources also enhance the system’s overall reliability for potential scenarios such as catastrophic failures of water conveyance infrastructure, a shut-down of Delta water supplies, or water quality issues in the SWP. To plan for these contingencies, a diverse water supply portfolio provides the highest degree of reliability (Section 5.3 page 5-5, 5-6).”

City-51

The comment states that the Draft EIR does not indicate there are unmet demands for water in Rosedale or in Irvine. The comment also states that the project objectives are confusing with respect to whether each objective applies to Rosedale, IRWD, or both districts.

The purpose and need for the project is described in the Draft EIR starting on page 2-3. The proposed project would allow Rosedale to further its mission of maintaining sustainable groundwater levels within its service area and meeting the demand for replenishment of the basin underlying its service area to support pumping by overlying land owners.

IRWD has sufficient supplies to meet its projected demands. See Draft EIR Section 5.3, Table 5-3. IRWD does not have unmet demands. As described in Section 5.4, for IRWD, the project will provide a means of offsetting existing supplies during periods when existing sources may be reduced or interrupted and provides a cost effective means of managing contingency and drought planning needs. The proposed project provides a future drought supply to augment the district’s drought planning requirements. Drought planning provides for supply reliability but does not accommodate additional demand. As cited in the Draft EIR, according to IRWD’s 2014 Policy Position on Water Banking Transfers and Wheeling, IRWD desires to maintain a groundwater

storage capacity of approximately 88,000 AF for its own use. Currently IRWD only has 25,000 AF of storage available, and thus the proposed project would assist with meeting the remaining unmet demand for storage of 63,000 AF. See response to City-7.

With regard to the project objectives as listed on page 2-3 of the Draft EIR, the first and third objective apply to both Rosedale and IRWD; the second objective applies to Rosedale; and the fourth objective applies to IRWD.

City-52

The comment states that the project description fails to provide important details about the components, operation and purpose of the project. The comment also states that the project description does not provide sufficient information about IRWD's intended use of water stored in the proposed project or IRWD's role and responsibilities in connection with the proposed project.

In the Draft EIR, Chapter 2 Project Description, the components of the proposed project are described generally in Section 2.4 starting on page 2-4, followed by specific details for each component on pages 2-5 through page 2-16. The components are also shown in Figure 2-2, Proposed Project Facilities. Details regarding Rosedale's and IRWD's roles in the operation of the proposed project are provided in Section 2.6 Project Operation. The purpose of the project is explained in Section 2.3 Purpose and Need for the Project. Section 2.4.4 describes Rosedale's integrated operation.

For details regarding IRWD's intended use of water stored in the proposed project and IRWD's role and responsibilities, please refer to responses to City-43, City-48 and City-51.

City-53

The comment states that the Draft EIR does not sufficiently describe the project area or all areas impacted by the project. The comment states that the Draft EIR does not contain sufficient details regarding IRWD's use of water from the proposed project, specific cities within IRWD's service area that will be impacted by the project, or other regions in southern California that will be impacted by the project. The comment states that the Draft EIR indicates that Metropolitan will be impacted by or involved in the project yet the Draft EIR provides no useful information regarding Metropolitan.

In the Draft EIR, Figure 2-1 shows the project location and the area potentially to be impacted by the proposed project. The area to be impacted by the proposed project is described for each resource evaluated in the Draft EIR in Chapter 3. For each resource, the analysis begins with a description of Environmental Setting for the area of potential effect.

For details regarding IRWD's intended use of water stored in the proposed project, please refer to responses to City-48 and City-51. Water recovered from the proposed project by IRWD would be used in cities throughout its service area, which are shown in Figure 1-3 of the Draft EIR. See also response to City-43.

Regarding Metropolitan, as stated on page 1-15 and 2-9 of the Draft EIR, currently 22 percent of IRWD's water supply is imported by Metropolitan, purchased through Municipal Water District

of Orange County (MWDOC). Section 5.3 of the Draft EIR describes MWD's water supplies through the year 2035 (see Table 5-4, MWD's single dry year supply capability and total water demand). The Draft EIR states that Metropolitan has also entered into a variety of cooperative delivery and storage conjunctive use arrangements with many of its member agencies who have groundwater storage assets, including the coordinated operating agreement with IRWD and MWDOC described in the Draft EIR Section 2.6.4, relating to the Strand Ranch. For the proposed project, the Draft EIR states the following on page 2-9:

With MWD approval, IRWD could take delivery of water purchased from MWD through MWDOC for storage and later conveyance to IRWD. Delivery would be made from the California Aqueduct via the CVC to Stockdale West, Stockdale East, the third Stockdale site, the Strand Ranch Project, or other Rosedale facilities and could be delivered through exchange. The delivery would be subject to supply and conveyance capacity availability and approval by MWD and KCWA. IRWD could also purchase surplus water supplies when approved and available from MWD through MWDOC for delivery to the proposed project.

Metropolitan would not otherwise be affected by the proposed project. Recovered water would be delivered to IRWD using existing water conveyance infrastructure, including infrastructure owned by Metropolitan. See responses to City-31 and City-48.

City-54

The comment states that the project description focuses on construction and operation of project facilities at the expense of actual details of the project banking operations from a water supply standpoint.

The Draft EIR evaluates the construction and operation of the proposed project, which is a groundwater banking project. Thus, all component facilities support operation of the banking project. Groundwater banking projects provide storage for water supply. The proposed project would also be operated as part of Rosedale's Conjunctive Use Program. Both groundwater banking and conjunctive use are defined in Chapter 1 of the Draft EIR on pages 1-9 and 1-10 of the Draft EIR:

“Conjunctive use” refers to coordinating the management of surface water and groundwater to improve the overall reliability of water supply (Pacific Institute, 2011). “Groundwater banking” is the practice of recharging specific amounts of water in a groundwater basin that can later be withdrawn and used by the entity that deposited the water (Pacific Institute, 2011). Groundwater banking uses underground aquifers for percolation and storage purposes, as an alternative to building aboveground storage, and offers water users both within and outside of the groundwater basin the opportunity to store water there. It allows flexibility to respond to seasonal and inter-annual variability, as water can be stored in wet periods, when water is abundant, for use in dry periods, when water may be in short supply. Groundwater banking programs may benefit water levels in the local aquifer because

the amount of water available for recovery is less than the amount recharged; this difference can mitigate for overdraft conditions and raise groundwater levels.

This explains how groundwater banking and conjunctive use projects, such as the proposed project, are used to manage water supply. Please also see responses to City-47 and City-52.

City-55

The comment states that the Project Approvals section of the project description is incomplete because it does not include the State Water Resources Control Board (SWRCB) approval of Rosedale's application to appropriate Kern River water. The comment states that the Draft EIR should have disclosed and discussed this specific SWRCB approval required for full implementation of the proposed project.

The approval of Rosedale's application was not included in the Draft EIR because it is not required for implementation of the proposed project. Kern River water is part of the portfolio of potential water supply sources for the project. An explanation of how Rosedale currently receives, and would continue to receive, Kern River water when available can be found on pages 2-9 and 2-10 of the Draft EIR. See responses to City-8 and City-32.

City-56

The comment cites legal principles with reference to California case law [*Cadiz Land Co. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 92; *Santiago County Water District*, 118 Cal.App.3d at 829].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-57

The comment cites legal principles with reference to California case law [*San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 729].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-58

The comment states the Project Description in the Draft EIR is deficient because Rosedale does not provide required information regarding the potential third Stockdale project site, specifically details regarding the reasons or triggers for future development of the third Stockdale project site. The comment suggests that Rosedale should confirm that it will not develop the third Stockdale project site without first undertaking additional detailed, proper CEQA review.

The third project site is included in the Project Description (See Section 2.4). The trigger for future development of a third site would be identifying a project location with suitable characteristics for recharge, storage and recovery. The third Stockdale project site would be located within the additional site radius as shown in Figure 2-1 of the Draft EIR. See also responses for KCWA-5 and KCWA-6.

City-59

The comment states that the Draft EIR fails to comply with CEQA because it fails to provide any information on certain baseline conditions in the project area, or only provides a brief, general and incomplete description of baseline conditions. The comment cites legal principles from California case law and State Guidelines [14 Cal. Code Regs. § 15125(a); *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119; 14 Cal. Code Regs. § 15125(c); *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 722].

For information concerning baseline conditions, see response to City-18 and City-19, and KCWA-24.

City-60

The comment states that the Kern River is the primary water source for groundwater recharge for the proposed project. The comment states that the Draft EIR does not describe baseline conditions in and around the Kern River, including current flow conditions, the environment in and around the river, and the timing and frequency of diversions from the river. The comment states that the Draft EIR cannot assess the impact of the project on environment without such information.

As already mentioned in response to City-32, the Kern River is not the primary source of recharge water for the proposed project. As described in Section 2.4.2 of Chapter 2 of the Draft EIR starting on page 2-8, there are many potential water sources for the project, including the Central Valley Project, the State Water Project, and other appropriative water rights. Kern River water is not necessary for implementation of the proposed project.

Surface water hydrology and water quality for the Kern River are generally described in the Draft EIR on pages 3.9-2 to 3.9-3. The proposed project itself would not change patterns or practices of water diversion from the Kern River, and as such, would not affect flow in the Kern River. The proposed project may recharge Kern River water provided by agencies with existing water rights, such as the City, as described on page 2-9 to 2-10 of the Draft EIR. Agencies with rights to Kern River water are responsible for developing programs for use of Kern River water and evaluating the impacts of such programs, which may include transfer or exchange of Kern River water with agencies such as Rosedale.

City-61

The comment states that the Draft EIR does not provide information about the amount of Kern River water potentially available for use in the proposed project. The comment states that the Draft EIR does not include a discussion of Kern River water rights held by the City and Buena Vista or the amount of water diverted from the Kern River by the City and Buena Vista, and how that water might be transferred to Rosedale.

Please refer to response to City-32, City-33, and City-34.

City-62

The comment states that the Draft EIR does not provide a description of baseline condition within Rosedale or IRWD, such as water rights held, quantities of water historically and currently used,

overall water demands, including municipal demands, and available sources of water for both districts.

General information about Rosedale and IRWD, including the size of the both districts and water sources available to both districts is included in Chapter 1 of the Draft EIR on pages 1-9 to 1-10, 1-16, and 1-18.

For Rosedale, the historic and current water use within the district can be found in Table 5-7 of the Draft EIR, including water used for irrigation and urban use. On page 5-6 of the Draft EIR it is stated that:

Water used for irrigation within Rosedale's service area is primarily obtained from groundwater pumping, although about 10,000 to 15,000 AFY of surface water is delivered by Rosedale to landowners for use during wet years. Consumptive use within the District is currently estimated to be about 93,000 AFY, including the consumptive use of precipitation (Rosedale, 2013). For the period from 1993 through 2011, the average annual consumptive use has been estimated to be about 92,000 AFY.

For IRWD, detailed descriptions of water supply and demand can be found in the Draft EIR in Section 5.3 on pages 5-3 through 5-5.

City-63

The comment states that the Draft EIR does not disclose the number of wells within Rosedale, including private wells, or the amount of water produced by those wells. The comment states that absent such information it is not possible to determine the impact of the project on the local environment.

Figure 2-2 in the Draft EIR shows Rosedale's existing wells in the project area. Figure 3 of Appendix E of the Draft EIR shows all wells in the project vicinity, including private wells. Rosedale does not maintain records of water produced by private wells. As stated on page 5-6 of the Draft EIR, the total amount of consumptive water use for irrigation in 2012 was approximately 84,500 AFY, which was primarily obtained from groundwater pumping. The amount of water pumped from all wells is reflected in groundwater levels. Historic groundwater levels in the project area are shown in Figure 3.9-2 for both the shallow/intermediate aquifer and deep aquifer. This historic record of groundwater fluctuations is the baseline upon which project impacts to groundwater levels are measured. See response to KCWA-24.

City-64

The comment states that the Draft EIR does not provide information about quantity and type of water used within IRWD, overall water demand within IRWD, and any rights associated with water utilized by IRWD. The comment states that this information is necessary to properly determine the impacts of the proposed project, which provides a supplemental water supply for IRWD.

Detailed descriptions of water supply and demand for IRWD can be found in the Draft EIR on pages 5-3 through 5-5. Additional information about IRWD's water supply, reliability planning, and water rights can be found in the Draft EIR on pages 1-15 through 1-18. Also please see response to City-62.

City-65

The comment states that the Draft EIR does not identify current and historic groundwater conditions in the project area, in and around Rosedale, including groundwater levels, quantities of water spread, and quantities of water pumped, by Rosedale and other entities within Rosedale. The comment states that the information in the Draft EIR is general and does not identify locations of various water level readings and variances among such readings.

Current and historic groundwater levels are a reflection of water spread and recharged and water pumped. Historic groundwater levels in the project area are shown in Figure 3.9-2 in the Draft EIR for both the shallow/intermediate aquifer and deep aquifer at the closest monitoring well to the proposed project, 30S/25E-04J. This well has continuous time-series data on groundwater elevations and illustrates historical high, low, and historical low groundwater conditions in the project area.

See response to KCWA-24. In addition, in Appendix E to the Draft EIR, Figures 13 and 14 show baseline groundwater elevation contours during historical high groundwater conditions (December 2005) and effects of project recharge on groundwater levels; Figures 21 and 22 show baseline groundwater elevation contours during low groundwater conditions (November 2004) and effects of project pumping on groundwater levels; and Figures 29 and 30 show baseline groundwater elevation contours during historical low groundwater conditions (June 2010) and effects of project pumping on groundwater levels.

City-66

The comment states that the Draft EIR does not identify quantities of water pumped, groundwater levels, quantities of water spread, and water quality conditions for other banking programs in the project area. The comment also states that the Draft EIR does not provide information about baseline conditions in areas that will be directly impacted by the project.

The other groundwater banking programs in Kern County are listed in the Draft EIR in Table 4-2 in Chapter 4, Cumulative Impacts. According to the analysis of groundwater impacts in Chapter 3.9 of the Draft EIR (pages 3.9-21 through 3.9-33), the only groundwater banking program that may be directly impacted by the proposed project is the Kern Water Bank. As such, baseline conditions for groundwater in the areas that will be directly impacted by the project are described in Chapter 3.9 and Appendix E of the Draft EIR, as explained above in responses to KCWA-24 and City-65. In addition, details about the Kern Water Bank are provided in the Draft EIR on page 4-7 of the Draft EIR, including recharge, recovery and storage.

City-67

The comment states that the Draft EIR does not contain information about the groundwater aquifer, including the nature and extent of basin overdraft condition. The comment states that this lack of information is contrary to the holding in *Cadiz Land Co* (83 Cal. App 4th at 92).

Information about the groundwater aquifer, including the estimated storage capacities of the San Joaquin Valley subbasin (see page 3.9.7), the Kern County portion of the San Joaquin Valley's groundwater basin (see page 3.9.7), and the Project sites (see page 3.9.9), is provided in the Draft EIR on pages 3.9-3 through 3.9-11, including both regional and project-site specific information about hydrogeology and groundwater levels; groundwater banking, recharge, recovery, and storage; and groundwater quality.

As stated in the Draft EIR, groundwater banking projects are designed to maintain a positive project balance such that no net water would be removed from the basin. The projects operate by recharging water in wet years and recovering water in dry years. Water banks only recover water up to the amount previously banked minus an amount to account for losses to the basin. Thus, long term trends have shown improvements in groundwater levels, when compared to a no-project condition (see Section 4.3 at page 4-14).

City-68

The comment states that the Draft EIR does not provide information about urban land uses or population within Rosedale, or information about quantity and source of water used to meet demands associated with urban uses.

As explained in the Draft EIR in Chapter 5, Growth Inducement Potential, Rosedale's service area is predominantly rural agricultural land uses. However, portions of the service area are within the Metropolitan Bakersfield Planning Area. Population projections for Metropolitan Bakersfield and Kern County overall are provided in the Draft EIR in Table 5-2. In addition, the Draft EIR states on page 5-6 that average urban use has doubled since 1990 within Rosedale's service area, as crop use has decreased slightly, and this trend is expected to continue. Historic consumptive use for both agricultural and urban land uses within Rosedale is shown in the Draft EIR in Table 5-7. The quantity and source of water used to meet demands associated with urban uses will not be affected by project operations.

City-69

The comment states that the claim that the No Project Alternative would forego environmental benefits to the groundwater basin such as overdraft correction, including those due to groundwater pumping to support irrigated agriculture at the Stockdale East property, is not supported or explained in the Draft EIR. The comment states the Draft EIR does not discuss the referenced overdraft conditions.

The Draft EIR includes the following statement on page 2-4: "Stockdale East and West are currently not within the boundaries of a public water agency, and thus water extracted historically for agricultural irrigation has not been replenished." As such, historic pumping without replenishment at these properties has contributed to overdraft conditions in the basin.

Accordingly, the impact analysis for the No Project Alternative concludes as follows on page 6-7 of the Draft EIR:

Under the No Project Alternative, Rosedale would not have access to the recharge and recovery facilities proposed for the Stockdale Properties. Rosedale would be limited to the recharge capacity of its existing recharge basins and forego any potential benefits to groundwater storage and overdraft correction associated with the proposed project. This includes foregoing correction of overdraft caused by groundwater pumping at Stockdale East to support existing farming practices.

City-70

The comment states that Draft EIR is deficient for failing to accurately describe baseline conditions involving the legal status of the Kern River. More particularly, the comment contends that the Draft EIR fails to disclose that the Kern River is no longer fully appropriated; that Rosedale has filed an application to appropriate the “Kern River floodwaters” and “high-flow Kern River water” generally referred to and described in the Draft EIR; that until the SWRCB acts on and approves Rosedale's application to appropriate it has no right to such water; and that other entities, including the City, have submitted competing applications to appropriate to the SWRCB, which seek all or some of the same Kern River water Rosedale proposes to utilize in the project.

Please see response to City-9, City-36 and City-37. The issues described do not involve environmental impacts and are, therefore, beyond the scope and purpose of the Draft EIR. See response to City-8.

City-71

The comment states that the Draft EIR description and characterization of the City is misleading because in several places it is stated that Rosedale is located six miles west of the City, when the City boundary overlaps with Rosedale's boundary.

On pages 1-1, 2-1, 3.9-8, and 3.10-1, the Draft EIR states that the Stockdale Properties, rather than Rosedale's entire service area, would be approximately six miles west of the City. This is accurate when considering the City's incorporated boundary, exclusive of its sphere of influence.

City-72

The comment states that several maps in the Draft EIR do not show actual geographic boundaries of the City, such as Figure 1-1.

Figure 1-1 has been revised to show the City's boundaries.

City-73

The comment cites legal principles from California case law and State Guidelines [14 Cal. Code Regs. § 15362; 14 Cal. Code Regs. §§ 15126.2(a), 15130; Pub. Res. Code §§ 21060.5, 21061; *Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354; 14 Cal. Code Regs. § 15151; *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 356; *Laurel Heights Improvement Assn.*, 47 Cal.3d at 392]. The comment concludes with the assertion that Rosedale has not made a good faith effort at full disclosure and discussion of the impacts of the project; instead, Rosedale has apparently attempted to obscure and hide the details of various elements and components of the project, so as to avoid or minimize the discussion and disclosure of various impacts from the project.

The comment is argumentative, not supported by substantial evidence, and grossly inaccurate. Please refer to response to City-3 regarding good faith effort to disclose environmental impacts. See also response to City-20 and City-21.

The comment does not specifically connect the cited authority to the Draft EIR or otherwise involve environmental impacts and thus, no response is required. See response to City-8.

