



March 6, 2014

Mr. Walter Sadler, Project Manager  
North San Joaquin Water Conservation District  
P.O. Box E  
Victor, CA 95253

Re: Initial Study/ Proposed Mitigated Negative Declaration – North San Joaquin Water Conservation District’s Water Right Change Petitions and Tracy Lake Groundwater Recharge Project

Dear Mr. Sadler:

The East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Initial Study/ Proposed Mitigated Negative Declaration (MND) for North San Joaquin Water Conservation District’s (NSJWCD) water right change petitions and Tracy Lake Groundwater Recharge Project (Tracy Lake Project). EBMUD’s primary source of water is the Mokelumne River. EBMUD, in partnership with other stakeholders and agencies, provides stewardship, responsible management, and protection of the Mokelumne’s environmental resources. EBMUD’s share of Mokelumne River water for municipal and industrial use is governed by License 11109 and Water Right Permit 10478. NSJWCD’s water right permit 10477 was granted by the State Water Board under Water Code Section 1462 and is excess to the needs of the EBMUD’s municipal rights under Permit 10478.

On February 28, 2014, EBMUD provided comments on the Draft Environmental Assessment (EA) issued by U.S. Bureau of Reclamation (Reclamation) regarding the WaterSMART Grant for the Tracy Lake Project. The MND also discusses several change petitions filed by NSJWCD with the State Water Board. EBMUD timely protested the petitions based on both environmental grounds and injury to vested rights. Subsequently, the protests were accepted by the State Water Board. EBMUD’s protests on the change petitions have not been resolved and should be addressed in this MND.

The MND does not provide sufficient information on baseline conditions to adequately assess impacts to the environment. A key component of any analysis is the requirement to delineate the baseline conditions that form the reference against which the project impacts are compared. The MND is flawed because the baseline conditions are not adequately described; it is difficult to discern exactly what baseline was used in the MND. In the past 10 years, records show that NSJWCD has historically diverted up to 3,000 acre-feet (AF) per year from the Mokelumne River at existing diversion locations when water is available under NSJWCD’s water right 10477. It is unclear whether the NSJWCD diversion of 3,000 AF at existing diversion points is in fact the baseline utilized in this MND. The proposed increase in NSJWCD’s diversions from the historical 3,000 AF per year to the proposed 20,000 AF per year needs to be analyzed.

The analysis contained in this MND does not appear to assess the impacts of the increased diversions. Requisite information is needed to analyze the impacts from increased diversions to the reach in the Lower Mokelumne River below Tracy Lake and impacts to the Delta resources.

Specific EBMUD comments and concerns regarding the proposed project are listed below:

1. **Conflict with Stipulated Agreement:** In 1992, NSJWCD, the California Department of Fish and Game, California Sportsfishing Protection Alliance, and EBMUD signed a stipulated agreement concerning NSJWCD's Permit 10477. The stipulated agreement provides that "no additional pumping capacity or storage facilities shall be constructed under Permit 10477." The Tracy Lake Project includes additional pumping capacity and additional storage facilities under Permit 10477, in contravention of the 1992 stipulated agreement. Given the stipulated agreement's prohibition on additional pumping and storage under NSJWCD's permit, under what water rights or amended agreement will the proposed Tracy Lake Project operate?
2. **Description of Baseline is inadequate:** As noted above, the MND does not state the baseline conditions. It is unclear whether the baseline condition is the historical use of 3,000 AF per year and the project condition is the diversion of the full 20,000 AF per year when available. It is imperative that baseline conditions are fully described in order to assess potential environmental impacts, if any, of the proposed project.
3. **Specific information regarding the Project is required:** The MND includes several change petitions that have been filed by NSJWCD with the State Water Board that require approval before the Tracy Lake Project is constructed. It is unclear whether NSJWCD is now seeking to obtain diversions during all years including years when water would not have been available under Permit 10477. For example, on page 83 of the MND states "[d]uring drier conditions when EBMUD would normally be releasing water only to meet WID and other water demands and JSA-specified minimum instream flows below Woodbridge Dam, the additional release for Tracy Lake Groundwater Recharge Project would result in streamflow increases during July through September ranging from 34% to 114%." In fact, NSJWCD's Permit 10477 can only be exercised during those years when there is water in excess to EBMUD's needs, which are typically in normal and above years, not drier year types. During years when EBMUD is releasing water to meet senior water rights and minimum fishery flows, there is no excess water. Thus, in those drier year types there is no water available for NSJWCD, and it is unclear why the MND states that NSJWCD will be diverting in dry years. Additional clarification is necessary to evaluate the impacts of the proposed project.
4. **Unclear Project Purpose:** According to the MND, the primary purpose of the proposed project is to implement additional conjunctive use as a means to reduce groundwater overdraft. According to Figure 2 in the MND, comparing differences in groundwater elevations from fall 1992 to fall 2012, Tracy Lake is located in an area where

groundwater elevations in the fall 2012 have actually risen as compared to the groundwater elevations in fall 1992. It is unclear how the Tracy Lake Project will result in reduced groundwater overdraft in those other portions of NSJWCD that continue to experience significant groundwater overdraft.