City-74

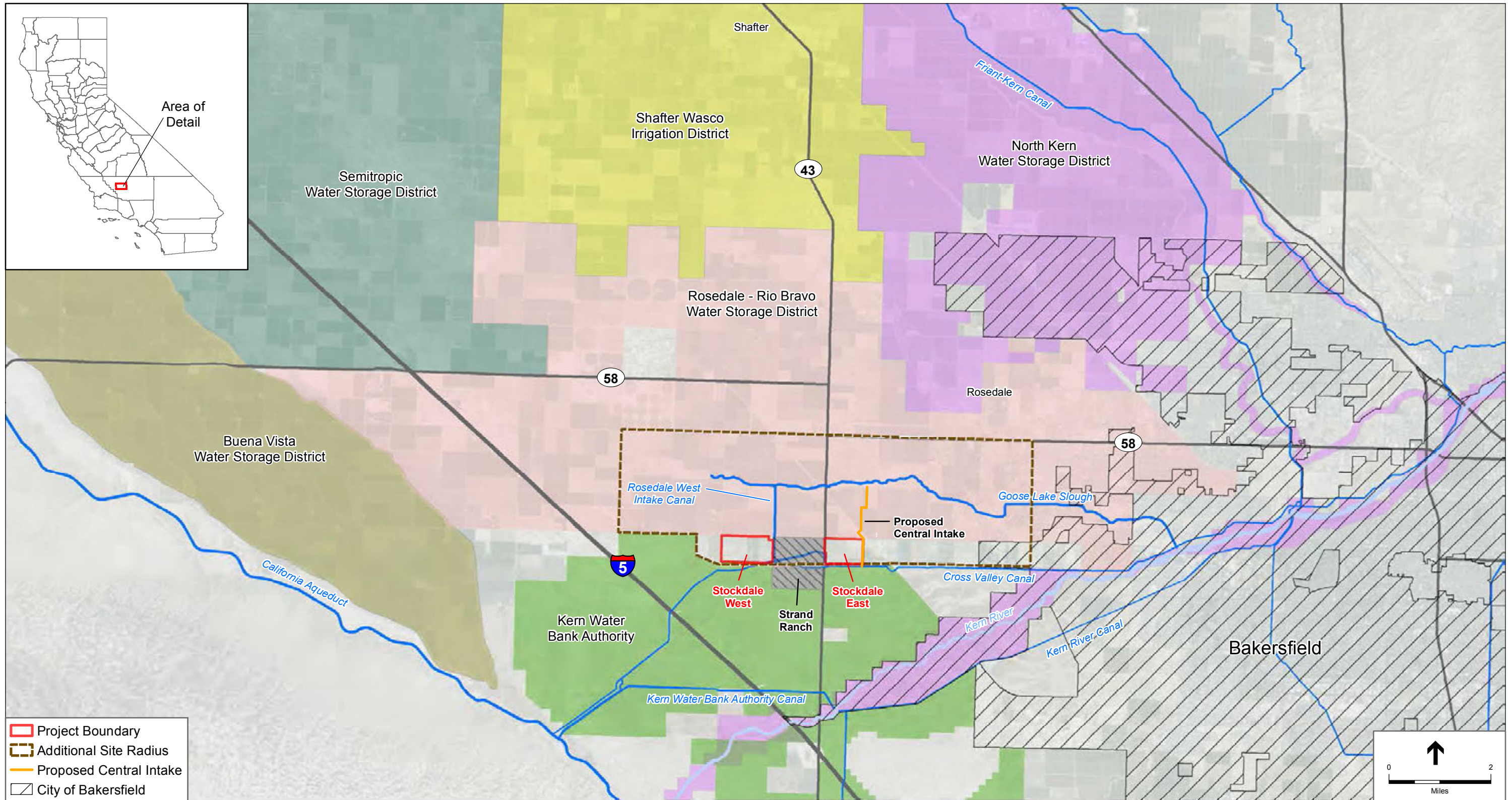
The comment states that the Draft EIR does not include required information about the proposed project and baseline conditions, and as such prevents meaningful complete analysis of impacts on the local environment, Kern River, the City, and local groundwater basin.

The comment does not specify what information the Draft EIR does not include with respect to the proposed project. The details of the proposed project are included in Chapters 1 and 2 of the Draft EIR. These chapters include all the information required by CEQA, including the location and boundaries of the project on a regional map and detailed map; statement of objectives that support the underlying purpose of the project; description of the project's technical, economic, and environmental characteristics; statement of intended uses of the EIR including responsible agencies, permits and approvals (*CEQA Guidelines*, Section 15124).

The comment does not specify what information the Draft EIR does not include with respect to baseline conditions. For each environmental resource evaluated in the Draft EIR in Chapters 3 and 4, the baseline conditions are explained as part of the Environmental Setting. See responses to City-65 and City-66. The Environmental Setting includes both regional and local environmental conditions. This format is explained on page 3-2 of the Draft EIR.

City-75

The comment states that the Draft EIR does not analyze the impact of using the potential water sources on the environment, other water users, and local water supplies. The comment states that the Draft EIR does not satisfy CEQA requirements for a large water supply and storage project as articulated in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007).



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The Draft EIR discusses the potential impacts of using the water sources for groundwater recharge on pages 3.14-6 through 3.14-7. The Draft EIR states that the project does not require a new water supply and as such would not affect local water supplies. The proposed project would use water from the SWP and CVP depending on availability; such opportunistic use of water would not affect other water users or local water supplies. The proposed project would use appropriative water rights, including pre-1914 and post-1914 water rights and other Kern River water also depending on availability. As stated in the Draft EIR, pre-1914 and post-1914 water rights can be transferred to other parties as long as legal users of water are not injured (“no injury rule,” per Water Code Sections 1706 and 1702). The Draft EIR explains how the State Water Resources Control Board (SWRCB) supervises transfers of appropriative water rights, and when the SWRCB is required to make a finding that the transfer will not result in unreasonable effects on fish or wildlife or other in-stream beneficial uses. As stated in the Draft EIR on page 3.14-6:

The “no unreasonable effect” test is not the same as the evaluation of significant impacts under CEQA (SWRCB, 1999). Should the use of such post-1914 appropriative water rights require evaluation of impacts to legal users and other environmental considerations, additional analysis may be required. Otherwise, given that transfers of appropriative water rights are subject to the approval of the transferring agency, and at times the SWRCB, and that the water code requires a finding of no injury, and at times a finding of no unreasonable effect, the uses of such waters for recharge would not result in significant impacts.

With regard to evaluation of supplies and the application of the *Vineyard* decision, please see responses to City-41 and City-42.

City-76

The comment states that the Draft EIR is deficient because it dismisses or minimizes a number of potential impacts to the environment without explanation and based on unsupported or unexplained conclusions. The comment cites legal principles from California case law [*Laurel Heights Improvement Assn.*, 47 Cal.3d at 404; *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383].

No potential impacts are identified which were dismissed or minimized without explanation or otherwise. Given the lack of specificity, a detailed response is not possible or required. See response to City-8. The comment is noted for the record.

City-77

The comment states that the Draft EIR reveals that the proposed project will use substantial quantities of Kern River water and that the Draft EIR does not analyze the impacts on the Kern River, including impacts on the quantity and timing of flows in the Kern River, the environment in and around the Kern River including plant and animal life, the aquifer underlying the Kern River, and the patterns of diversion and use of water from the River.

As discussed in response to City-60, the proposed project will have no impact on baseline Kern River flow and as such was not evaluated in the Draft EIR. The proposed project would use Kern River water, if and when available, through transfers or other agreements with entities that hold

existing rights to Kern River water. The entities with Kern River water rights are responsible for developing programs that demonstrate how Kern River water will be used, and for preparing environmental documentation that evaluates the impacts of such programs. Kern River water utilized by the proposed project would occur consistent with the requirements of such environmental documentation. The proposed project itself would not change patterns or practices of water diversion from the Kern River, and as such, would not affect flow in the Kern River. Therefore, the environment in and around the Kern River, including plant and animal life and aquifer underlying the Kern River, would not be affected by the proposed project

As explained in response to City-33, the proposed project is not dependent on the availability of Kern River water in any particular amount, at any particular time, or at all.

City-78

The comment states that the plan to use substantial quantities of Kern River water for a new water banking project will necessarily result in changes, and impacts, in the diversion and use of water from the Kern River, which changes will necessarily have an impact on the Kern River.

As explained in response to City-33, the proposed project is not dependent on the availability of Kern River water in any particular amount, at any particular time, or at all. Thus, implementation of the proposed project will not “necessarily result” in the changes and impacts described. Please also see response to City-77 above.

City-79

The comment cites legal principles with reference to California case law [*Napa Citizens for Honest Government*, 91 Cal.App.4th at 386; *County of Amador*, 76 Cal.App.4th at 948; *Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373; *Santiago County Water District*, 118 Cal.App.3d at 831].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-80

The comment cites legal principles with reference to California case law [*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099]. The comment states that the analysis of impacts of the project on Kern River flow is incomplete for the same reasons as found in cited case law.

Unlike the facts of the cited authority, the proposed project will not cause a reduction in the surface flows of a stream. Please see response to City-77.

City-81

The comment suggests that the Draft EIR is “fatally flawed and defective” because it fails to assess or discuss the impacts of transfers of water, including valuable, necessary high quality Kern River surface water, out of Rosedale, and out of the County, to IRWD.

Please see response to City-2 and City-8.

City-82

The comment assumes that the proposed project involves out-of-area transfers and criticizes the Draft EIR for failing to disclose or discuss impacts associated therewith.

Please see response to City-2 and City-8.

City-83 and City-84

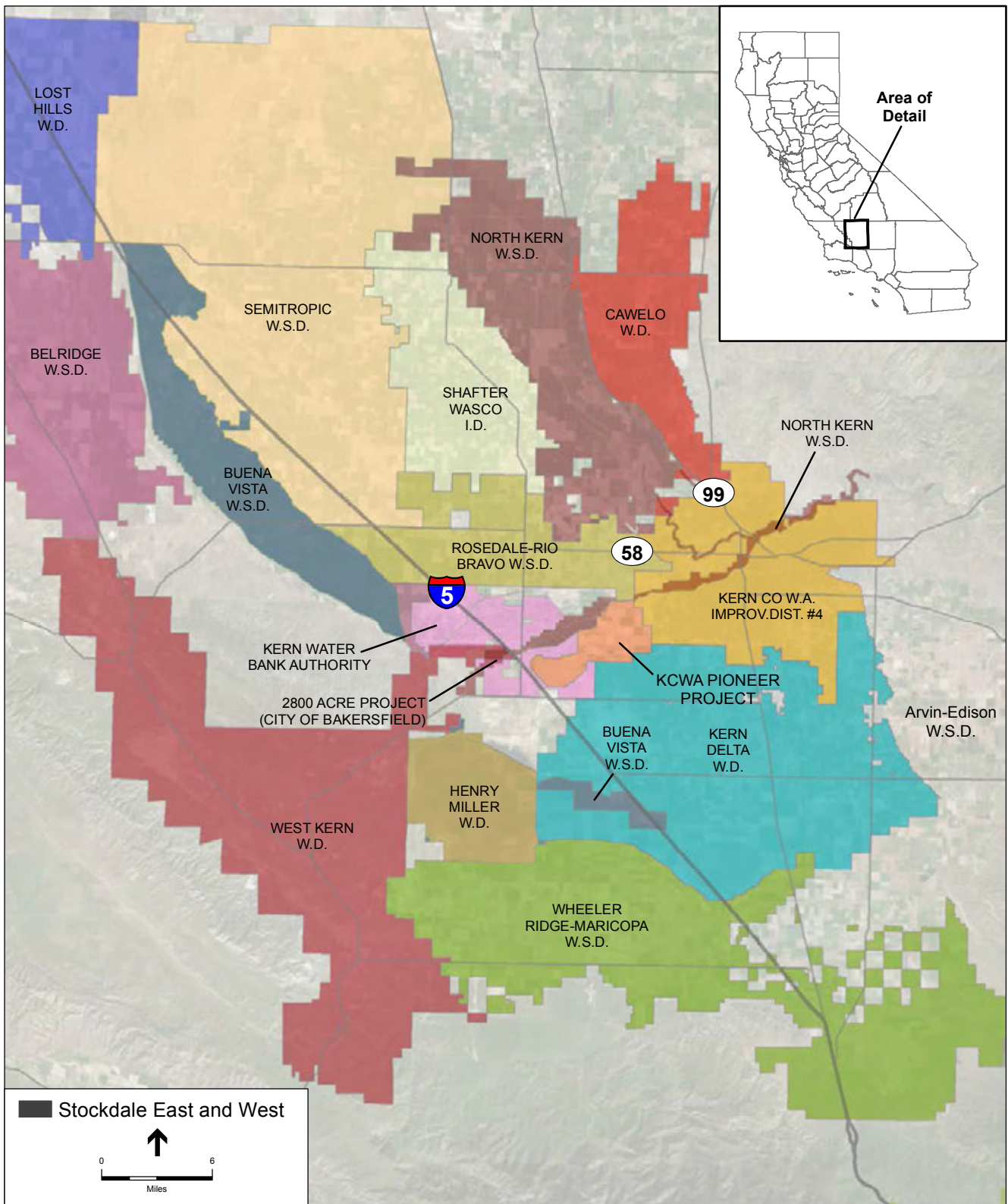
The comment states that the Draft EIR does not discuss the impacts of the proposed project on the City and does not include information about baseline conditions within the City including the City's baseline water rights. The comment states that the City will provide one of the primary water sources to the proposed project through its transfer of Kern River water to Rosedale pursuant to the 1961 agreement and as such the City's water supply would be affected. The comment states that the boundaries of the City overlap with the boundaries of Rosedale and as such the extraction of groundwater associated with the proposed project would impact the City's operation of the nearby 2800 Acre recharge and water banking facility.

The proposed project would have no impact to the City or its water supplies. The 1961 agreement with Rosedale for the transfer of Kern River is an existing agreement that would not be altered by the proposed project and as such would not affect the City's water supply.

The Draft EIR describes regional groundwater banking projects in Kern County, including the City's 2800 Acres project, on pages 3.9-4 and 3.9-5 and Figure 3.9-1. In response to the comment, Figure 3.9-1 has been revised to include a label for the City's project, which is located south of the proposed project sites and south of the Kern Water Bank Authority (KWBA) along the Kern River.

Impacts associated with groundwater pumping are described in the Draft EIR on pages 3.9-22 through 3.9-26 and in Appendix E. In general, as a groundwater banking project that requires recharge prior to extraction, the proposed project would not affect the City's water supplies as a result of groundwater pumping. However, groundwater pumping would result in localized impacts to groundwater levels at wells surrounding the proposed project sites. The impact would be greatest directly adjacent to the project sites and at the closest neighboring wells and would decrease with distance from the project sites. The closest wells to the project sites belong to the KWBA and the impact analysis and determination are based on impacts to KWB Well 6D03. Impacts were determined to be less than significant without mitigation. As shown in the groundwater elevation maps in Appendix E (see Figures 23 and 24) during historic low groundwater levels pumping at Stockdale East and Stockdale West could affect water levels as far south as the Kern River in the vicinity of the City's 2800 Acres project. However, the effect would be approximately 0 to 5 feet in the shallow/intermediate aquifer (Appendix E, Figure 23) and 5 to 10 feet in the deep aquifer (Appendix E, Figure 24), substantially less than the 17 to 27 feet of drawdown potentially at the KWB Well 6D03 (see Draft EIR, Table 3.9-1). Therefore impacts of groundwater pumping to the City's 2800 Acres project also would be less than significant.

See also responses to City-10, City-60, and City 77.



SOURCE: ESRI 2013, California Department of Water Resources

Stockdale Integrated Banking Project . 211181

Figure 3.9-1
Kern County Water Districts

City-85

The comment suggests that the Draft EIR fails to review the impacts of the proposed project on the City in direction violation of CEQA requirements.

Impacts on the City are discussed in Chapters 3 and 4 of the Draft EIR (Section S.6 page 3-7). See also response to City-10, City-83 and City-84.

City-86

The comment assumes that the City will provide water to Rosedale for project purposes and opines (with reference to California case law (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373)) that the Draft EIR must describe and assess the impacts of the alleged transfer.

The assumption is incorrect; the proposed project is not dependent on a transfer of water from the City to Rosedale at any particular time, in any particular amount, or at all. Also as stated above, any actual transfers as may occur will be subject to consent of the water right holders and entities having jurisdiction. See also responses to City-32, and City-34.

City-87

The comment states that the Draft EIR evaluates impacts of the proposed project on the local groundwater basin but does not discuss the impact to groundwater supplies and the groundwater basin underlying Rosedale and the City. The comment states that the Draft EIR does not identify the impact of the proposed project on other banking projects and programs in the area, groundwater levels in the vicinity of the project, related impacts on the basin and local water supplies as a result of the extraction of water, and the transfer of water from the proposed project out of the region.

Regarding the impact of the project to groundwater supplies, local water supplies, other groundwater banking projects and programs in the area, and groundwater levels in the vicinity of the project, please refer to responses to City-83 and City-84. Regarding the transfer of water from the proposed project out of the region, please refer to response to City-2 and City -66.

City-88

The comment states that the Draft EIR does not include information related to the claims of reductions in future overdraft conditions in the underlying groundwater basin on page 3.2-13; as such the effect of the project on overdraft conditions cannot be determined.

The Draft EIR includes the following statement on page 2-4: “Stockdale East and West are currently not within the boundaries of a public water agency, and thus water extracted historically for agricultural irrigation has not been replenished.” As such, historic pumping without replenishment at these properties has contributed to overdraft conditions in the basins.

In addition, it is general knowledge that the local groundwater basin is, and has historically been, experiencing overdraft conditions. As stated in on page 1-9 of Chapter 1 of the Draft EIR:

Rosedale's service area overlies the Kern County Subbasin of the San Joaquin Valley Groundwater Basin. Rosedale was established in 1959 to develop a groundwater recharge program to offset overdraft conditions in the underlying basin. Prior to the groundwater recharge efforts initiated by Rosedale, groundwater levels in the District were declining at a rate of eight to ten feet per year. Through implementation of groundwater recharge programs and participation in the State Water Project (SWP), Rosedale slowed the decline in groundwater levels dramatically. In the mid-1990s, groundwater levels again were declining, and Rosedale initiated the Conjunctive Use Program.

In addition, the City itself makes reference to the overdrafted basin in its comment letter on page 4 (City-12), citing the California Department of Water Resources' identification of the Kern County sub-basin as being in "a critical condition of overdraft," as well as on page 5 (City-14), page 25 (City-97), and page 28 (City-108). The Draft EIR references the DWR determination of the overdrafted basin on page 3.9-17.

In addition, as stated in the Draft EIR, groundwater banking projects are designed to maintain a positive project balance such that no net water would be removed from the basin. The projects operate by recharging water in wet years and recovering water in dry years. Water banks only recover water up to the amount previously banked minus an amount to account for losses to the basin. Thus, long term trends have shown improvements in groundwater levels, when compared to a no-project condition (see Section 4.3 at page 4-14).

City-89

The comment states that the claim that the proposed project does not require a new water supply is contradicted by the repeated reference to and discussion of water supplies that will be used by the project.

As described in the Draft EIR, the proposed project does not require new water supply entitlements. The project will opportunistically use water supplies as available, primarily during wet hydrologic periods, as described on page 2-8 and 2-9 of the Draft EIR. During wet periods, when water is plentiful and State reservoirs are full to capacity, agencies like the Bureau of Reclamation and DWR make excess water available to water purveyors with storage capacity as long as conveyance capacity is available as well. For example, the Bureau of Reclamation makes excess, non-storable flood water available during wet years through the CVP. DWR also makes uncontrolled excess water that cannot be stored in state reservoirs available through the SWP during wet years. In addition, the U.S. Army Corp of Engineers mandates the release of Kern River water from Isabella Reservoir during wet years for flood control purposes. During such periods, Kern River water may be available for diversion to the project, allowing for recharge of Kern River water that would have otherwise flowed out of the County.

See also response to City-2 and City-8.

City-90

The comment states that the Draft EIR only evaluates localized impacts on groundwater resources within Rosedale and the project area and adjacent wells and does not evaluate longer term impacts on the groundwater basin or groundwater levels and quantities farther removed from the project areas.

The Draft EIR evaluates the extent to which operating the proposed project would affect groundwater levels on pages 3.9-22 through 3.9-30. As discussed above under responses to City-83 and City-84, the localized impacts would be greatest directly adjacent to the project sites and would decrease with distance from the project sites. The longer-term impacts to the Kern County sub-basin due to operating the project in conjunction with other groundwater banking programs are discussed as part of the analysis of cumulative impacts in Chapter 4 of the Draft EIR, on pages 4-13 through 4-15. The analysis lists the other groundwater banking programs in the Kern Fan area on page 4-14 and goes on to explain how groundwater banking projects are designed to maintain a positive project balance such that no net water is removed from the basin, since water banks only recover water up to the amount previously banked minus an amount to account for losses to the basin. The analysis goes on to document how long-term trends have shown improvements in groundwater levels, although periods of groundwater recovery can temporarily lower groundwater levels. These fluctuations are illustrated by the historical record of groundwater levels shown in Figure 3.9-2, for a monitoring well close to the project area.

City-91

The comment states that the Draft EIR does not sufficiently describe the local groundwater basin or consider other uses of or burdens on the basin. The comment states that the Draft EIR does not identify other entities that pump water from the basin, describe the quantities and timing of groundwater extractions from the basin, or discuss the impact of pumping of other parties on the basin in connection with the proposed project.

The local groundwater basin, namely the Kern County Subbasin of the San Joaquin Valley Groundwater Basin, is described in the Draft EIR on page 3.9-3 through 3.9-11, including both regional and project-site specific information about hydrogeology and groundwater levels; groundwater banking, recharge, recovery, and storage; and groundwater quality. The other entities that pump from the basin are included on page 3.9-4 and 3.9-5. Groundwater recovery operations in the Kern Fan area is discussed on page 3.9-7. The impact of pumping associated with the proposed project together with pumping associated with other entities and groundwater banking programs are discussed as part of the cumulative impacts analysis in the Draft EIR on pages 4-13 through 4-15.

City-92

The comment states that the Draft EIR does not assess the actual impact of increased groundwater banking and pumping in the area by other entities. The comment states that the Draft EIR provides general, vague statements and information about the groundwater basin, other spreading projects and the extraction of water from the basin.

Please refer to response to City-91 above. The impact of pumping associated with the proposed project together with pumping associated with other entities and groundwater banking programs are discussed as part of the cumulative impacts analysis in the Draft EIR on pages 4-13 through 4-15. The comment does not specify what the claimed increase in groundwater banking and pumping would be and does not specify what statements and information in the Draft EIR are general and vague.

City-93

The comment states that the Draft EIR relies on historical groundwater pumping data that is not reasonable in the present situation due to the long-term drought, which is increasing pumping and leading to new banking projects and facilities. The comment states that the reliance on past historical data does not accurately assess the impacts of the proposed project.

The Draft EIR includes a description of the justification for using the range of historical groundwater conditions as its baseline on pages 3.9-22 and 3.9-23. The period chosen includes historical low and historical high groundwater conditions. The Draft EIR states on page 3.9-23 that the historic lows “may have been met or exceeded, given the current and ongoing drought conditions (Kern Fan Monitoring Committee, 2015).” The Draft EIR states on page 3.9-23 that the period was chosen “for the purpose of identifying the potential effects on a representative range of groundwater conditions, particularly the maximum potential effects.” See also response to KCWA-24.

City-94

The comment states that the limited information about groundwater conditions does not adequately support the conclusion that the project will have a less than significant impact on the environment.

Please refer to responses City-87 through City-93 above. The comment does not clarify which less-than-significant impact determination it claims is not adequately supported.

City-95

The comment states that the Draft EIR should have disclosed information and potential impacts regarding critical habitat for the Buena Vista Lake Shrew. The comment states that the City’s 2800 Acre Recharge Area has been “designated or proposed for designation as ‘critical habitat’ for the Buena Vista Lake Shrew.” The comment further states that the Draft EIR should have determined and discussed whether the species could be found on the project site.

The Buena Vista Lake shrew was disclosed in the Biological Resources Technical Report, included as Appendix D1 to the Draft EIR. As explained therein on page 24, the Buena Vista Lake shrew occupies the marshlands of the San Joaquin Valley and the Tulare Basin and is unlikely to occur in the project area. The Biological Resources section of the Draft EIR states on page 3.4-8 that only the species with a medium or high potential to occur in the project area and associated vicinity are explained in detail in Section 3.4, and directs the reader to Appendix D-1 Biological Resources Technical Report for a full listing of all species considered.

City-96

The comment states that the Draft EIR does not consider the impacts associated with pumping of new project recovery wells with respect to the generation of GHG at electric-power generating plants due to increased energy demands. The comment states that the Draft EIR does not assess the impacts of increased GHG emissions from municipal use of water from the project within Irvine.

The analysis of GHG emissions specifically calculates the annual metric tons of CO₂e associated with energy use from project recovery operations (see Draft EIR, Table 3.7-2). The Draft EIR states that electricity use can result in GHG production if the electricity is generated by combustion of fossil fuel (page 3.7-16).

The proposed project would use existing conveyance facilities to move water from the proposed project to IRWD's service area. The water would be used during times of water shortages when supplies typically available during normal years or operating conditions are unavailable. Given there would be no new facilities to convey water to IRWD's service area and the water would offset normal supplies, there would be no effect to GHG production.

City-97

The comment states that the Draft EIR does not evaluate increased energy consumption and generation and related increases in GHG emissions caused by pumping from lower groundwater levels at nearby wells and increased demand on an already overdrafted basin as a result of the proposed project.

The proposed project would not increase demands on an already overdrafted basin. There would be no project recovery unless and until water is recharged first, as required by the project description. The project would result in long-term increases in water levels within the basin; potential decreases in water levels will be localized and short in duration and are thus not expected to result in net increases in energy consumption or net increases in generation of GHG emissions.

City-98

The comment states that the Draft EIR discussion of cumulative impacts related to other similar projects in the region is inadequate and incomplete. The comment states that the Draft EIR does not provide information about other banking projects in the area, does not identify the source of water for other banking projects, quantities of water recharged and pumped, the extent and rate of pumping, quantities of water pumped, and planned changes in operation.

The analysis of cumulative impacts is required to evaluate the project's contribution to cumulative impacts when considered together with the effects of past, current, and probably future projects (Draft EIR, page 4-1). As stated in the Draft EIR, an EIR shall discuss cumulative impacts of a project when the project's incremental effect is "cumulatively considerable", and an EIR should not discuss impacts that do not result in part from the project evaluated in the EIR (Draft EIR, page 4-1).

The impacts of the proposed project to groundwater are described in Chapter 3.9 of the Draft EIR. The proposed project would not affect groundwater levels at other water banks within the Kern Fan area with the possible exception of the KWBA. Therefore, it follows that no cumulative impacts to groundwater levels at other water banks would be associated with operation of the proposed project.

Information about other water banking projects that were included in the analysis of the cumulative impacts, including a description of those projects' respective water supply sources, is included in section 4.2.4 of the Draft EIR.

City-99

The comment states that the cumulative impact analysis does not disclose whether other banking projects are using the same water supplies to be used by the proposed project, and therefore the Draft EIR does not properly determine cumulative impacts of the proposed project on local water supplies.

Section 4.2.4 of the Draft EIR discloses other water banking projects and the sources of supply used in their respective operations. For a further discussion of the proposed project's water supplies, see response to City-2 and City-8.

City-100

The comment states that without information about operation of other banking projects, the Draft EIR cannot accurately assess the cumulative impact of substantial increased pumping in the region as a result of the project. The comment states that if other banking projects were planning to drill more wells or increase pumping, the cumulative impacts of the proposed project would be different than described in the Draft EIR.

The cumulative impact analysis on pages 4-13 through 4-18 of the Draft EIR considers the effects of recovery operations associated with the proposed project together with the Kern Water Bank operation and other recovery projects in the vicinity. There are no other known recovery projects that could contribute to the cumulative groundwater condition; the analysis of cumulative impacts in the Draft EIR is therefore sufficient.

City-101

The comment states that the Draft EIR does not discuss cumulative impacts of the proposed project on the Kern River and other local water supplies and sources. The comment states that the Draft EIR does not provide information about baseline conditions in the Kern River and the impact of the proposed project on the Kern River.

Surface water hydrology and water quality for the Kern River are generally described in the Draft EIR on pages 3.9-2 to 3.9-3. The proposed project would not affect diversions from the Kern River, and as such, would not affect flow in the Kern River. Please see responses to City-60 and City-77.

City-102

The comment cites legal principles with reference to California case law [*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431; *Whitman v. Board of Supervisors*, (1979) 88 Cal.App.3d 397, 408].

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record.

City-103 and City-104

The comment states that an EIR must identify areas of known controversy and that the Introduction chapter of the Draft EIR indicates that various “concerns” raised during the public comment period and scoping session for the proposed project have been addressed in Chapters 3 and 4 of the Draft EIR. The comment states that the Draft EIR does not sufficiently identify or summarize all areas of controversy including the issues and concerns raised by the City in its comments to the NOP.

As required by 14 Cal. Code Regs. § 15123(b)(2), the Executive Summary of the Draft EIR includes areas of known controversy, including the “adverse impacts to the City’s water supply and surrounding environment” (Draft EIR, page S-7). Issues and concerns raised during the public comment period for the NOP are not necessarily considered to be an area of known controversy. Rosedale as the Lead Agency is not required to respond to comments submitted during the public scoping period or in response to the NOP. As required by CEQA, Rosedale has considered all comments submitted in response to the NOP when determining the scope of the analysis in the EIR, including the City’s NOP comment letter. Nonetheless, given the City’s incorporation of its NOP letter with its comments on the Draft EIR, responses to the City’s NOP comment letter are also included herein. Issues raised by the City that Rosedale has determined would not be affected by the proposed project may not be included in the Draft EIR, nor would non-environmental concerns and objections about the project. However such concerns and objections may be considered by Rosedale before making a final decision on the proposed project.

In response to the comment the text of the Executive Summary has been modified on page S-7 as follows:

During the public comment period and during scoping sessions held for the proposed project, concerns were raised regarding potential adverse impacts to the following: water quality; special status species; water supply sources for the proposed project; and adverse impacts to the City of Bakersfield’s water supply and surrounding environment. These concerns have been considered in the development of the scope of the environmental analysis included ~~addressed in~~ Chapters 3 and 4 of this Draft EIR.

City-105

The comment suggests that Rosedale has violated CEQA by failing to adequately summarize the main points of disagreement between the City and Rosedale as required by *CEQA Guidelines* Section 15151.

That *CEQA Guidelines* Section provides, in pertinent part, that an EIR "...should summarize the main points of disagreement among the experts." Rosedale is not aware of any disagreement among experts with respect to the proposed project. As to areas of controversy between the City and Rosedale, the EIR states (as modified in response to City-104 above) the following: "During the public comment period and during scoping session held for the proposed project, concerns were raised regarding potential adverse impacts to the following: water quality; special status species; water supply sources for the proposed project; and adverse impacts to the City's water supply and surrounding environment. These concerns have been considered in the development of the scope of the environmental analysis included addressed in Chapters 3 and 4 of this Draft EIR. (Section S.6 page S-7).

City-106

The comment states that the Draft EIR fails to identify and discuss a significant area of controversy involving competing claims to, and disputes over, rights to the "floodwaters" historically released from Isabella Reservoir, based on competing applications to appropriate such water filed with the SWRCB.

No such controversy exists. Please see responses to City-8, City-32, City-34, City-36 and City-37.

City-107

The comment states that an EIR must identify and describe mitigation measures that minimize significant effects on the environment. The comment states that the Draft EIR does not identify potential measures to mitigate "a number of significant environmental effects that would result from the Project." The comment states that the Draft EIR does not identify measures to mitigate reduced flows in the Kern River or the transfer of local water supplies to Irvine.

The comment does not specify any significant environmental effects are not mitigated except for impacts to flow in the Kern River. As stated in response to City-2, the proposed project would not result in the transfer of local Kern River water to IRWD's service area. In the event Kern River Water is used as a source of recharge water for the project, as stated in responses to City-60 and City-77, the proposed project would not affect flow in the Kern River, and as such no mitigation measures are required.

City-108

The comment states that the Long Term Operation Plan (LTOP) is not sufficient mitigation for impacts to groundwater resources and neighboring wells. The comment states that the LTOP "lacks necessary details, or will not actually address or alleviate adverse groundwater impacts and conditions resulting from the Project." The comment states that the primary mitigation measure in the LTOP involves "providing compensation to lower the 'well pump' in wells negatively

impacted by the Project.” The comment states that such a measure would “allow a neighboring well owner to further deplete an already overdrafted, basin and would exacerbate, not mitigate, adverse impacts. The comment states that Rosedale has not proposed mitigation to address and alleviate negative impacts, such as a reduction in pumping, temporary interruption in pumping, reduction in the number of wells used to extract water, reduced pumping rates, and increased recharge or conjunctive use measures.

As explained in the Draft EIR on page 3.9-19, the proposed project would have a significant impact if it would: *“[s]ubstantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).”* As a groundwater banking project that requires recharge prior to extraction, the proposed project would not deplete groundwater supplies or result in a net deficit in aquifer volume. The proposed project may have temporary, localized impacts during operation of project recovery wells, as described in the Draft EIR on page 3.9-22 through 3.9-26 and page 4-13 through 4-18. As such, pumping at project wells could lower groundwater levels at neighboring wells and affect their production rates or ability to operate. The LTOP (see Draft EIR, Appendix B-3) provides multiple measures to mitigate such effects to agricultural and domestic wells. These measures would in fact mitigate the impact of lower groundwater levels, ensuring the operation of existing wells in order to support existing or planned land uses. These measures will provide neighboring landowners with the ability to continue overlying uses and, therefore, will not further deplete an already overdrafted basin or exacerbate adverse impacts.

For agricultural wells, Rosedale would provide compensation to lower the well pump if possible, if groundwater levels are within the operating range of the well. If groundwater levels are outside the operating range of the well, then Rosedale would either:

- Supply equivalent water supply to the affected landowner from an alternate source at no greater cost to the affected landowner; or
- With the consent of the affected landowner, provide other acceptable mitigation; or
- Reduce or adjust pumping as necessary to prevent, avoid or eliminate the impact.

Similarly for domestic wells, if production ceases then Rosedale would provide compensation to implement one of the following:

- Lower the domestic submersible pump bowl setting sufficient to restore and maintain service.
- Provide a one-time permanent connection to the nearest water service provider.
- Drill and equip a new domestic well, the cost of which may be subject to offset by the landowner based on betterment.
- If necessary, provide interim in-home water supplies until any action mentioned above is completed.

The comment suggests mitigation may also include “increased recharge or conjunctive use measures.” Recovery operations typically occur during dry hydrologic periods when water supply shortages occur and water is not available for recharge. The comment does not clarify what other conjunctive use measures could serve to mitigate localized impacts to groundwater levels and neighboring wells.

City-109

The comment states that the LTOP only provides compensation as a mitigation measure for impacts to agricultural wells. The comment also states that the LTOP only proposes to mitigate adverse impacts to domestic wells if production ceases or is likely to cease. The comment states that Rosedale fails to provide mitigation for “negative impacts on domestic wells that fall short of complete inability to use the pump” and thus mitigation for domestic wells is insufficient.

Under the LTOP, compensation would be available from Rosedale to implement mitigation measures for impacts to either agricultural or domestic wells.

Regarding mitigation for domestic wells, the LTOP states that the trigger for evaluating impacts to domestic wells is when production ceases or is likely to cease as a result of pumping by Rosedale’s project. The clause “is likely to cease” covers impacts to domestic wells when production of such wells is compromised but not completely inoperable. If this trigger is not reached then the proposed project would not adversely affect domestic wells, and no other mitigation is required.

City-110

The comment states that it is not reasonable for Rosedale to propose providing a connection to the nearest water service provider as mitigation for complete cessation of production from an existing domestic well. The comment states that such an action would further exacerbate negative impacts on water supplies by increasing domestic water service to a new customer. The comment states that Rosedale does not explain how a nearby water service provider would have sufficient supply to serve a new customer or could legally or practically serve a new customer. The comment states that the City would be a potential nearby water service provider but City ordinances prevent the City from serving customers outside of City limits.

The comment also states drilling of a new well following complete cessation of production from a domestic well would further burden the groundwater basin.

Regarding a connection to the nearest water service provider, in most instances the connection would be to Vaughn Water Company’s supply and distribution system. As with all connections to Vaughn Water Company, the Company determines whether it is legally and practically able to supply a proposed connection at the time an application is made.

Regarding drilling of new wells, such mitigation would allow for existing well owners to continue to serve existing or planning land uses. Additionally, as mentioned above in response to City-108, drilling of a new well is one of a menu of options available to Rosedale and the landowner to mitigate the impact.

Neither form of mitigation will “further exacerbate negative impacts on water supplies by increasing domestic water service to a new customer” because either form will only serve to replace existing uses and will therefore not increase demands on the groundwater basin.

City-111

The comment states that the discussion of alternatives in the Draft EIR is “highly flawed and inadequate” primarily because the stated project objectives are vague, incomplete and self-serving.

Please see response to City-50. The stated project objectives are neither vague nor incomplete. Thus it follows that the analysis of alternatives is adequate.

City-112

The comment states that the Draft EIR only considers “slightly alternative variations” on different versions of a water banking project, including the same project at a different location and the use of injection wells. The comment states that the Draft EIR does not consider alternatives for Rosedale that might improve its operational flexibility, and thus the Draft EIR is deficient. The comment goes on to list other potential alternatives for Rosedale.

The Draft EIR explains the CEQA requirements for the analysis of alternatives on page 6-1. *CEQA Guidelines* state that an EIR shall describe a range of reasonable alternatives to the project, or to the location of a project that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project (14 Cal. Code Regs. § 15126.6). As stated in the Draft EIR, an EIR need not consider every conceivable alternative, but must consider a reasonable range of alternatives that fosters informed decision-making and public participation. The “rule of reason” governs the selection and consideration of EIR alternatives, requiring that an EIR set forth only those alternatives necessary to permit a reasoned choice (14 Cal. Code Regs. § 15126.6). Alternatives may be eliminated from detailed consideration in the EIR if they fail to meet most of the project objectives, are infeasible, or do not avoid any significant environmental effects (14 Cal. Code Regs. § 15126.6(c)). Factors that may be considered when addressing the feasibility of an alternative include site suitability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries, economic viability, and whether the lead agency can reasonably acquire, control or otherwise have access to the alternative site.

According to *CEQA Guidelines*, an EIR must identify ways to mitigate or avoid significant effects of a project, and thus “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project” (14 Cal. Code Regs. § 15126.6(b)). As summarized in Table ES-1 in the Draft EIR, the proposed project would not result in any significant and unavoidable environmental impacts. Nonetheless, Chapter 6 of the Draft EIR provides an assessment of five project alternatives that were considered but rejected, along with the No Project Alternative as required by CEQA (14 Cal. Code Regs. § 15126.6(e)). Table 6-2 on page 6-9 of the Draft EIR provides a matrix that summarizes the comparison of alternatives (14 Cal. Code Regs. § 15126.6(d)).

The Draft EIR does not need to evaluate the additional alternatives suggested in the comment because none of them would serve to mitigate a significant and unavoidable environmental impact.

City-113

The comment states that the alternatives analysis is deficient because Rosedale does not consider an alternative to out-of-County sales of local water to IRWD. The comment states that Rosedale should consider alternatives involving local districts.

The proposed project would not result in the sale of local Kern River water to IRWD, and the project recharge is not dependent on the availability of Kern River water at any particular time or at all. See response to City-2. Alternatives involving local districts instead of IRWD would not satisfy the objectives for IRWD's portion of the proposed project involving its Stockdale West property, effectively eliminating the Stockdale West part of the project and being the same as the No Project Alternative, examined in Section 6.2.2, for IRWD.

City-114

The comment states that the discussion of alternatives for IRWD is incomplete, and the Draft EIR does not provide sufficient explanation for rejection of these alternatives. The comment states that the Draft EIR fails to consider reasonable, feasible alternatives for IRWD.

The Draft EIR provides the following explanations for rejection of the three alternatives mentioned in the comment (Draft EIR, pages 6-6 and 6-7):

- Orange County Storage: Orange County Water District is not partnering with individual retail water agencies to develop groundwater banking programs at this time; therefore, a groundwater banking program within Orange County is not feasible. Constructing surface water storage (e.g., reservoirs, tanks) in Orange County would have significant environmental impacts and would be cost prohibitive due to the land acquisition costs associated with a site big enough to store a volume of water equivalent to the proposed project.
- Conservation: IRWD already manages extensive water conservation programs. Conservation does not achieve the objective of the proposed project, however, to provide IRWD customers with increased water supply reliability through redundancy and diversification during periods when existing imported supplies are reduced or interrupted.
- Recycled Water: IRWD already implements an extensive water recycling program. When imported water supplies may be cutback due to drought or interrupted, IRWD cannot use recycled water to meet potable water demands and therefore would need to augment potable water supply. Therefore, recycled water was not considered as a feasible project alternative.

As described above in the response to City-112, the proposed project would not result in any significant and unavoidable environmental impacts and as such alternatives are not required.

Nonetheless, the Draft EIR discusses alternatives considered for IRWD's portion of the project. See also response to City-118.

City-115

The comment states that the Draft EIR improperly rejects the "alternative storage and supply options" because on page 6-5 of the Draft EIR it does not explain why IRWD is not partnering with other agencies at this time, or why that would not be a viable alternative, or why IRWD cannot change its position or policy. The comment also states that the Draft EIR does not explain why IRWD chose to develop a groundwater banking program with Rosedale, as opposed to another agency. The comment also states that the Draft EIR does not provide justification for rejection of alternatives involving storage or supply projects with MWD.

Alternatives involving IRWD's development of a banking program with an agency other than Rosedale would not satisfy the objectives for Rosedale's portion of the proposed project involving its Stockdale East property or integration of IRWD's Stockdale West with Rosedale's Conjunctive Use Program, effectively being the same as the No Project Alternative, examined in Section 6.2.2.

On page 6-5 of the Draft EIR, it states that Orange County Water District (OCWD) is not partnering with retail water agencies (such as IRWD) to develop groundwater banking programs at this time. OCWD manages the local Orange County Groundwater Basin. IRWD has no control over OCWD's positions or policies. The Draft EIR concludes that a groundwater banking program in Orange County is not feasible.

The Draft EIR does not provide justification for rejection of an alternative storage project with MWD because no such alternative was proposed or described.

City-116

The comment states that the Draft EIR fails to explain the rejection of alternatives involving conservation and recycled water. The comment states the Draft EIR does not explain how much water these alternatives could produce, and that there is no explanation of the amount of supplemental water IRWD needs.

The reasons for rejecting the conservation and recycled water alternatives are provided on page 6-6 and 6-7 of the Draft EIR and summarized above in response to City-114. In the project description, it is stated that IRWD desires a storage capacity of approximately 88,000 AF for its contingency storage (Draft EIR, page 2-3). There is no explanation of how much water the alternatives could produce, relative to the 88,000 AF that IRWD desires, because such is not the foundation for rejecting these alternatives. Recycled water cannot be used to meet potable water demands during a water shortage and thus is not an appropriate project alternative. Conservation does not achieve the objective of providing increased water supply reliability through redundancy and diversification during periods when existing imported supplies are reduced or interrupted; thus conservation is not an appropriate project alternative either. See also responses to City-7, City-118 and City-119.

City-117

The comment states that IRWD's claim that conservation cannot produce enough water to meet the objectives of the Program lacks credibility in light of the recent declaration by the Governor of the State of California calling for all water users in the state to reduce water consumption by 25 percent.

In the Alternatives Analysis on page 6-5, IRWD's water conservation program to reduce water demand in its service area is described. IRWD has implemented programs that comply with or exceed prescribed urban water conservation Best Management Practices requirements under the California Urban Water Conservation Council. Conservation alone was not considered feasible to achieve the project objectives (page 6-6). The proposed project supports the Governor's 2014 conservation initiatives by providing water supply reliability for future conditions (page 2-4). The 2015 Emergency Regulation mandated a 25% aggregate demand reduction statewide (a temporary measure that will expire in February 2016). Agencies with higher potential for reductions are assigned higher targets, and those that are already efficient are assigned lower targets. IRWD's target is lower than 25% in recognition of the significant conservation already achieved by IRWD, and resultant demand hardening. The 2015 Emergency Regulation is targeted solely at temporary demand reductions, and does not address enhanced supply reliability.