5. **Missing Project Analysis:** The MND relies upon EBMUD's Draft Environmental Impact Report to assess and mitigate impacts to the environmental resources, which analyzes the environmental impacts of extending Permit 10478. NSJWCD needs to conduct a separate analysis on the environmental impacts from increased diversions or the addition of new diversion locations. The MND also states that the increase in use by NSJWCD was already analyzed under Permit 10477 by the Northeastern San Joaquin County Groundwater Banking Authority in its September 2009 Eastern San Joaquin Basin Integrated Conjunctive Use Program (ICUP) Programmatic Environmental Impact Report (PEIR). EBMUD reviewed that PEIR and commented that the PEIR alternatives could impact EBMUD facilities, water rights, and operations. The individual components included in the ICUP PEIR were not analyzed to a project-specific level. The MND should include a full, project-specific analysis of the proposed project by NSJWCD.
6. **Impacts to Lower Mokelumne River and Delta:** Table 8 of the MND should also include existing conditions from Tracy Lake to the Delta. Impacts to the Lower Mokelumne River downstream of the proposed new diversion Tracy Lake diversion point to Delta resources should be assessed. Potential changes in water quality parameters including changes in temperatures should also be assessed.
7. **Cumulative Impacts:** The MND does not analyze potential growth inducing or other cumulative impacts as a result of the proposed Tracy Lake Project and change petitions. The MND should include an assessment of cumulative impacts resulting from increased upstream use (Amador and Calaveras), Bay Delta Conservation Plan, and other projects and programs within the Mokelumne River and Delta watershed.
8. **Biological Resources and Environmental Consequences:** The MND's analysis of the Tracy Lake Project's biological impacts is not sufficient to properly determine the project's potential impacts to Mokelumne River salmonid populations. There is no discussion of the proposed Tracy Lake Project's minimum operating levels at the new Tracy Lake point of diversion and its effects on Mokelumne River elevations or flows. Nor is there analysis of the maximum volume (percentage) of total flow the project will divert from the Mokelumne River. These are fundamental pieces of information needed to adequately assess potential fishery impacts. In addition, it is not clear whether project diversion rates would be adjusted seasonally based on the presence of salmon species.  
Although the circular screen described in the MND is used at the other three diversion locations upstream of Woodbridge Dam, the percentage of total flow being diverted at those other locations is less than 10% of total river flow. Design criteria for the circular screen should consider that the Tracy Lake Project diversion rate could be greater than 50% of the total Mokelumne River flow rate at the proposed location. It is unclear

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whether the fisheries at California Department of Fish and Wildlife and National Oceanic and Atmospheric Administration fish screen criteria could be met given these limitations. Further analysis is needed to address this issue.

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Overall there are many assumptions in the MND regarding the Tracy Lake Project's potential impacts to aquatic and terrestrial species. These assumptions are not backed by the requisite supporting information. As an example, the project's intake structure, which would be located in the channel of the Mokelumne River, is assumed to have a relatively low risk of increasing predation on aquatic species due to the structure's small size. However, no data is presented nor is there any estimate provided in the MND of the intake structure's total area in comparison to the total river width and depth at the diversion location. Many studies have demonstrated that in-channel structures serve as effective cover for predators such as largemouth bass and striped bass. It would appear that the Tracy Lake Project's proposed new in-channel intake structure would act in a similar fashion, however, there is no data analyzing this matter in the MND.

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Furthermore, under construction related effects to special status species (page 78 of the MND) the document states that adult Chinook salmon would not be present in substantial numbers during the month of October. In fact, over 50% of the annual Chinook salmon run could move through the project area during the months of September through October. In-river construction during these months could have significant effects on movement of salmon. Likewise, work in June could affect the tail-end of the juvenile outmigration. The MND is required to address what actions will be taken to insure Chinook salmon migration (juvenile and adult) is not adversely affected by obstructions or noise.

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9. **Time frame for construction work:** The MND discusses in-river work during October, a period that can see over 50% of the total Mokelumne River salmon run upmigrate through the river in the area of the proposed project. The Draft EA describes the in-river work as ending on September 30. Ending in-river construction on September 30 would help avoid impacts to immigrating salmonids, but given that MND states that in-river construction could occur in October it does not indicate an end date for in-river construction. It should be September 30 in both documents. Likewise project construction description includes in-river work in June, which could impact outmigrating juvenile Chinook salmon and steelhead. More analysis and a thorough description of the project footprint and timing of in-river construction are needed to conduct a proper assessment.
10. **Tracy Lake Quarry Excavation Project:** The MND should note that Tracy Lake Project proponents have also approached the Habitat Technical Advisory Committee for the San Joaquin Council of Governments to include a Tracy Lake Quarry Project in the San Joaquin Multi-Species Conservation Plan. The proposed quarry appears to be part of land associated with Tracy Lake, and as such is likely a connected action requiring analysis. At a minimum, it should be included within the MND's cumulative analysis. It

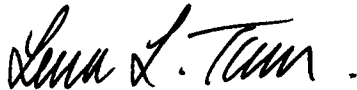
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is our understanding that the proposed quarry is supposed to remove approximately 1.5 million cubic yards of soil from the Tracy Lake site. Adding such a quarry would increase the size of the overall project and the need for further environmental assessments to water quality, air quality, and other parameters.

EBMUD, in partnership with other agencies and stakeholders, has invested significant resources in developing programs and projects that are protective of the environmental resources in the Lower Mokelumne River. These efforts have yielded successful results. EBMUD appreciates the opportunity to comment on the MND and looks forward to working with NSJWCD to reach agreement on activities that protect the aquatic and terrestrial species and conjunctively manage the groundwater basin to improve water supply reliability in the region.

Please do not hesitate to contact me a (510) 287-1240 or by email at [ltam@ebmud.com](mailto:ltam@ebmud.com) should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Lena L. Tam". The signature is written in a cursive style with a period at the end.

Lena L. Tam, P.E.  
Manager of Water Resources Planning

LLT:ARU:UAT:FSE:smc

cc: Jennifer Spaletta  
North San Joaquin County Water Conservation District Board of Directors