The Draft EIR states on page 6-6:

Under extreme shortage scenarios, IRWD can temporarily implement further demand reduction efforts as described in IRWD's Water Shortage Contingency Plan. Conservation efforts combined with supplemental supplies provided by the proposed project to augment IRWD's supply portfolio provide the most effective and reliable water supply alternative. Therefore, conservation by itself was not considered feasible to achieve the project objectives.

City-118

The comment states that the Draft EIR fails to mention or consider a number of other potential, viable alternatives for IRWD including exchanges and transfers, acquisition of additional supplies from MWD or other member agencies, transfers and exchanges with other entities outside of MWD, desalination, increased groundwater pumping, and other operational changes.

Section 5.3 of the Draft EIR provides information on IRWD's water supplies and demands and includes reference to IRWD's most recent Urban Water Management Plan. The proposed project is developed to enhance IRWD's supply reliability under potential scenarios such as MWD shortage due to drought, catastrophic failures of water conveyance infrastructure, a shut-down of Delta water supply, or water quality issues in the SWP. The project includes exchanges and transfers as a way that IRWD can acquire water supplies such as unbalanced exchanges. IRWD evaluates other opportunities for exchanges or transfers that may be available on a short term or long term basis. Exchanges and transfers can be unreliable due to constraints related to conveyance or infrastructure capacity, regulatory approvals, or water quality which make exchanges or transfers unpredictable and do not meet the project objectives. The project is designed to address short term dry year shortages or other catastrophic shortages; as this project is not part of IRWD's normal supply it would be cost prohibitive or infeasible to construct a

seawater desalination facility for this purpose. As stated on page 5-5 of the Draft EIR, IRWD could augment water supplies through increased local Orange County Basin groundwater pumping on a short-term basis. This may be only allowed temporarily, as it is anticipated that other water suppliers who produce water from the Orange County Basin will also experience cutbacks of imported supplies and will increase groundwater production and that imported replenishment supplies would also be cut.

City-119

The comment contends that the discussion of alternatives is inadequate for failure to consider a combination of additional recycled water supplies, water conservation, more efficient irrigation methods, operational changes, and additional alternate water supplies as a complete, viable and environmentally superior alternative to the proposed project.

CEQA Guidelines Section 15126.6 states that an EIR shall describe a range of reasonable alternatives to the project, or to the location of a project that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project (emphasis added). As stated in the Draft EIR, the proposed project would not result in any significant impacts as documented in the analyses provided in Chapters 3, 4, and 5 of the Draft EIR (Section 6.3 page 6-8). Nonetheless, CEQA requires that an EIR shall assess the No Project Alternative and this was done (Section 6.2.2 page 6-7 and 6-8). Although not required, the Draft EIR did consider conservation and additional recycled water as possible alternatives to the proposed project, in whole or in part, and both were found wanting. While IRWD manages a water conservation program to reduce demand in its service area, such programs do not achieve the objective of the proposed project to provide IRWD customers with increased water supply reliability through redundancy and diversification during periods when existing imported supplies are reduced or interrupted (Section 6.2.1 page 6-6). Similarly, even though IRWD operates an extensive recycled water program meeting 95 percent of all irrigation demand and over 23 percent of that district's total water resource demand, additional recycled water use expansion could not be implemented as an alternative to the proposed project because IRWD needs to augment its potable water supply (emphasis added; Section 6.2.1 page 6-6). Please see also responses to City-114, City-116, and City-117.

City-120

The comment cites legal principles with reference to California case law [*Vineyard Area Citizens for Responsible Growth*, 40 Cal.4th at 432; *Napa Citizens for Honest Government*, 91 Cal.App.4th 342]. The comment states that in *Vineyard*, the court stated that when “it is impossible to confidently determine that anticipated future water sources will be available, CEQA requires some discussion of possible replacement sources or alternatives to use of the anticipated water, and of the environmental consequences of those contingencies”; the comment also references the *Napa Citizens* holding that an EIR cannot label sources speculative and decline to address them.

The comment does not specifically address the environmental analysis contained in the Draft EIR. The comment is noted for the record. See responses to City-41 and City-42.

City-121

The comment states that Rosedale fails to properly consider the no project alternative, which should have demonstrated that without the proposed project, IRWD would not have a supplemental water supply and Rosedale would not have operational flexibility. The comment states that “[n]either of those results appears too problematic” in comparison to the adverse impacts that would result from the project, namely “significant adverse impacts on the Kern River, the groundwater basin, the City and local water supplies.

On page 6-8 of the Draft EIR, the alternatives analysis does in fact state that under the no project alternative, Rosedale would not achieve the objective of operational flexibility and IRWD would not achieve the objective of water supply reliability and redundancy. Given that these are the project objectives, the Draft EIR properly states that the No Project alternative would not achieve the project objectives. As explained in response to City-2, City-3, City-8, City-10, City-13, and City-112, the proposed project would not have an adverse impact on the Kern River, the groundwater basin, the City or local water supplies. In fact there are no significant adverse and unavoidable impacts associated with the proposed project (see response to City-3 and City-12) and as such no alternatives are required to minimize impacts of the project.

City-122

The comment urges Rosedale and IRWD to either not implement the proposed project or prepare a “new, more comprehensive and complete EIR which complies with CEQA requirements.”

This comment is not specific as to the claimed noncompliance with California law and, thus, a detailed response is not possible. Per Section 15088.5 of 14 CCR, no significant new information has been presented that would result in a new significant environmental impact or a new mitigation measure; no significant new information has been presented that would result in a substantial increase in the severity of an environmental impact; no new feasible project alternatives have been presented that would lessen the environmental impacts of the proposed project; and the project has no significant and unavoidable impacts that require consideration of alternatives to lessen such impacts. The Draft EIR provided an opportunity for meaningful public review and comment. The EIR complies with applicable California law. Rosedale and IRWD need not prepare a new, more comprehensive and/or more complete EIR. See also response to City-3.

City of Bakersfield Exhibit A: Comments on the Notice of Preparation**City NOP-1**

The comment states that the City of Bakersfield (City) generally supports the goals and purposes of the proposed project related to Rosedale’s efforts to increase its “operational flexibility;” however the comment expresses concern over the scope and content of the EIR.

Please refer to response to City-1 and City-2.

City NOP-2

The comment expresses concern that the project involves transfer or sale of local water supplies from the Kern River out of Kern County to IRWD, and reiterates project details and project

objectives related to IRWD's increased water supply and contingency storage. The comment also states that sales or transfers of local water supplies outside of Kern County are directly contrary to policies of the City, and that development of a water supply for IRWD would logically involve such importation or transfer.

Please refer to response to City-2, City-6, and City-7.

City NOP-3

The comment questions the project's transfer of local Kern County supplies, namely Kern River water, outside of the county, especially in a time of such critical drought. The comment states that "out-of-county" water sales or transfers could cause substantial impacts to groundwater and water supplies.

Please refer to response to City-2.

City NOP-4

The comment states that because of the overlapping boundaries between the City and Rosedale, the EIR should accurately, honestly, and completely review impacts to the City, and review the transfer of local water out of Kern County.

Please refer to response to City-10.

City NOP-5

The comment states that NOP project description is incomplete, vague, and lacking in critical details about the proposed project. The comment also states that the project description lacks information about IRWD's use of water stored or banked in connection with the project.

Please refer to response to City-21, City-43, City-48, and City-52.

City NOP-6

The comment states that the terms "integrate," "coordinate," and "operational flexibility" used to represent the goals and objectives of the project are vague and general, and as such, states that the project description does not indicate how the proposed project will achieve these goals and objectives.

Please refer to response to City-50 and KCWA-3.

City NOP-7

The comment states that without a more detailed description of the proposed project's objectives and goals specified under *CEQA Guidelines* Section 15082(a)(1), the City cannot make a meaningful response to the NOP.

Please refer to response to City-50 for a discussion of project objectives. Contrary to the comment, the NOP was prepared according to *CEQA Guidelines* Section 15082(a)(1), which requires lead agencies to provide sufficient information describing the proposed project and

potential environmental effects, specifically: “(A) Description of the project; (B) Location of the project...; (C) probable environmental effects of the project.” The NOP included this information.

City NOP-8

The comment questions why IRWD is not the lead agency for the proposed project, since the agency would benefit from water supply and IRWD appears to have “principal responsibility” for the project. The comment states that Rosedale does not appear to obtain or utilize a new increased water supply in connection with the project.

As explained in the Draft EIR on page 1-2, the proposed project is a joint project of both Rosedale and IRWD. *CEQA Guidelines* specify that if more than one agency carries out a project, only one can be the CEQA lead agency (*CEQA Guidelines* §15050(a)).

Various aspects of the proposed project will be implemented by Rosedale, IRWD, and some by both agencies in coordination with one another. Rosedale will construct and operate the project. The project is to be operated on an integrated basis with Rosedale’s other banking facilities, and Rosedale, rather than IRWD, would manage the integration of the project with all of Rosedale’s other banking facilities. IRWD will secure supplies for only for a portion of the project, the Stockdale West property and potentially a portion of a third site, if developed, and will schedule its recharge and recovery requests through Rosedale. For the Stockdale East property, Rosedale will have priority use of recharge and recovery facilities. For these reasons Rosedale is considered to be an appropriate lead agency. This is discussed in Section 2.8 of the Draft EIR.

City NOP-9

The comment states that information regarding the source of water to be used for the project is not detailed enough, and that the vagueness for water supplies does not provide sufficient information for agencies to make a meaningful response to the NOP, as detailed in *CEQA Guidelines* Section 15082(a)(1).

Please refer to response to City-25 and City-26 about the sources of recharge water supplies. Contrary to the comment, the NOP was prepared according to *CEQA Guidelines* Section 15082(a)(1), which requires lead agencies to provide sufficient information describing the proposed project and potential environmental effects, specifically: “(A) Description of the project; (B) Location of the project...; (C) probable environmental effects of the project.” The NOP included this information. The Draft EIR includes additional detail on potential water sources, which is included in the Project Description on pages 2-9 to 2-11.

City NOP-10

The comment states that the NOP does not examine the impacts of the project on the City, specifically potential impacts from using the same water as that which is proposed for the project. The comment also states that the NOP does not describe the current use of water to be utilized by the project, and does not identify how and to what extent water would be available for use in the project.

Please refer to response to City25, City-26, City-83 and City-84.

City NOP-11

The comment states that the EIR should review impacts of the proposed project on other water supply and banking projects in the area, including those operated by the City (Kern River channel and the 2800 Acre recharge facility).

The Draft EIR includes both projects in the cumulative impacts analysis. The 2800 Acres project is featured as a select related water banking and infrastructure project on page 4-8 and the Kern River channel project is introduced in Table 4-1 on page 4-5. Impacts associated with water supply and banking are discussed on page 4-13 through 4-18.

City NOP-12

The comment states that the NOP does not provide sufficient or detailed information regarding the potential “conveyance facilities” included as part of the proposed project.

Page A-5 of the NOP includes four paragraphs on the conveyance facilities proposed as part of the project. Additional project description-level detail was made available in the Draft EIR in Sections 2.4.4 and 2.5.3 and details regarding operation of the conveyance facilities are provided in Section 2.6.4.

City NOP-13

The comment states that the NOP does not mention consideration of project alternatives including the “no project alternative.”

To the contrary, the NOP on page A-6 mentions the fact that the EIR will discuss alternatives to the proposed project, including the no project alternative.

City NOP-14

The comment states that the City reserves the right to comment further and raise objections on the project.

The comment is noted for the record.

References – Final EIR Responses to Comments

Division of Oil, Gas, and Geothermal Resources (DOGGR), 1998. FIELD RULE: San Joaquin Valley Oil Spill Reporting Criteria. August.

Kern County Water Agency (KCWA), 1991. *Regional Geologic Structure Related to Ground Water Aquifers in the Southern San Joaquin Valley Ground Water Basin*. Plate IX.

Thomas Harder & Co. (THC), 2011. *Hydrogeological Impact Evaluation Related to Operation of the Kern Water Bank and Pioneer Projects*. Prepared for Rosedale-Rio Bravo Water Storage District. December 5, 2011.

CHAPTER 11

Corrections and Additions to the Draft EIR

This chapter contains a compilation of revisions made to the text of the Draft EIR by the Lead Agency, in response to the comments received during the 45-day public review period. All revisions are previously introduced in Chapter 10 of this Final EIR but are summarized here for convenience of the reader. Where the responses indicate additions or deletions to the text of the Draft EIR, additions are indicated in underline and deletions in ~~strikeout~~.

Chapter S: Summary

Page S-5:

The proposed project consists of ~~three sites: Stockdale East, Stockdale West, the Central Intake Pipeline alignment,~~ and a third project site that may be made up of non-contiguous parcels and that has yet to be specifically located, and the Central Intake Pipeline.

Page S-7:

During the public comment period and during scoping sessions held for the proposed project, concerns were raised regarding potential adverse impacts to the following: water quality; special status species; water supply sources for the proposed project; and adverse impacts to the City of Bakersfield's water supply and surrounding environment. These concerns have been considered in the development of the scope of the environmental analysis included ~~addressed~~ in Chapters 3 and 4 of this Draft EIR.

Chapter 1: Introduction

Page 1-3:

Figure 1-1 has been revised to show the City of Bakersfield's boundaries.

Page 1-17:

A review of the existing Strand Ranch Project has demonstrated that the groundwater banking program between IRWD and Rosedale has a benefit to the overall water balance within the groundwater basin. Operations of the facilities during the 2011 recharge cycle enabled Rosedale to recharge approximately 45,000 acre-feet of water that would not have otherwise come into the basin. Of this amount, Rosedale retained 25,000 acre-feet. Additional benefits to the basin include the loss factors applied to water banked by IRWD, which represents water that will be retained within the basin and may not be recovered.

Chapter 2: Project Description

Page 2-8:

Should water from the sources listed below, or other sources, not suggested below be acquired for recharge, additional analysis may be required, subject to the discretion of Rosedale and IRWD. Rosedale and/or IRWD will analyze the use of identified sources for project purposes to determine the need for and/or extent of future analysis under CEQA.

Page 2-12:

Rosedale shall balance the proposed project's recharge and recovery operations within the geographic areas shown on Figure 2-8.

Page 2-12:

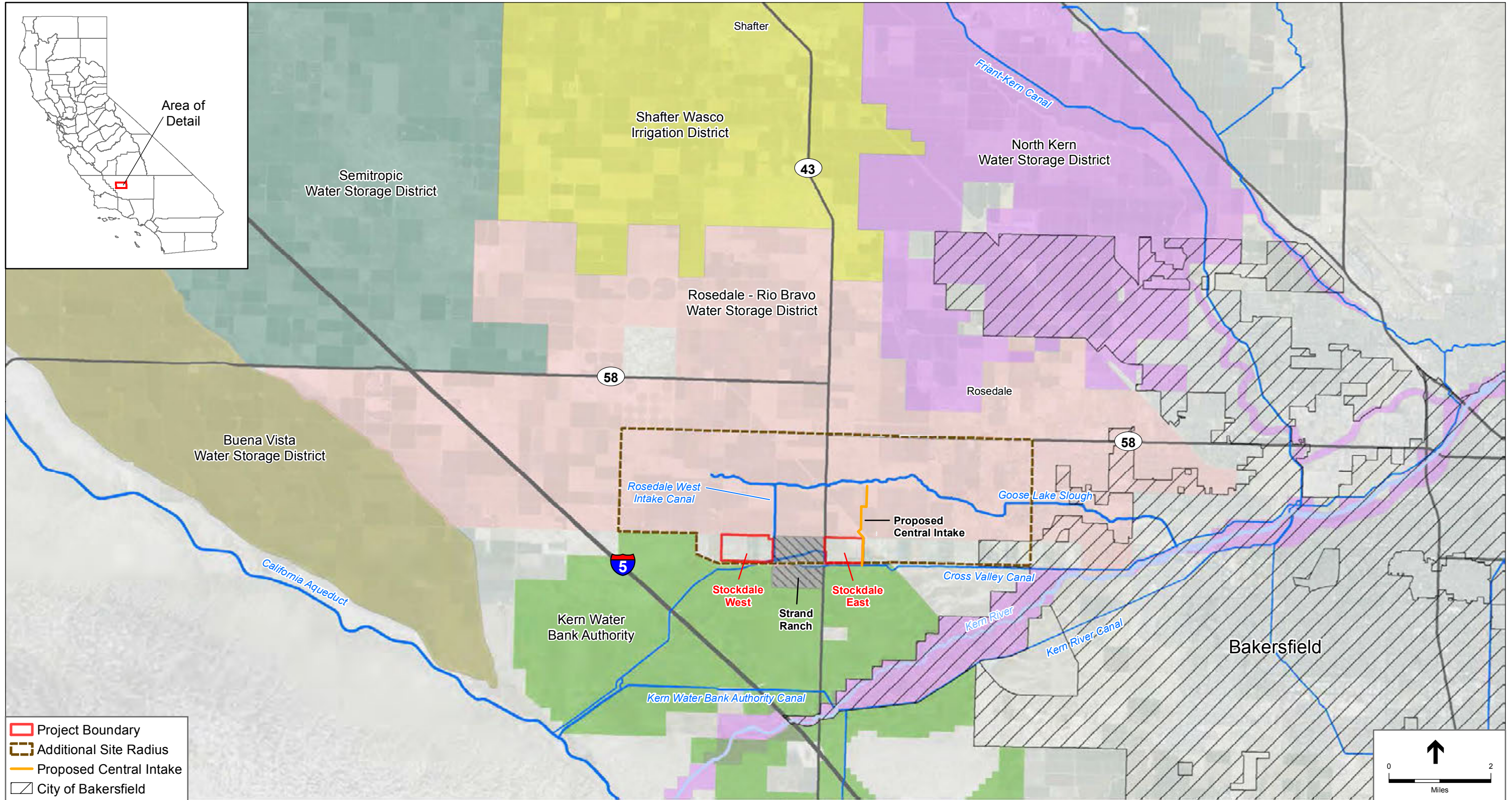
A new Figure 2-8 has been added to the Draft EIR to clarify that recharge and recovery operations associated with groundwater banking will be balanced within the geographic areas shown as Area A and Area B within Rosedale's service area.

Chapter 3: Environmental Settling, Impacts, and Mitigation Measures

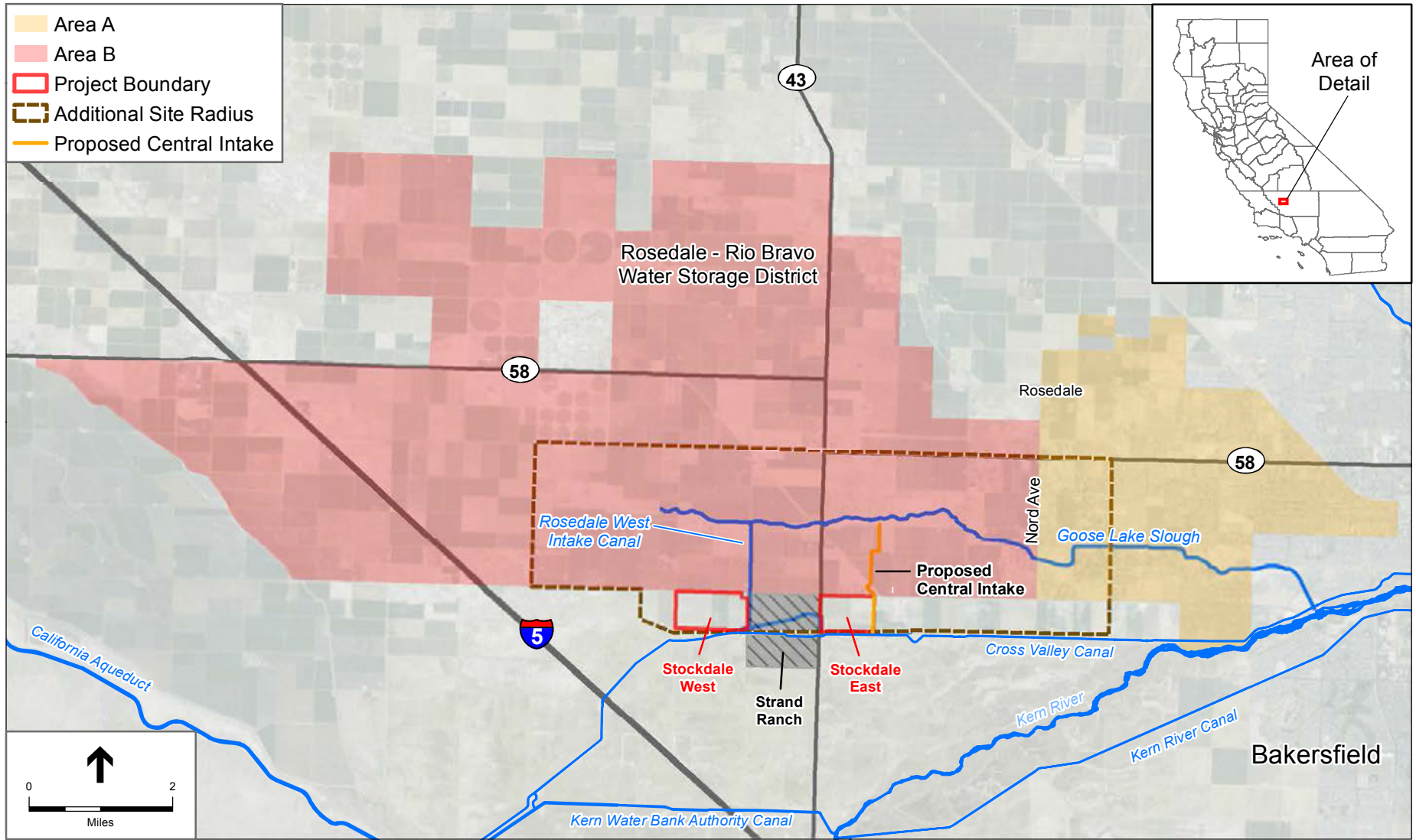
Section 3.2: Agricultural and Forestry Resources

Page 3.2-13:

Furthermore, agricultural land uses, such as annual farming, grazing, or fallowing, would be allowed within the basins at the Stockdale Properties when not operated for water recharge or water management purposes. For a discussion of water quality related to farming use, please refer to Section 3.9, Hydrology and Water Quality, from page 3.9-31 to 3.9-32.



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SOURCE: ESRI 2013

Stockdale Integrated Banking Project . 211181

Figure 2-8

Recharge and Recovery Operations Associated with Groundwater Banking

Section 3.6: Geology, Soils, and Seismicity

Page 3.6-15:

During operation of the groundwater recharge basins, the recharge basins would contain water, which would inhibit erosion; during periods of non-recharge, the recharge basins would be subject to wind erosion. However, when not used for recharge, the basins would continue to be used for agricultural purposes. With the continuation of farming, grazing, or fallowing, the existing land cover would not be substantially altered from existing conditions and would not alter the conditions that affect erosion. Plant cover at the project site would minimize wind erosion. Operation of the Central Intake Pipeline would not contribute to wind erosion since the pipeline would be underground running along the edge of Stockdale East and then primarily beneath an existing dirt road between existing agricultural parcels. The dirt road is already denuded of vegetation and would be restored back to existing conditions, resulting in no change in erosion potential.

Section 3.9: Hydrology and Water Quality

Page 3.9-4:

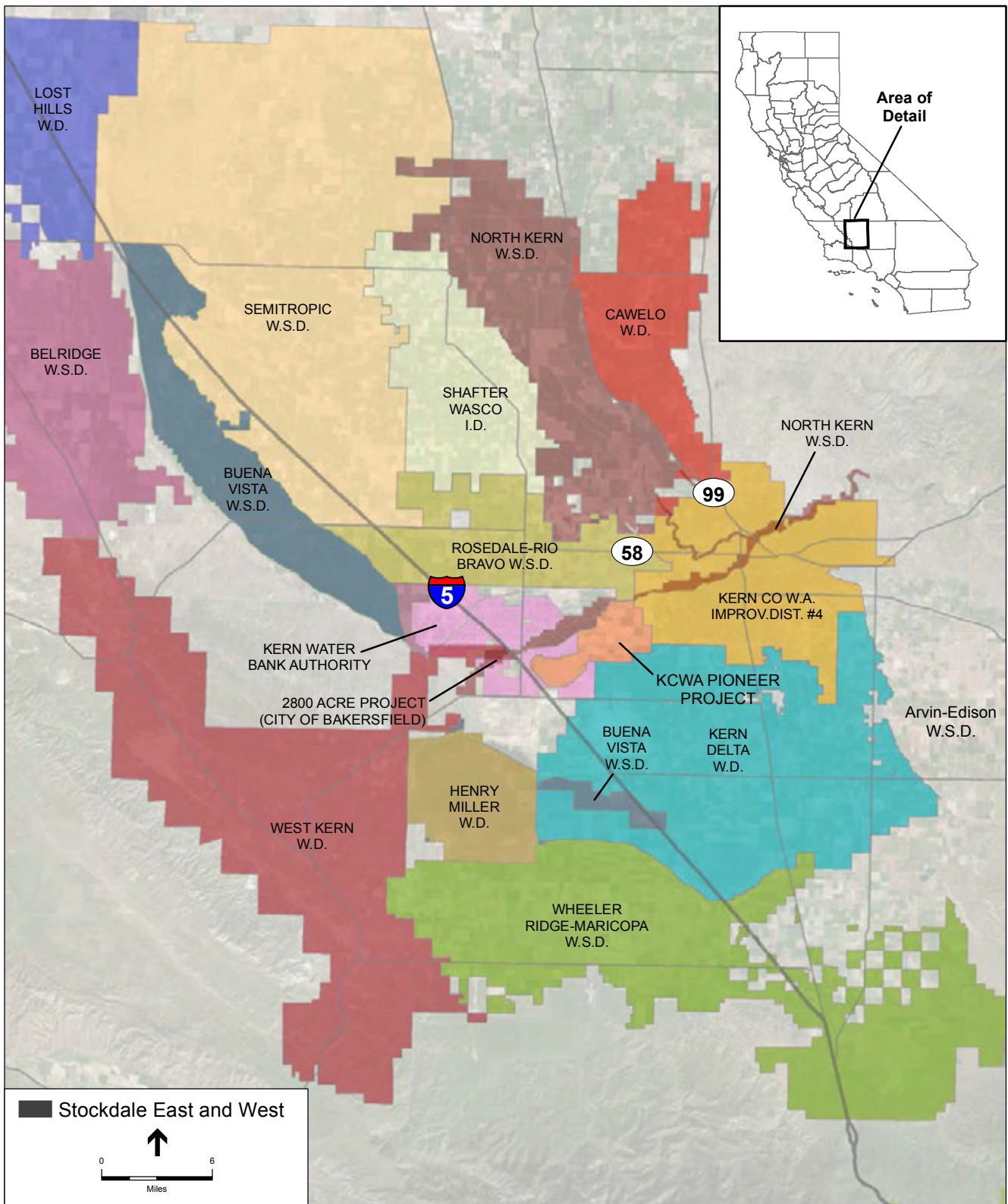
Recharge and recovery activities will generally increase the gradient during the early period of a recharge event due to the effective mounding of the groundwater table and decrease, flatten, or even reverse during a recovery period (THC, 2011).

Page 3.9-6:

Figure 3.9-1 has been revised to include a label for the City of Bakersfield's 2800 Acre recharge and water banking facility project.

Page 3.9-7:

Volumetric recharge rates are controlled by the porosity and permeability of the subsurface materials and total pond area. Throughout the Kern Fan Area and including the area of the third Stockdale project site, existing borehole lithologic data shows that subsurface sediments are highly stratified (i.e. layered) with layers of permeable sand and gravel interbedded with less permeable silt and clay (THC, 2011). The less permeable layers are referred to as aquitards, which impede the vertical flow of water (recharge) but do not prevent it. Aquitards at depth can impede recharge efforts; however on the Kern Fan and in the project area, these layers impede but do not prevent recharge and recovery operations. The porosity of near surface soils tend to be very important to sustaining long term recharges operations. Pore spaces can eventually become clogged with finer grained material transported by the recharge water or by bio-growths found within the recharge water. Local project operators periodically scrape or treat their ponds to remove clogging deposits and encourage the growth of certain types of plants which keep the near-surface soil structure open and porous.



SOURCE: ESRI 2013, California Department of Water Resources

Stockdale Integrated Banking Project . 211181

Figure 3.9-1
Kern County Water Districts

Page 3.9-9:

Significant changes in groundwater levels have occurred during the various recharge and recovery cycles in the project area since 1995 when the Kern Water Bank and Pioneer Project began operations. Extreme changes occurred between 2007 and 2010 when groundwater levels fluctuated as much as 246 feet between historical high levels in 2007 and historical low levels in 2010 (THC, 2015). These conditions have been recorded at nested monitoring wells in the project area where water levels fluctuated from highs of approximately 282 to 305 feet amsl to lows of approximately 36 to 73 feet amsl (**Figure 3.9-2**); given ground surface elevations are approximately 314 to 328 amsl at the monitoring well locations, this translates into high groundwater levels of approximately 31 to 32 feet below ground surface (bgs) and low groundwater levels of approximately 253 to 273 bgs. For the purpose of identifying the potential effects of the proposed project on a range of conditions, including historical low groundwater levels, the period from 2004 through 2010 is selected as the baseline on which to superimpose proposed recharge and recovery conditions in order to determine the greatest potential impacts on water levels ~~assuming the historical groundwater record represents the range of potential groundwater level conditions that could be expected in the future.~~

Use of the 2004 through 2010 time period ensures that an outlier or transitory condition is not used as the baseline condition out of context and provides the public with more accurate information about potential impacts resulting from project operations. The baseline historical groundwater conditions include recharge and recovery operations from nearby existing banking projects (e.g., Kern Water Bank, Pioneer Project, Rosedale-Rio Bravo Water Service District, etc.) including the more recently operating Strand Ranch Project.

Page 3.9-22:

The proposed recharge activities ~~would likely~~ may improve underlying groundwater quality through the blending of high quality surface water such that no adverse effect on water quality would be anticipated (see discussion under Impact HYDRO-5). In addition, the pump-in water quality requirements would ensure that water introduced into the CVC and California Aqueduct would meet KCWA and DWR requirements.

Page 3.9-26:

Subsequent implementation of the third Stockdale project site similarly: may contribute to lower groundwater levels in the project area. If and when the third Stockdale project site is identified, subsequent project-level environmental review will be conducted pursuant to *CEQA Guidelines* Section 15168(c) to determine site-specific effects to groundwater. However, with implementation of Rosedale's LTOP, as described below, impacts to groundwater levels and corresponding impacts to operation of neighboring wells would be considered less than significant.

Page 3.9-32:

The surface water sources for recharge generally have constituent concentrations that are lower than the underlying groundwater or well below drinking water MCLs, and therefore with blending, recharge would not substantially degrade water quality below drinking water standards and may improve groundwater quality ~~would likely improve~~. The transport, use, and disposal of pesticides at Stockdale East, Stockdale West, and the third Stockdale project site would also be done in accordance with applicable regulatory requirements, including regulations specific to application of pesticides within recharge basins and in proximity to wellheads. Mitigation Measure HAZ-1 would require that samples of soils at the Stockdale East property are analyzed and removed appropriately if soils contain hazardous quantities of contaminants. Therefore impacts to water quality would be considered less than significant with mitigation.

Section 3.10: Land Use and Planning

Page 3.10-1:

The Kern River ~~and floodplain~~, the dominant natural feature in the vicinity of the Stockdale Properties, is located approximately 2.5 miles south and east of the project sites.

Page 3.10-2:

Figure 3.10-1 has been revised to include land use designations for the property directly adjacent to the outside border of the radius for the third Stockdale project site.

Page 3.10-3:

Third Stockdale Site

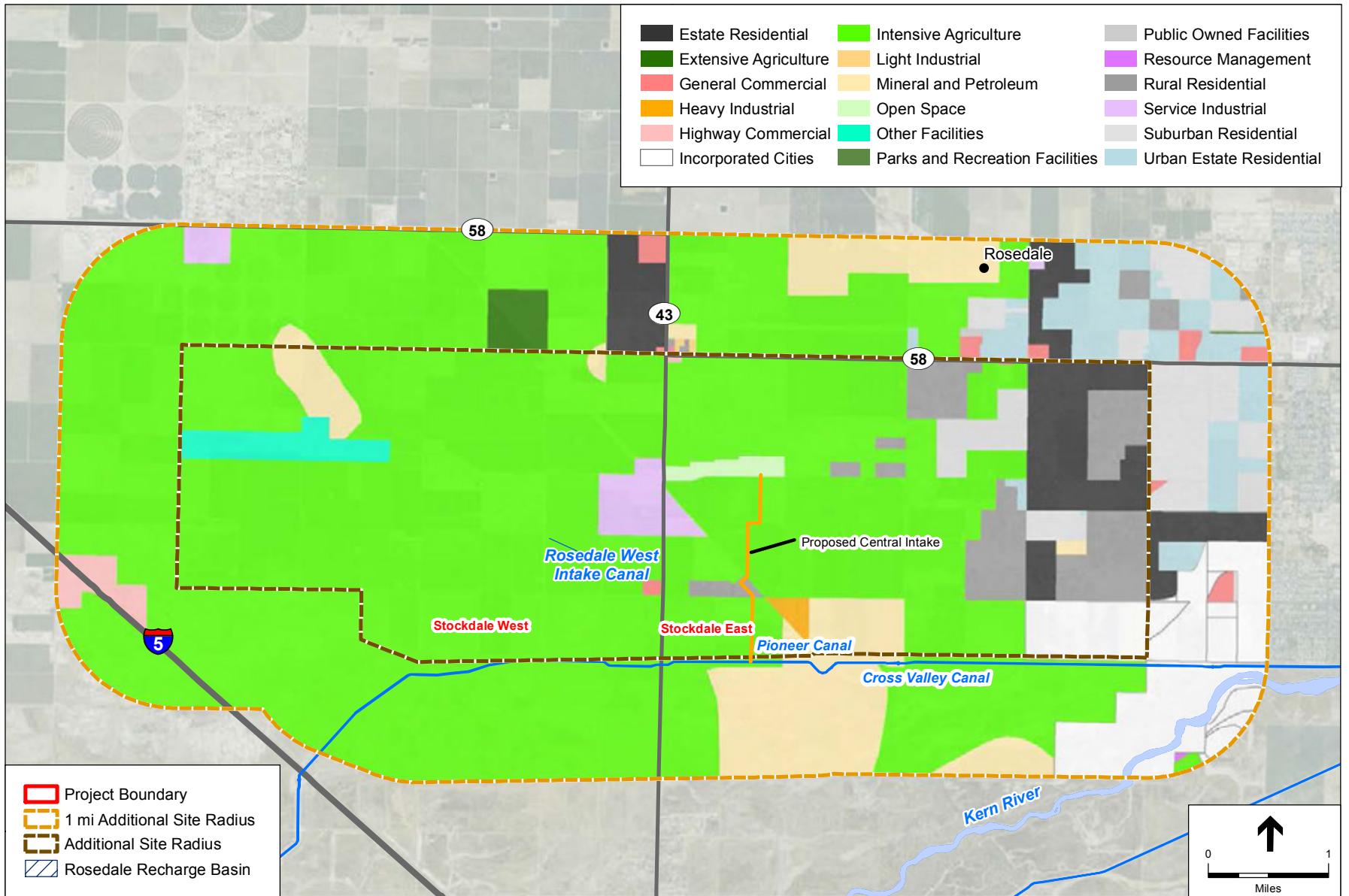
The third Stockdale project site would be located within a site radius as shown on Figure 3.10-1, and is anticipated to be primarily agricultural land. The majority of land within and adjacent to the outside border of the radius is designated Intensive Agriculture by the Kern County General Plan and is zoned Exclusive Agriculture, similar to Stockdale East and Stockdale West.

Page 3.10-4:

Figure 3.10-2 has been revised to include land use designations for the property directly adjacent to the outside border of the radius for the third Stockdale project site.

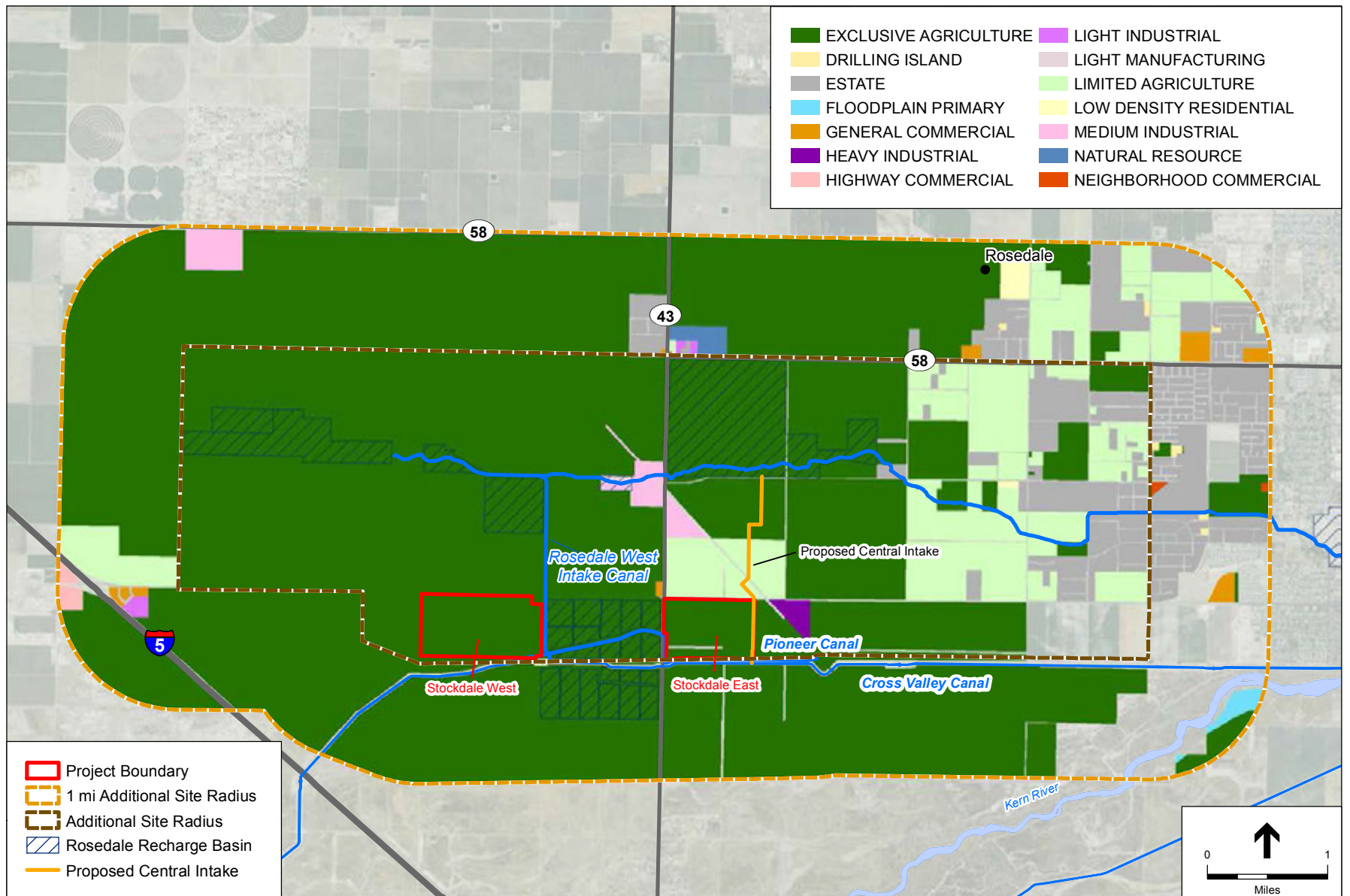
Page 3.10-11 to 3.10-12:

Given that the proposed project would not result in the conversion of land to urban uses, and that mitigation measures have been included to reduce project impacts to threatened and endangered species to less than significant levels (see Mitigation Measures BIO-1 through ~~BIO-10~~ BIO-7 in Chapter 3.4 Biological Resources), the proposed project would not conflict with the MBHCP. Impacts would be less than significant, and no additional mitigation is required



SOURCE: ESRI 2013, Kern County 2013

Stockdale Integrated Banking Project . 211181
Figure 3.10-1
 General Plan Land Use Designation



SOURCE: ESRI 2013, Kern County 2013

Stockdale Integrated Banking Project . 211181

Figure 3.10-2
Kern County Zoning Designation

Page 3.10-10:

Third Stockdale Site

The location of the third Stockdale project site has not yet been determined. Land within the site radius shown on Figure 3.10-1 is primarily Intensive Agriculture, similar to both the Stockdale East and Stockdale West properties. As shown on revised Figure 3.10-1, land on the outside border of the radius for the third Stockdale project site is similar to land designated within the radius: Intensive Agriculture. As shown on Figure 3.10-2, land within the site radius is zoned primarily Exclusive Agriculture. As shown on Figure 3.10-2, land on the outside border of the radius for the third Stockdale project site is similar to land zoned within the radius: Exclusive Agriculture. It is anticipated that the third Stockdale project site would be located on agricultural land designated as Intensive Agriculture by the Kern County General Plan, which allows for groundwater recharge facilities. Kern County Setback and mid-section line requirements would be adhered to, similar to Stockdale East and Stockdale West.

Chapter 4: Cumulative Impacts

Page 4-16:

The cumulative analysis assumes that all 14 recovery wells are operating for eight months and approximately 44,100 AF of groundwater is extracted (THC, 2014, Appendix I).

Page 4-16

However, historical low groundwater levels may have recently been exceeded in 2014 due to ongoing drought conditions (Kern Fan Monitoring Committee, 2015), and development of the third Stockdale site, together with other future groundwater banking projects may be developed that increase cumulative recovery capacity in the project area. Therefore, implementation of Rosedale's Long Term Operations Plan, as required by **Mitigation Measure CUM-2**, would serve to mitigate the proposed project's incremental contribution to cumulative groundwater impacts and associated effects to wells serving overlying land uses.

CHAPTER 12

Mitigation Monitoring and Reporting Program

CEQA Requirements

Section 15091(d) and Section 15097 of the CEQA Guidelines require a public agency to adopt a program for monitoring or reporting on the changes it has required in the project or conditions of approval to substantially lessen significant environmental effects. This MMRP summarizes the mitigation commitments identified in the Stockdale Integrated Banking Project Final EIR (State Clearinghouse No. 2013091076). Mitigation measures are presented in the same order as they occur in the Final EIR.

The columns in the MMRP table provide the following information:

- **Mitigation Measure(s):** The action(s) that will be taken to reduce the impact to a less-than-significant level.
- **Implementation, Monitoring, and Reporting Action:** The appropriate steps to implement and document compliance with the mitigation measures.
- **Responsibility:** The agency or private entity responsible for ensuring implementation of the mitigation measure. However, until the mitigation measures are completed, Rosedale, as the CEQA Lead Agency, remains responsible for ensuring that implementation of the mitigation measures occur in accordance with the MMRP (CEQA Guidelines, Section 15097(a)).
- **Monitoring Schedule:** The general schedule for conducting each task, either prior to construction, during construction and/or after construction.

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
Aesthetics			
AES-1: All nighttime construction lighting and security lighting installed on new facilities shall be shielded and directed downward to avoid light spill onto neighboring properties.	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Perform site inspections to ensure mitigation is being implemented during construction. 	Rosedale/IRWD; Construction Contractor	During Construction
Agriculture and Forestry Resources			
AGR-1: If the third Stockdale project site is under a Williamson Act contract, then the use of the property would be managed as applicable in accordance with Kern County's <i>Agricultural Preserve Standard Uniform Rules</i> , which identify land uses that are compatible within agricultural preserves established under the Williamson Act.	<ul style="list-style-type: none"> • Include mitigation measure in project design specifications. • Perform site inspections as appropriate based on the Uniform Rules to ensure property is being managed as defined. 	Rosedale/IRWD	Before Construction
Biological Resources			
BIO-1: The following measures would reduce potential impacts to nesting and migratory birds and raptors to less than significant levels: <ul style="list-style-type: none"> • Within 15 days of site clearing, a qualified biologist shall conduct a preconstruction, migratory bird and raptor nesting survey. The biologist must be qualified to determine the status and stage of nesting by migratory birds and all locally breeding raptor species without causing intrusive disturbance. This survey shall include species protected under the Migratory Bird Treaty Act including the tricolored blackbird. The survey shall cover all reasonably potential nesting locations for the relevant species on or closely adjacent to the proposed project site. • Nesting habitat should be removed prior to the bird breeding season (February 1 – September 30). • If an active nest is confirmed by the biologist, no construction activities shall occur within 250 feet of the nesting site for migratory birds and within 500 feet of the nesting site for raptors. The buffer zones around any nest within which project-related construction activities would be avoided can be reduced as determined acceptable by a qualified biologist. Construction activities may resume once the breeding season ends (February 1 – September 30), or the nest has either failed or the birds have fledged. 	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist will conduct pre-construction nesting survey as defined. • Prepare documentation to record results of the pre-construction survey. • If an active nest is detected, then implement measures as appropriate. Perform construction site inspections to ensure measures are implemented properly. An inspection log will be maintained to document results of site inspections. • Retain copies of pre-construction survey documentation and construction site inspection logs in the project file. 	Rosedale/IRWD; Construction Contractor	Before and During Construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>BIO-2: If construction activities are scheduled to take place outside of the Swainson's hawk nesting season (which runs from March 1 – September 15), then no preconstruction clearance surveys or subsequent avoidance buffers are required. If construction activities are initiated within the nesting season then preconstruction nesting surveys shall be conducted by a qualified biologist prior to ground disturbance, in accordance with the guidance provided in the <i>Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley</i> (Swainson's Hawk Technical Advisory Committee, 2000). The required windshield surveys shall cover a one-half mile radius around the project sites. If a nest site is found, the qualified biologist shall determine the appropriate buffer zone around the nest within which project-related construction activities would be avoided. In addition, the qualified biologist shall consult with Rosedale and/or IRWD to determine whether consultation with CDFW is necessary.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist will conduct pre-construction surveys for Swainson's hawk as defined. • Prepare documentation to record results of the pre-construction survey. • If a Swainson's hawk nest is detected, then implement measures as appropriate. Perform construction site inspections to ensure measures are implemented properly. An inspection log will be maintained to document results of site inspections. • Retain copies of pre-construction survey documentation and construction site inspection logs in the project file. 	<p>Rosedale/IRWD; Construction Contractor</p>	<p>Before and During Construction</p>
<p>BIO-3: A pre-construction survey shall be conducted for burrowing owls 14 to 30 days prior to clearing of the site by a qualified biologist in accordance with the most recent CDFW protocol, currently the <i>Staff Report on Burrowing Owl Mitigation</i> (CDFW 2012). Surveys shall cover suitable burrowing owl habitat disturbed by construction including a 500-foot buffer. The survey would identify adult and juvenile burrowing owls and signs of burrowing owl occupation. This survey shall include two early morning surveys and two evening surveys to ensure that all owl pairs have been located. If occupied burrowing owl habitat is detected on the proposed project site, measures to avoid, minimize, or mitigate impacts shall be incorporated into the proposed project and shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> • If owls are identified on or adjacent to the site, a qualified biologist shall provide a pre-construction Worker's Environmental Awareness Program to contractors and their employees that describes the life history and species protection measures that are in effect to avoid impacts to burrowing owls. Construction monitoring will also occur throughout the duration of ground-disturbing construction activities to ensure no impacts occur to burrowing owl. • Construction exclusion areas shall be established around the occupied burrows in which no disturbance shall be allowed to occur while the burrows are occupied. Buffer areas shall be determined by a qualified biologist based on the recommendations outlined in the most recent <i>Staff Report on Burrowing Owl Mitigation</i> (CDFW 2012). • If occupied burrows cannot be avoided, a qualified biologist shall develop and implement a Burrowing Owl Management Plan. The biologist shall develop the Plan in consultation with Rosedale and/or IRWD and shall coordinate with CDFW as necessary. 	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist will conduct preconstruction surveys as defined, covering suitable burrowing owl habitat. • Prepare documentation to record results of the pre-construction survey. • If occupied burrowing owl habitat is found, then implement construction limitations and programs as defined. Perform construction site inspections to ensure measures are implemented properly and the construction contractor is complying with construction limitations. An inspection log will be maintained to document results of site inspections. • Retain copies of pre-construction survey documentation and construction site inspection logs in the project file. 	<p>Rosedale; Construction Contractor</p>	<p>Before and During Construction</p>

TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM FOR THE STOCKDALE INTEGRATED BANKING PROJECT

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>BIO-4: IRWD and Rosedale shall conduct a USFWS-approved “early evaluation” of the project area to determine if the project sites represent San Joaquin kit fox habitat. If the evaluation shows that the San Joaquin kit fox does not utilize the project sites, and the project will not result in take, then no further mitigation shall be required for this endangered species. If the “early evaluation” finds potential for the presence of kit fox, USFWS may require a San Joaquin kit fox survey to be conducted by a qualified biologist, in accordance with the most recent USFWS <i>San Joaquin Kit Fox Survey Protocol</i>. If it is determined that the San Joaquin kit fox has the potential to utilize the property then the following measures are required to avoid potential adverse effects to this species:</p> <ul style="list-style-type: none"> • Rosedale and/or IRWD shall initiate discussions with the USFWS to determine appropriate project modifications to protect kit fox, including avoidance, minimization, restoration, preservation, or compensation. • If evidence of active or potentially active San Joaquin kit fox dens is found within the area to be impacted by the proposed project, compensation for the habitat loss shall be determined and provided in consultation with USFWS and CDFW. 	<ul style="list-style-type: none"> • Conduct evaluation of project area for San Joaquin kit fox habitat prior to construction. If kit fox are determined to use project property, then implement measures as defined. • Perform construction site inspections to ensure any measures decided upon are implemented properly. • Retain copies of survey documentation and construction site inspection logs in the project file. 	<p>Rosedale/IRWD;</p>	<p>Before and During Construction</p>
<p>BIO-5: Prior to ground disturbing activities at the Goose Lake Slough and third Stockdale site, a qualified biologist shall conduct a pre-construction floristic survey and, if deemed necessary, focused rare plant survey of project areas to determine and map the location and extent of special-status plant species populations and natural communities of special concern within disturbance areas. Focused rare plant surveys shall occur during the typical blooming periods of special-status plants with the potential to occur. The plant surveys shall follow the CDFW Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities (November 24, 2009).</p> <p>If a special-status plant species is found to be present, and avoidance of the species and/or habitat is not feasible, the implementing agency shall retain a qualified botanist to prepare and implement a Revegetation/Restoration Mitigation Plan.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist will conduct pre-construction surveys for special status plants as defined. • Prepare documentation to record results of the pre-construction survey. • If special-status plant species are detected, then implement measures as appropriate. Perform construction site inspections to ensure measures are implemented properly. An inspection log will be maintained to document results of site inspections. • Retain copies of pre-construction survey documentation and construction site inspection logs in the project file. 	<p>Rosedale/IRWD; Construction Contractor</p>	<p>Before and During Construction</p>

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>BIO-6: Prior to ground disturbing activities at the third Stockdale site, a habitat assessment shall be conducted by a qualified biologist to determine the potential for special-status wildlife species to occur within affected areas. If the habitat assessment determines that a special-status species has the potential to be present within a minimum of 500 feet of the construction zone, a qualified biologist shall determine whether subsequent focused surveys are required prior to project implementation to determine presence or absence.</p> <p>If a special-status wildlife species is found to be present, and avoidance of the species and/or habitat is not feasible, then Mitigation Measures BIO-1 through BIO-4 shall be implemented as appropriate, or Rosedale and/or IRWD shall consult with a qualified biologist to prepare a species-specific mitigation plan and determine whether consultation with wildlife agencies are recommended.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist will conduct pre-construction surveys for special-status wildlife species as defined. • Prepare documentation to record results of the pre-construction survey. • If special-status wildlife species are detected, then implement measures as appropriate. Perform construction site inspections to ensure measures are implemented properly and the construction contractor is complying with construction limitations. An inspection log will be maintained to document results of site inspections. • Retain copies of preconstruction survey documentation and construction site inspection logs in the project file. 	Rosedale/IRWD; Construction Contractor	Before and During Construction
<p>BIO-7: For project components that have potential to impact jurisdictional features, prior to ground disturbing activities, a qualified biologist shall be retained to conduct a jurisdictional delineation in areas that may be affected by the project. If jurisdictional resources are identified, the qualified biologist shall prepare a jurisdictional delineation report outlining the potential acreage of jurisdictional features that may be impacted. The jurisdictional delineation report will be submitted to USACE for a jurisdictional determination. If the delineation report determines that jurisdictional waters and/or wetlands are present within the project site, regulatory permits may be required prior to project impacts which include mitigation and/or compensation to reduce impacts to jurisdictional features to a less than significant level. Based on the results of the delineation report, permits required may include a 404 or Nationwide Permit from USACE, a 401 Certification from RWQCB and/or a Streambed Alteration Agreement from CDFW. Project impacts under 0.10 acre may not require a permit from USACE but only a notification of impact. The appropriate permits required to reduce impacts to jurisdictional features will be determined through initial consultation with the resource agencies.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A qualified biologist shall conduct a jurisdictional delineation as defined, if necessary. • A jurisdictional delineation report shall be prepared, if necessary. This report shall be submitted to USACE and kept in the project file on-site. 	Rosedale/IRWD	Before and During construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
Cultural Resources			
<p>CUL-1: In the event that prehistoric or historic subsurface cultural resources are discovered during ground-disturbing activities, all work within 50 feet of the resources will be halted and Rosedale or IRWD (as applicable) will consult with a qualified archaeologist to assess the significance of the find according to <i>CEQA Guidelines</i> Section 15064.5. If any find is determined to be significant, then Rosedale or IRWD and the archaeologist will meet to determine the appropriate avoidance measures or other appropriate mitigation. Rosedale or IRWD (as applicable) will make the final determination. All significant cultural materials recovered will be, as necessary and at the discretion of the consulting archaeologist, subject to scientific analysis, professional museum curation, and documentation according to current professional standards.</p> <p>In considering any suggested mitigation proposed by the consulting archaeologist in order to mitigate impacts to historical resources or unique archaeological resources, Rosedale or IRWD will determine whether avoidance is necessary and feasible in light of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is infeasible, other appropriate measures (e.g., data recovery) will be instituted. Work may proceed on other parts of the project site while mitigation for historical resources or unique archaeological resources is being carried out.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • In the event that subsurface cultural resources are discovered, documentation of the assessment of the significance of the find will be prepared and retained in the project file. • Perform site inspections to ensure compliance with cultural sensitivity requirements. Retain inspection forms in the project file. 	Rosedale/IRWD; Construction Contractor	During Construction
<p>CUL-2: For any project components not previously subject to archaeological survey (e.g., the third Stockdale site), prior to the initiation of ground disturbance, a qualified archaeologist shall be retained to carry out a Phase I Cultural Resources Survey of the project component. The Phase I Survey shall identify and evaluate the significance of any resources that may be directly or indirectly impacted by the proposed project. The Phase I Survey effort shall be documented in a Phase I Report. If as a result of the additional Phase I Survey any resource is found to be a historical or unique archaeological resource as defined in PRC Section 21084.1 and 21083.2(g), respectively, then Mitigation Measure CUL-1 shall be implemented.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • A Phase I Cultural Resources Survey shall be completed when the third Stockdale site is identified. • Perform site inspections to ensure construction contractor is in compliance with any avoidance measures or other mitigation requirements. • Retain copies of construction site inspection logs in the project file. 	Rosedale/IRWD; construction contractor	Before and During Construction
<p>CUL-3: In the event that paleontological resources are discovered, Rosedale or IRWD (depending upon the project component) will notify a qualified paleontologist. The paleontologist will document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in <i>CEQA Guidelines</i> Section 15064.5. If fossil or fossil bearing deposits are discovered during construction, excavations within 50 feet of the find will be temporarily halted or diverted until the discovery is examined by a qualified paleontologist. The paleontologist will notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If Rosedale or IRWD determines that avoidance is not feasible, the paleontologist will prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important. The plan will be submitted to Rosedale or IRWD for review and approval prior to implementation.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • In the event that paleontological resources are discovered, documentation of the assessment of the significance of the find will be prepared and retained in the project file • Paleontological monitoring reports and logs will be retained in project file. 	Rosedale/IRWD; Construction Contractor	Before and During Construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>CUL-4: Once the location of the third Stockdale site is determined (or any additional project components), prior to the initiation of ground disturbance, a paleontological literature, map, and museum locality review shall be conducted in order to assess the paleontological sensitivity of the project component. If the literature, map, and museum locality review identifies potentially sensitive paleontological resources, then a qualified paleontologist shall be retained to conduct a pedestrian survey and assessment of the project component. A report shall be prepared which summarizes the results of the survey and assessment and provides recommendations regarding implementation of mitigation, such as Mitigation Measure CUL-3.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Perform evaluation of paleontological sensitivity of the third Stockdale site, as described. • Retain copies of the paleontological report and recommendations in the project file. 	Rosedale/IRWD	Before Construction
<p>CUL-5: If human remains are uncovered during project construction, Rosedale or IRWD (as applicable) shall immediately halt work, contact the Kern County Coroner to evaluate the remains, and follow the procedures and protocols set forth in Section 15064.4 (e)(1) of the <i>California Environmental Quality Act Guidelines</i>. If the Coroner determines the remains are Native American in origin, the Coroner shall contact the Native American Heritage Commission (NAHC). As provided in Public Resources Code Section 5097.98, the NAHC shall identify the person or persons believed to be most likely descended from the deceased Native American. The most likely descendent shall be afforded the opportunity to provide recommendations concerning the future disposition of the remains and any associated grave goods as provided in PRC 5097.98.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Perform site inspections to ensure contractor is following procedures outlined in this measure. 	Rosedale/IRWD; Construction Contractor	During Construction
Hazards and Hazardous Materials			
<p>HAZ-1: Prior to construction at Stockdale East, Rosedale shall collect representative samples of soils remaining in place near the oilfield as identified in the Phase 1 Environmental Site Assessment. The samples shall be analyzed for total petroleum hydrocarbons and pesticides. Rosedale shall avoid if feasible or otherwise remove from the site soils identified as containing hazardous quantities of contaminants and dispose of such soils in accordance with applicable hazardous waste regulations.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • In the event of identification of hazardous site soils, documentation of the assessment and removal or avoidance shall be prepared and retained in the project file. 	Rosedale; Construction Contractor	Before and During Construction
<p>HAZ-2: In the event that asbestos-containing materials are uncovered during project construction, work at the project sites shall immediately halt and a qualified hazardous materials professional shall be contacted and brought to the project sites to make a proper assessment of the suspect materials. All potentially friable asbestos-containing materials shall be removed in accordance with Federal, State, and local laws and the National Emissions Standards for Hazardous Air Pollutants guidelines prior to ground disturbance that may disturb such materials. All demolition activities shall be undertaken in accordance with California Occupational Safety and Health Administration standards, as contained in Title 8 of the CCR, Section 1529, to protect workers from exposure to asbestos. Materials containing more than one percent asbestos shall also be subject to San Joaquin Valley Air Pollution Control District regulations. Demolition shall be performed in conformance with Federal, state, and local laws and regulations so that construction workers and/or the public avoid significant exposure to asbestos-containing materials.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • In the event of identification of asbestos-containing materials on site, documentation of the assessment and removal shall be prepared and retained in the project file. 	Rosedale/IRWD; Construction Contractor	During Construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>HAZ-3: A Phase I Environmental Site Assessment shall be prepared for the Central Intake Pipeline and third Stockdale project site to identify potential hazards and hazardous materials located within a one-mile radius. The construction contractor shall be informed of potential hazards and shall develop appropriate plans to avoid or remediate hazards.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Results of the assessment shall be documented and retained in the project file. • Construction site inspections shall be performed to ensure contractor compliance with identified plans to avoid or remediate hazards. 	Rosedale/IRWD; Construction Contractor	Before and During Construction
<p>HAZ-4: In the event the third Stockdale project site is located within a quarter mile of any school facilities, prior to construction, the contractors shall coordinate the proposed project construction route with the impacted school district and school facility to avoid school safety routes.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Documentation of the agreed upon construction route shall be retained in the project file. • Construction site inspections shall be performed to ensure contractor compliance with identified construction route. 	Rosedale/IRWD; Construction Contractor	Before and During Construction
<p>HAZ-5: IRWD and Rosedale shall coordinate with the Kern County Department of Public Health Services and the Kern Mosquito and Vector Control District prior to project operations to develop and implement, if necessary, appropriate insect abatement methods. Such methods shall not utilize any substances that may contaminate groundwater.</p>	<ul style="list-style-type: none"> • Include mitigation measure in project design specifications. • Coordinate with appropriate Kern County agencies and retain documentation of correspondence with such agencies in the project file. • Implementation of appropriate insect abatement methods shall be documented and retained in the project file. 	Rosedale/IRWD	Before and After Construction
Hydrology and Water Quality			
<p>HYDRO-1: The SWPPP for the proposed project shall include the following BMPs:</p> <ul style="list-style-type: none"> • Establish an erosion control perimeter around active construction and contractor layout areas, using methods such as silt fencing, jute netting, straw wattles, or other appropriate measures to control sediment from leaving the construction area. • Stockpiled soils shall be watered, covered, or otherwise managed to prevent loss due to water and wind erosion. • Install containment measures at fueling stations and at fuel and chemical storage sites. • Employ good house-keeping measures including clearing construction debris and waste materials at the end of each day. 	<ul style="list-style-type: none"> • Prepare the SWPPP prior to project implementation. • Retain copies of the SWPPP in the project file. • Retain copies of sampling and analyses conducted in accordance with the SWPPP in the project file. • Conduct construction site inspections in accordance with the SWPPP to ensure proper implementation of BMPs. 	Rosedale/IRWD; Construction Contractor	Before and During Construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>HYDRO-2: Prior to operation of the project, Rosedale shall develop and implement a shallow groundwater monitoring plan for purposes of protecting subsurface structures of the Cross Valley Canal (CVC). Piezometers shall be installed adjacent to the CVC at Stockdale East and the third Stockdale project site if applicable. Piezometers have already been installed at Stockdale West. The location and design of the new piezometers shall be approved by the Kern County Water Agency (KCWA). Piezometers at the Stockdale Properties shall be used to monitor groundwater levels beneath the CVC. Prior to initiating the project, a California state licensed geotechnical engineer shall conduct an analysis to determine the critical depth at which shallow groundwater would pose a threat to the stability of CVC structures. Based on this analysis, the monitoring plan shall identify depths at which monitoring frequency shall change, such as from monthly to weekly to daily, as shallow groundwater levels approach the critical depth. The monitoring plan also shall identify the depth at which project operation would cease such that the critical depth would not be reached and the conditions under which project operation could resume. The monitoring plan shall be approved by KCWA.</p>	<ul style="list-style-type: none"> Retain a licensed geotechnical engineer to conduct the analysis as described and prepare the shallow groundwater monitoring plan. Initiate consultation with KCWA regarding the plan. Retain copies of correspondence with KCWA in the project file. Retain copies of the plan and KCWA approvals in the project file. During plan implementation, retain copies of the monitoring reports in the project file. 	Rosedale/IRWD	Before and During Construction
<p>HYDRO-3: If the third Stockdale project site includes a flood hazard area, then associated project facilities would be designed either: (1) to avoid development within the flood hazard area, or (2) to ensure that flood hazards or flood elevations on neighboring parcels are not significantly altered.</p>	<ul style="list-style-type: none"> Include mitigation measure in project design specifications. Retain specifications related to flood hazards in the project file. 	Rosedale/IRWD	Before Construction
Land Use and Planning			
<p>LU-1: A General Plan Amendment may be requested from Kern County to eliminate the mid-section line setback requirements from the Stockdale properties.</p>	<ul style="list-style-type: none"> Documentation of any necessary amendments shall be retained in the project file. 	Rosedale	Before Construction
Noise			
<p>NOISE-1: To reduce temporary construction related noise impacts at the third Stockdale site, the following shall be implemented by the construction contractor:</p> <ol style="list-style-type: none"> Place all stationary construction equipment so that emitted noise is directed away from sensitive receptors nearest the project site. Locate equipment staging in areas that will create the greatest possible distance between construction-related noise sources and noise-sensitive receptors nearest the project site during all project construction. Ensure proper maintenance and working order of equipment and vehicles, and that all construction equipment is equipped with manufacturers approved mufflers and baffles. Install sound-control devices in all construction and impact equipment, no less effective than those provided on the original equipment. 	<ul style="list-style-type: none"> Include mitigation measure in construction contractor specifications. Perform site inspections to ensure contractor is in compliance with noise mitigation measures. Retain copies of inspection logs in the project file. 	Rosedale/IRWD; Construction Contractor	During Construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
Traffic and Transportation			
<p>TR-1: For project features that require open-trench construction across roadways, the Construction Traffic Control Plan for the proposed project shall include measures that ensure Rosedale provides signage and flagging to alert motorists of pending and actual lane or road closures and detours. Such measures shall conform to the requirements of the Kern County Roads Department and any requirements of related encroachments permits.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Verify that the Construction Traffic Control Plan has been prepared and approved by the applicable local jurisdiction(s). • Perform site inspections to routinely verify proper implementation of the approved Plan. • Retain copies of the Plan and inspection records in the project file. 	Rosedale/IRWD; Construction Contractor	Before and During Construction
<p>TR-2: IRWD and Rosedale shall require the construction contractor to prepare and implement a Construction Traffic Control Plan that conforms to requirements of the Kern County Roads Department, California Department of Transportation District 6, and the California Department of Transportation Manual on Uniform Traffic Control Devices and Work Area Traffic Control Handbook. The construction contractor shall obtain all necessary permits for the work within the road right-of-way or use of oversized/overweight vehicles that will utilize county maintained roads, which may require California Highway Patrol or a pilot car escort.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Verify that the Construction Traffic Control Plan has been prepared and approved by the applicable local jurisdiction(s). • Perform site inspections to ensure contractor is in compliance with plan. • Retain copies of inspection logs in the project file. • Retain copies of necessary permits obtained for the work within the road right-of-way. 	Rosedale/IRWD; Construction Contractor	Before and During Construction
Utilities and Energy			
<p>UTIL: IRWD and Rosedale shall install energy efficient equipment, including pumps and motors, for operation of the proposed project.</p>	<ul style="list-style-type: none"> • Include mitigation measure in project design specifications and construction contractor specifications. 	Rosedale/IRWD; Construction Contractor	During Construction
Cumulative Impacts			
<p>CUM-1: The construction contractor shall consult with appropriate local agencies and jurisdictions prior to initiating ground-disturbing activities, to determine if other construction projects will occur coincidentally at the same time and in the vicinity of the proposed project, depending on project schedule. Coordination of construction activities for coincident projects shall occur to ensure impacts to noise and traffic do not compound to be cumulatively significant and to ensure compatibility of activities within construction zones. Adjustments to construction schedules and plans shall be made accordingly as necessary.</p>	<ul style="list-style-type: none"> • Include mitigation measure in construction contractor specifications. • Retain copies of correspondence and coordination with other agencies and jurisdictions in the project file. 	Construction Contractor	Before Construction

**TABLE 12-1 – MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE STOCKDALE INTEGRATED BANKING PROJECT**

Mitigation Measures	Implementation, Monitoring, and Reporting Action	Responsibility	Monitoring Schedule
<p>CUM-2: Operation of the proposed project shall be conducted in accordance with the <i>Long Term Project Recovery Operations Plan Regarding Rosedale-Rio Bravo Water Storage District Projects</i> (Long Term Operations Plan). The Long Term Operations Plan requires monitoring of groundwater conditions; annual predictions of project-related groundwater declines in the area; definition of negative project impact (NPI) to neighboring wells relative to no-project conditions; triggers for implementation of mitigation measures based on NPI that affects neighboring well operation; and mitigation measures to be implemented for different categories of wells. Mitigation measures include, but are not limited to, providing compensation to lower well pumps; reducing or adjusting pumping to prevent, avoid, or eliminate the NPI; or drilling a new well.</p>	<ul style="list-style-type: none"> • Copies of monitoring reports and annual groundwater modeling runs shall be maintained in the project file. • Document implementation of mitigation measures and retain in the project file. 	Rosedale	After Construction

APPENDIX I

Drought Relief Technical Memorandum

Technical Memorandum



To: Mr. Dan Bartel
Rosedale-Rio Bravo Water Storage District

From: Thomas Harder, P.G., CH.G.
Thomas Harder & Co.

Date: 3-Nov-14

Re: 2014 Drought Relief Project

1. Introduction

This Technical Memorandum (TM) summarizes an analysis of potential groundwater level changes associated with the proposed 2014 Drought Relief Project (the Project). The Project is located within and adjacent to Rosedale-Rio Bravo Water Storage District's (RRBWSD's) service area at the existing Superior, West, and proposed Stockdale East facilities (Project Area, see Figure 1). The Project includes construction of eleven groundwater production wells to recover stored water.

This TM presents the results of a hydrogeological analysis to assess potential groundwater level impacts associated with Project pumping from the eleven proposed wells. The analysis was conducted using a calibrated numerical groundwater flow model previously developed to assess groundwater level changes in the area of banking projects along the lower Kern River. The scope of work for the analysis included:

1. Developing Project pumping scenarios for analysis using the groundwater flow model.
2. Identifying alternative screened interval depths for Project wells for analysis using the groundwater flow model.
3. Analyzing the Project scenarios using the calibrated groundwater flow model.
4. Preparing this TM summarizing the results.

1.1. Analysis Methodology – Groundwater Flow Model

Potential changes in groundwater levels predicted for Project recovery scenarios were analyzed using a calibrated numerical groundwater flow model. The groundwater model used for the analysis was previously developed to evaluate groundwater level changes in the vicinity of banking projects along the Kern River west of Bakersfield, California. The model was developed using MODFLOW, a block centered, finite difference groundwater flow modeling code developed by the United States Geological Survey (USGS) for simulating groundwater flow (McDonald and Harbaugh, 1988)¹. MODFLOW is one of the most widely used and critically accepted model codes available (Anderson and Woessner, 2002)².

The original documentation for the model is presented in TH&Co (2011)³. Since that time, the model has been updated, refined, and recalibrated. The version used for this analysis is calibrated through December 2013 and incorporates projected 2014 groundwater pumping and recharge for all other banking projects and pumpers in the model area.

1.2. Types and Sources of Data

The calibrated groundwater flow model used in the analysis of groundwater level changes incorporates a comprehensive hydrogeological database of the Project Area, as summarized in TH&Co (2011). The types of data used to develop the model included geology, soils/lithology, groundwater levels, hydrogeology, surface water hydrology, and groundwater recharge and pumping. Information regarding the Project Area was provided by RRBWSD and Zeiders Consulting.

¹ McDonald, M.G., and Harbaugh, A.W., 1988. A Modular Three-Dimensional Finite-Difference Ground-Water Flow Model: in Techniques of Water-Resources Investigations of the United States Geological Survey; Book 6 Modeling Techniques.

² Anderson, M.P., and Woessner, W.W., 2002. Applied Groundwater Modeling, Simulation of Flow and Advective Transport. Academic Press.

³ TH&Co., 2011. Hydrogeological Impact Evaluation Related to Operation of the Kern Water Bank and Pioneer Projects. Prepared for McMurtrey, Hartsock, & Worth and Rosedale-Rio Bravo Water Storage District, December 5, 2011.



2. Project Pumping Scenarios for Analysis Using the Groundwater Flow Model

The 2014 Drought Relief Project is located near the Kern Water Bank and Pioneer Project where existing recharge and recovery operations are already occurring. In addition, there is ongoing groundwater production in the area to supply agriculture and municipal demands. In order to evaluate potential impacts of the Project on existing projects and production wells, Project pumping (simulated as an 8-month Project pumping period) was superimposed on groundwater conditions that reflect predicted groundwater recharge and recovery operations for 2014. Year 2014 projected pumping and recharge for the baseline was obtained from each of the area banking entities and incorporated into the groundwater flow model. Municipal production (e.g. Vaughn Water Company and City of Bakersfield) for 2014 was assumed to be the same as 2013.

It is noted that the three Stockdale West wells that are part of the Stockdale Integrated Banking Project (see Figure 1) were included in the Project pumping simulation though they are not a part of the 2014 Drought Relief Project.

2.1. Baseline Groundwater Level Conditions

Potential changes in groundwater levels specific to Project operations were evaluated relative to baseline groundwater level conditions for an 8-month Project pumping period between April 2014 and November 2014. The baseline condition is represented by the model-generated groundwater levels for the calibrated groundwater flow model (through 2013) and the model-generated groundwater levels resulting from the 2014 projected recharge and recovery for the model area. All groundwater level changes associated with Project scenarios are relative to this Baseline condition.

2.2. Project Operational Scenarios

The purpose of the scenarios was to evaluate potential Project-related groundwater level changes under two different well design scenarios:

1. The first scenario incorporates a production well screened interval from 300 to 700 feet below ground surface (ft bgs) for all Project wells. This perforation interval is across both the intermediate and deep aquifers in the Project area. Most of the private land owner wells are constructed in the intermediate aquifer.
2. The second scenario incorporates a production well screened interval from 400 to 700 ft bgs for all project wells, which is only in the deep aquifer.



Stockdale West wells were perforated in both the intermediate and deep aquifers for both scenarios.

2.3. Pumping Rates for Project Wells

The potential pumping rate for individual Project wells was determined based on pumping rates for existing wells in the Project area. Individual well production rates in the Project area typically range from approximately 1,600 gallons per minute (gpm) to approximately 5,000 gpm. However, wells with both intermediate and deep perforated intervals (250 to 700 ft bgs) typically produce more than 3,000 gpm. The individual well pumping rate for Project wells in the vicinity of the West and Superior basins was established at approximately 3,000 gpm. Project wells in Stockdale East and well pumping for Stockdale West was incorporated at an individual well pumping rate of 2,800 gpm. The total combined production (Project and Stockdale West) for the 8-month extraction period (April 2014 through November 2014) was approximately 44,100 acre-ft.

No recharge in the Stockdale Integrated Banking Projects or RRBWSD basins was simulated for the scenarios.



3. Findings

3.1. Scenario 1 - Wells Perforated from 300 - 700 ft bgs (Intermediate and Deep Aquifers)

Maximum Scenario 1 change in intermediate aquifer groundwater levels, relative to the baseline condition, is predicted to be approximately 30 ft at the Superior ponds (see Figure 3). Maximum change in deep aquifer groundwater level is predicted to be approximately 50 ft at the Stockdale East and West ponds (see Figure 4). Maximum pumping interference at the nearest existing monitoring wells is in the deep aquifer where it is predicted to range from approximately 17 to 29 ft (see Figure 4).

3.2. Scenario 2 - Wells Perforated from 400 - 700 ft bgs (Deep Aquifer Only)

Maximum Scenario 2 change in intermediate aquifer groundwater levels, relative to the baseline condition, is predicted to be approximately 30 ft at the Stockdale West ponds (see Figure 5). Maximum change in deep aquifer groundwater level is predicted to be approximately 80 ft at the Superior ponds (see Figure 6). Maximum pumping interference at the nearest existing monitoring wells is in the deep aquifer where it is predicted to range from approximately 29 to 56 ft (see Figure 6).



4. Conclusions

The following summarizes the findings and conclusions that have been developed based on the analysis of Project recovery scenarios:

1. Model simulations for Scenario 1 (wells perforated in both the intermediate and deep aquifers) show that recovering approximately 44,100 acre-ft of water over an eight month period within the Project Area during current groundwater level conditions will result in a maximum groundwater level change of approximately 30 ft in the intermediate aquifer. The greatest groundwater level changes are predicted to occur at the Superior basins and Stockdale West basins (see Figure 3).
2. In the deep aquifer, Scenario 1 groundwater pumping is predicted to result in a maximum groundwater level change of approximately 50 ft. The greatest groundwater level change in the deep aquifer is observed in the vicinity of the Stockdale West and Stockdale East basins (see Figure 4).
3. Model simulations for Scenario 2 (wells perforated in the deep aquifer only) show that groundwater level changes in the intermediate aquifer in the vicinity of the Superior ponds is less than in Scenario 1 (10 to 15 ft of change; see Figure 5). The greatest groundwater level changes are predicted to occur at the Stockdale West basins, where the wells were simulated to be perforated in the intermediate aquifer (see Figure 5).
4. In the deep aquifer, Scenario 2 groundwater pumping is predicted to result in a maximum groundwater level change of approximately 80 ft. The greatest groundwater level change in the deep aquifer is observed in the vicinity of the Superior basins (see Figure 6).

Based on the findings from the analyses of Scenarios 1 and 2, it is concluded that constructing the 2014 Drought Relief wells in the deep aquifer (below approximately 400 ft bgs) will have a lesser impact on private wells in the area than perforating the wells in both the intermediate and deep aquifers. This is because most of the private wells are believed to be perforated in the upper 400 ft bgs. However, final design of the Project wells will have to take into account other design criteria, including:

Potential Well Yield - The intermediate aquifer beneath the site (see Figure 3) is more permeable and less confined than the deep aquifer. Perforating a well partially in the intermediate aquifer would result in higher well yields, particularly during periods of high groundwater levels. It is also noted that the hydraulic head (groundwater level) in the intermediate aquifer is higher than that of the deep aquifer during low groundwater conditions, which would assist in maintaining higher well yields during these times.

Groundwater Quality - Arsenic concentrations in the groundwater typically increase with increasing depth in the aquifer system. Including shallower perforations in the intermediate



aquifer, which has lower arsenic concentrations, may provide more blending potential for the wells and result in lower arsenic concentrations in the discharge.

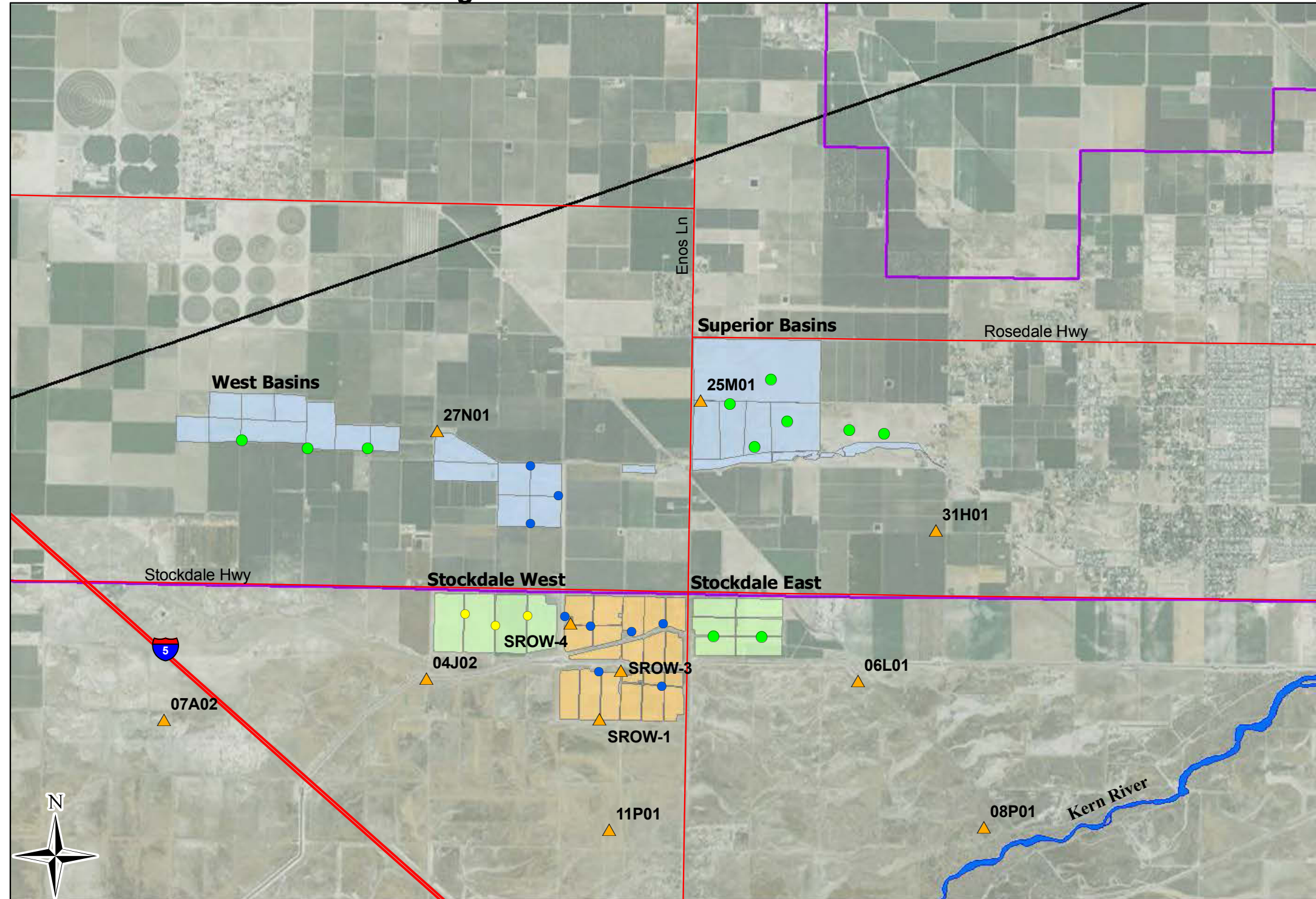
It is anticipated that the final design of the Project wells will take into account site-specific data to be collected during the drilling and testing of the pilot boreholes for each well.



Rosedale-Rio Bravo Water Storage District

3-Nov-14

2014 Drought Relief Project



Map Features

- Proposed Project Well
- Proposed Stockdale West Well
- ▲ Nested Observation Well
- Existing Extraction Well
- RRBWSD Recharge Basin
- Stockdale Recharge Basin
- Strand Ranch Recharge Basin
- Rosedale-Rio Bravo Water Storage District
- Model Domain
- Kern River
- Highway/Road

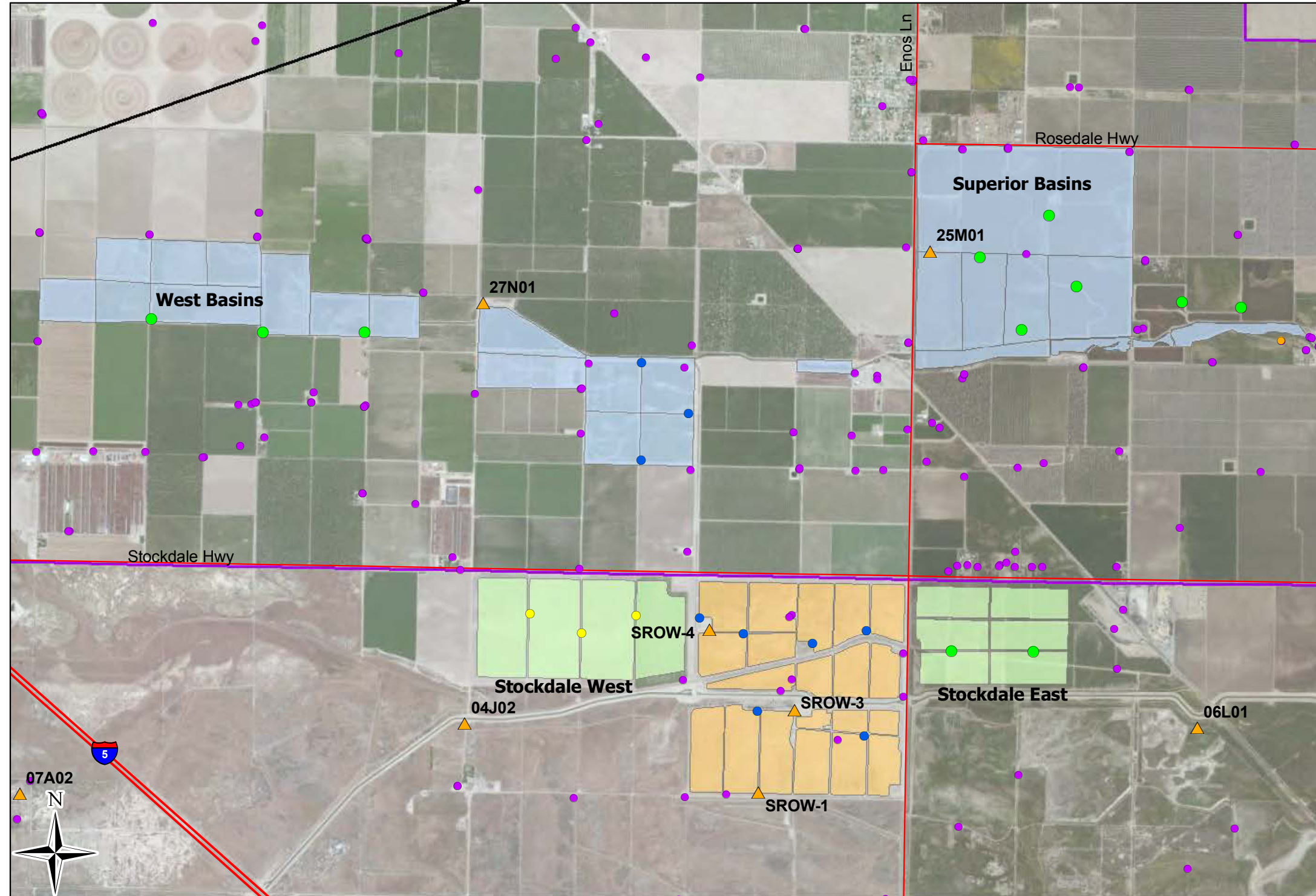


0 0.5 1 2 Miles

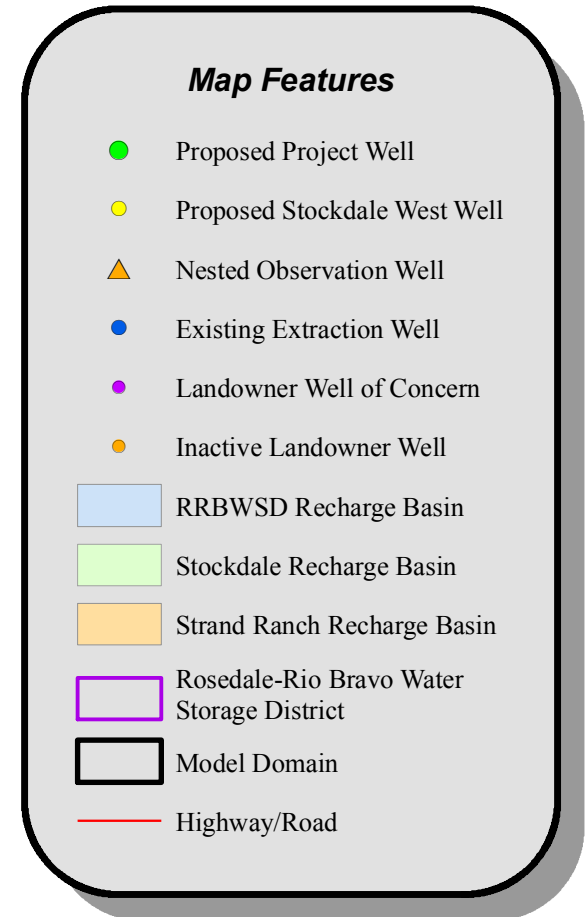
NAD 83 State Plane Zone 5 (feet)
Central Meridian: -118

Rosedale-Rio Bravo Water Storage District

3-Nov-14



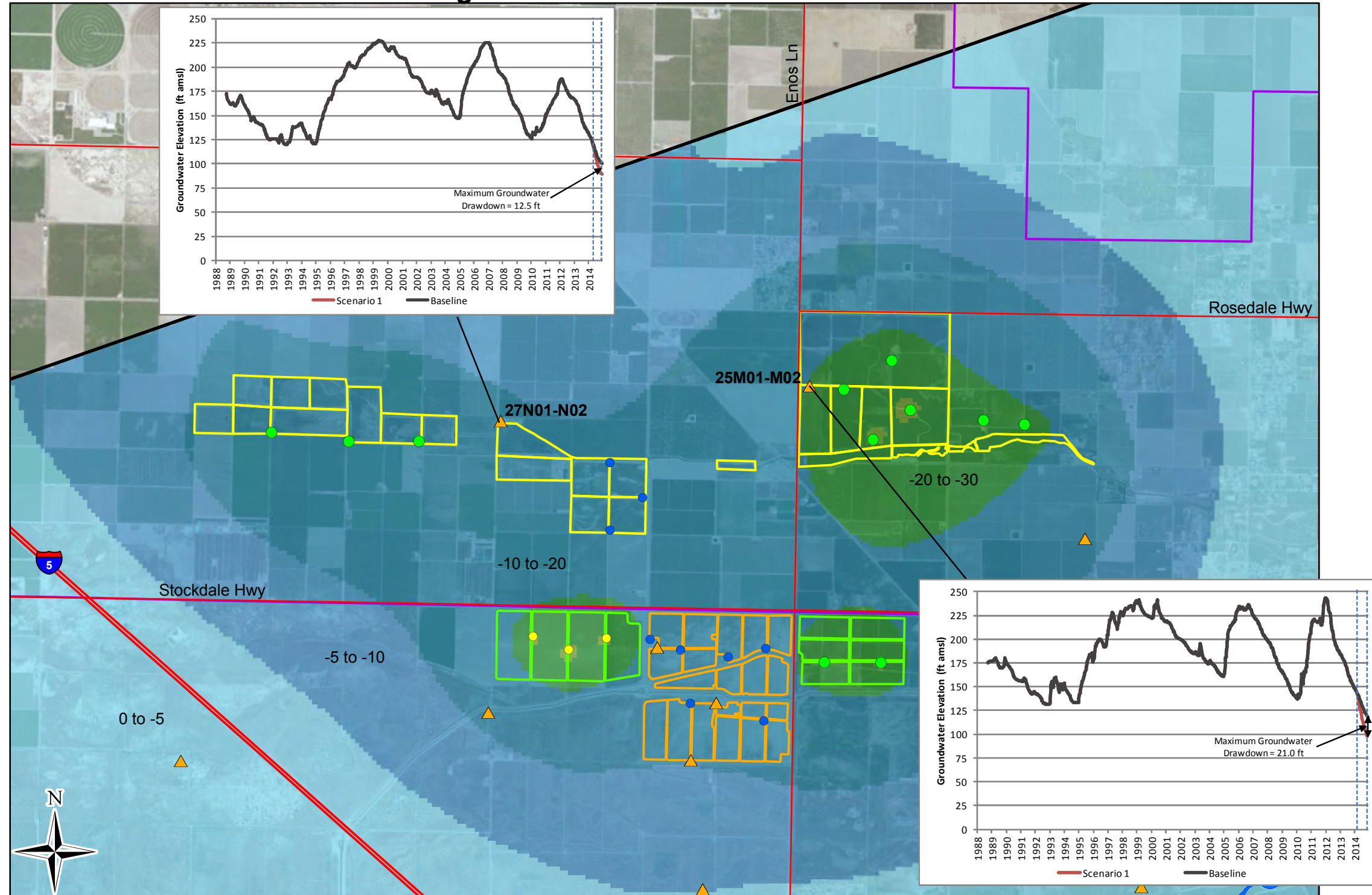
2014 Drought Relief Project



Rosedale-Rio Bravo Water Storage District

3-Nov-14

2014 Drought Relief Project



***All Proposed Project Wells are Perforated in both the Intermediate and Deep Aquifers.**

Scenario 1* Head Difference Map Intermediate Aquifer

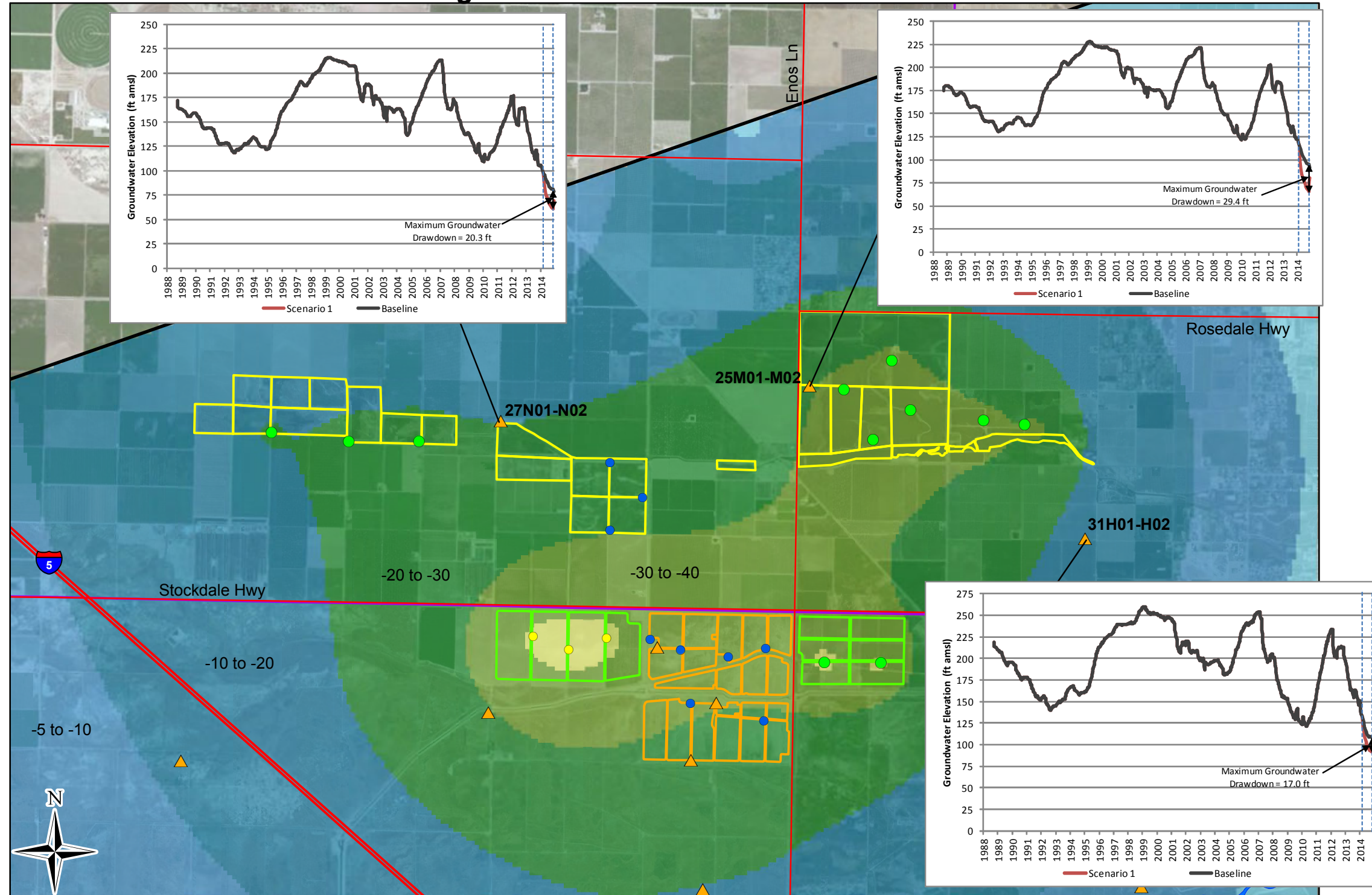
Figure 3

This figure shows the model-predicted difference in groundwater levels in November 2014 between a "with" drought relief scenario and a "without" drought relief scenario. The maximum difference is estimated for the area around the Superior Ponds where groundwater levels are predicted to be as much as 30 feet lower in November 2014 than they would have been absent the project.

Rosedale-Rio Bravo Water Storage District

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2014 Drought Relief Project



Map Features

Groundwater Level Change (ft)

- 0 to -5
- 5 to -10
- 10 to -20
- 20 to -30
- 30 to -40
- 40 to -60

- Proposed Project Well
- Proposed Stockdale West Well
- Nested Observation Well
- Existing Extraction Well
- RRBWS D Recharge Basin
- Stockdale Recharge Basin
- Strand Ranch Recharge Basin
- Rosedale-Rio Bravo Water Storage District
- Model Domain
- Highway/Road

***All Proposed Project Wells are Perforated in both the Intermediate and Deep Aquifers.**

0 0.25 0.5 1 Miles
 NAD 83 State Plane Zone 5 (feet)
 Central Meridian: -118

This figure shows the model-predicted difference in groundwater levels in November 2014 between a "with" drought relief scenario and a "without" drought relief scenario. The maximum difference is estimated for the area around the Stockdale West ponds where groundwater levels are predicted to be as much as 50 feet lower in November 2014 than they would have been absent the project.

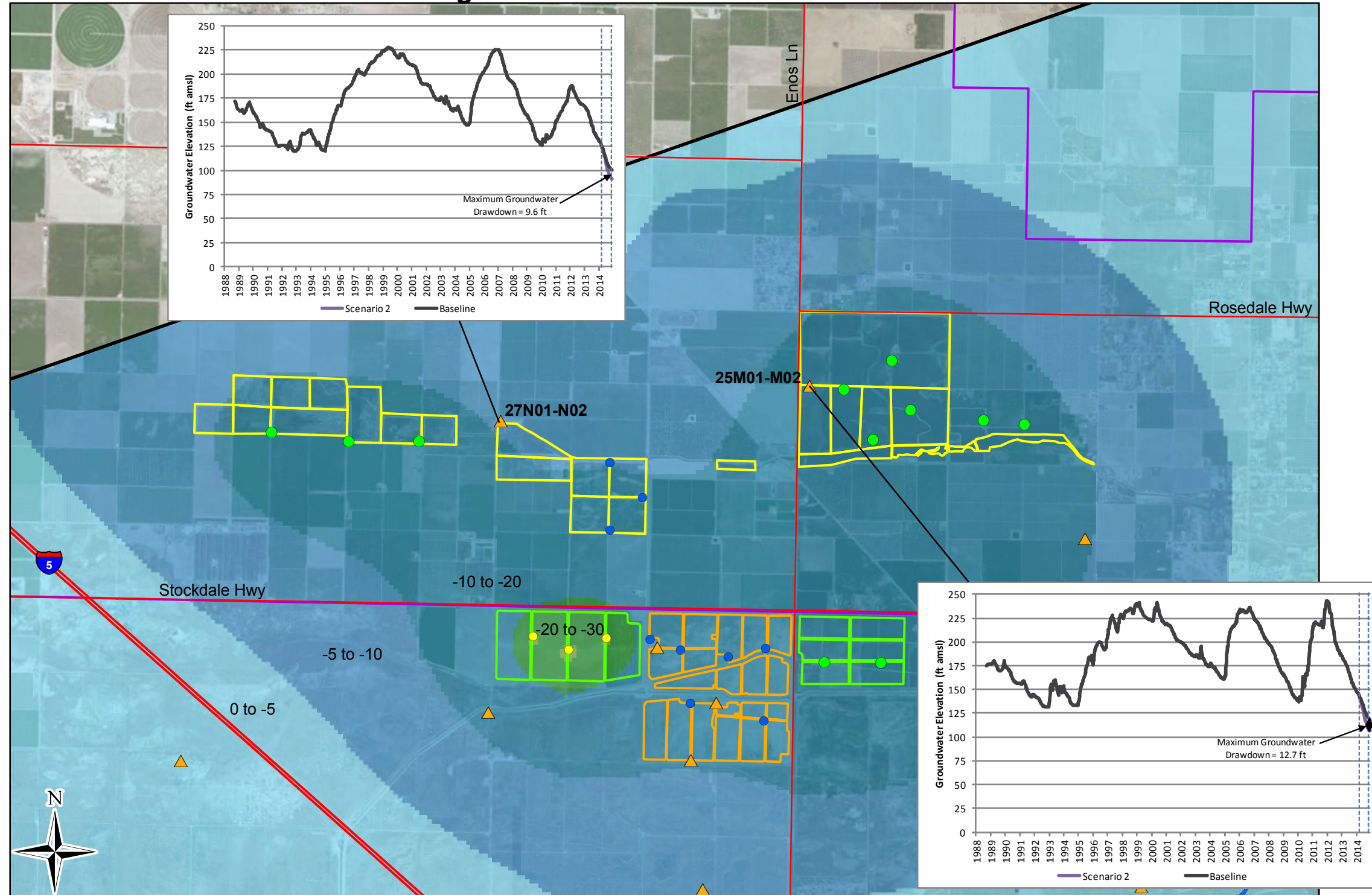
**Scenario 1*
 Head Difference Map
 Deep Aquifer**

Figure 4

Rosedale-Rio Bravo Water Storage District

3-Nov-14

2014 Drought Relief Project



Map Features

Groundwater Level Change (ft)

- 0 to -5
- 5 to -10
- 10 to -20
- 20 to -30
- 30 to -40

- Proposed Project Well
- Proposed Stockdale West Well
- Nested Observation Well
- Existing Extraction Well
- RRBWSD Recharge Basin
- Stockdale Recharge Basin
- Strand Ranch Recharge Basin
- Rosedale-Rio Bravo Water Storage District
- Model Domain
- Highway/Road

***All Proposed Project Wells are Perforated in the Deep Aquifer Only.**

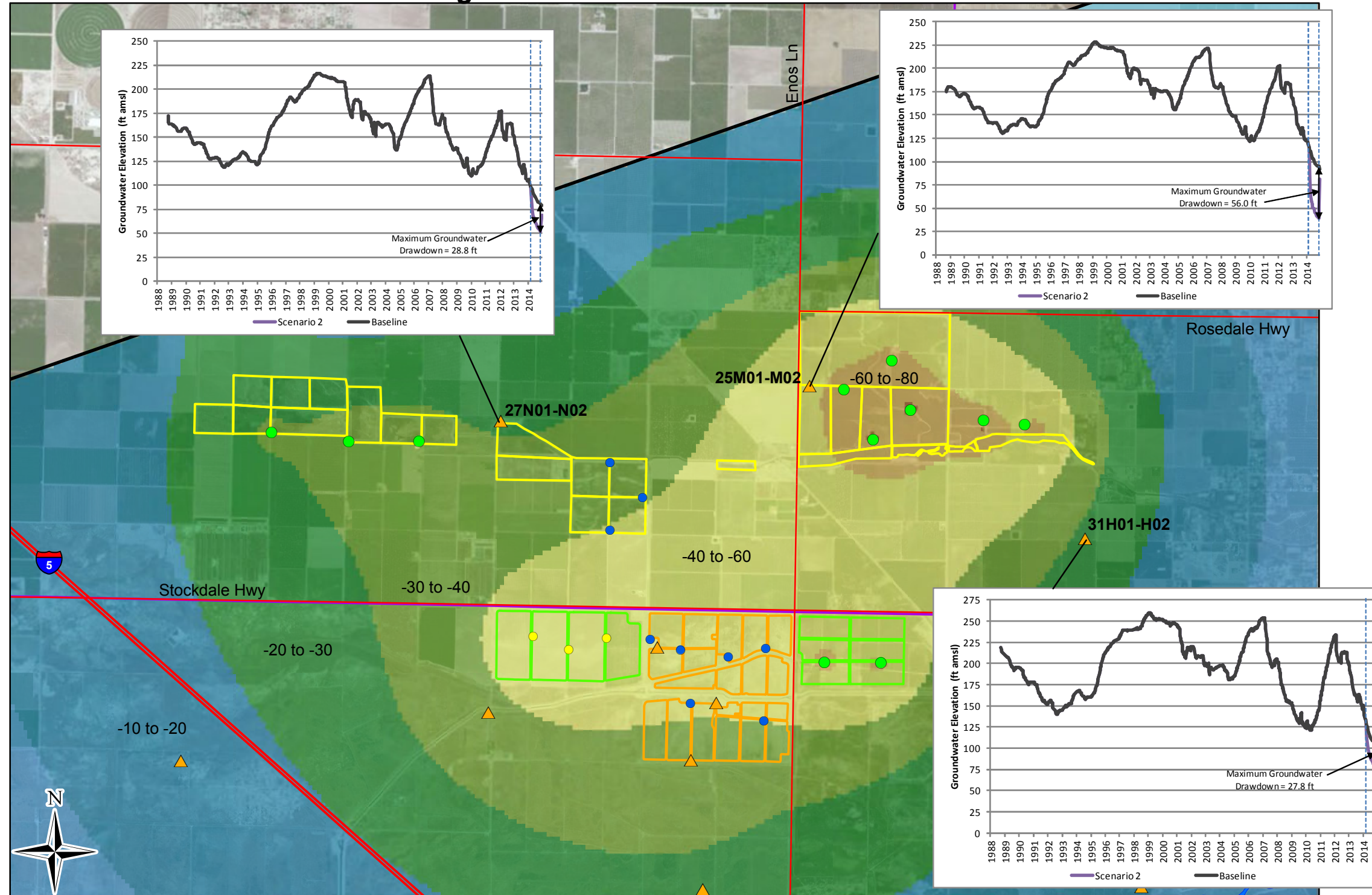
Scenario 2* Head Difference Map Intermediate Aquifer

Figure 5

This figure shows the model-predicted difference in groundwater levels in November 2014 between a "with" drought relief scenario and a "without" drought relief scenario. The maximum difference is estimated for the area around the Stockdale West ponds where groundwater levels are predicted to be as much as 30 feet lower in November 2014 than they would have been absent the project.

Rosedale-Rio Bravo Water Storage District

2014 Drought Relief Project



Map Features

Groundwater Level Change (ft)

- 0 to -5
- 5 to -10
- 10 to -20
- 20 to -30
- 30 to -40
- 40 to -60
- 60 to -80
- 80 to -90

- Proposed Project Well
- Proposed Stockdale West Well
- Nested Observation Well
- Existing Extraction Well
- RRBWS D Recharge Basin
- Stockdale Recharge Basin
- Strand Ranch Recharge Basin
- Rosedale-Rio Bravo Water Storage District
- Model Domain
- Highway/Road

***All Proposed Project Wells are Perforated in the Deep Aquifer Only.**

Scenario 2* Head Difference Map Deep Aquifer

Figure 6

0 0.25 0.5 1 Miles
NAD 83 State Plane Zone 5 (feet)
Central Meridian: -118

This figure shows the model-predicted difference in groundwater levels in November 2014 between a "with" drought relief scenario and a "without" drought relief scenario. The maximum difference is estimated for the area around the Superior Ponds where groundwater levels are predicted to be as much as 80 feet lower in November 2014 than they would have been absent the project.