

**STAFF REPORT REGARDING RESPONSE TO COMMENTS RECEIVED ON PROPOSED MITIGATED
NEGATIVE DECLARATION FOR THE WATER RIGHT CHANGE PETITIONS AND TRACY LAKE
GROUNDWATER RECHARGE PROJECT**

To: North San Joaquin Water Conservation District
Board Members

From: Walter E. Sadler, PE
Project Manager

Date: March 10, 2014

Response to Comments of California Sportfishing Alliance:

Comment 1: Commenter asserts that MND makes no showing that the Project will reduce overdraft and that individual water users may increase pumping to avail themselves of improved groundwater levels.

Response: As described in the MND at 8, the Eastern San Joaquin County Groundwater Basin is in overdraft estimated to be 130,000 to 200,000 AFA. NSJWCD is one part of that Groundwater Basin. The District's limited 20,000 AFA surface water right is the only surface water available to alleviate the groundwater overdraft within its now approximately 150,000-acre area. A purpose of the Project is to begin incrementally reducing the groundwater overdraft within limited areas within the district given the limited surface water supply available to the district. The commenter appears to be advocating that only major projects, which would substantially improve the groundwater basin, should be approved and implemented and that smaller-step projects should not be approved. The district has no land use regulatory authority to prevent the conversion of dry pasture land into vineyards and other crop lands. The district is unaware of any facts or data, and the commenter has not provided any facts or data, to suggest that the Project will cause an increase in total water demand in the district, as alleged by the commenter.

Comment 2: Commenter asserts that the stated purpose of the Project of alleviating groundwater overdraft cannot be achieved without placing restrictions or limitations on groundwater pumping.

Response: The commenter appears to characterizing the "project" as the alleviation of groundwater overdraft within the district as opposed to the actual project, which generally consists of (1) obtaining changes and extension of time for Permit 10477 from the SWRCB and (2) constructing and operating the Tracy Lake Groundwater Recharge Project. MND at 10. The County of San Joaquin has primary authority for placing restrictions and limitation on groundwater pumping. The proposed change in Permit 10477 will increase surface water use in-lieu of groundwater use resulting in indirect recharge within the district. The Tracy Lake Groundwater Recharge Project has a direct recharge component via percolation to groundwater at the lake. Collectively, the above two elements will provide additional

water supplies to meet existing demand, which will reduce reliance on native groundwater, thereby helping to alleviate overdraft within areas of the district.

Comment 3: Commenter asserts that provisions of Water Right Order 2008-0016 should be incorporated into the mitigation measures.

Response: The noted provisions of Water Right Order 2008-0016 are already terms of Permit 10477 that govern water use by the district and the district must comply with them. Thus, they are part of the existing conditions, rather than mitigation measures.

The comment does not identify an environment impact requiring further analysis.

Comment 4: Commenter states that the purpose of the time extension is not described and that the MND should provide more detail on potential decision points for completion of various elements of the Proposed Project.

Response: The IS explains that if the requested water right changes are granted, water will be used through the District's existing facilities, for a transfer to the City of Lodi, and for the Tracy Lake Groundwater Recharge Project. The time extension to 2040 provides for 26 years to put the full amount of the permit to beneficial use. While the Tracy Lake project construction for Phase 1 is likely to be completed within 1-2 years, the specific timeline for phase 2 has not been identified yet. The district also will need the additional time to determine if existing demands along its existing facilities will use the balance of the permitted right or if additional projects will need to be identified, analyzed, and constructed for this purpose. As noted in the IS, any additional projects to utilize the water would be subject to compliance with CEQA.

Response to Comments of East Bay Municipal Utility District

Comment 1: Commenter asserts that the project conflicts with a 1992 Stipulated Agreement concerning pumping capacity and storage facilities for Permit 10477.

Response: The proposed new points of diversion conflict with the terms of Permit 10477, which is the reason for the pending petitions for change with the State Water Resources Control Board (SWRCB). Any changes must be approved by the State Board, subject to the ability of any party to the 1992 Stipulated Agreement to protest or participate in that process, which Commenter is doing. The comment does not identify an environment impact requiring further analysis.

Comment 2: Commenter asserts that the description of the baseline is inadequate.

Response: The CEQA Guidelines and case law are clear that potential environmental effects should be evaluated in comparison to existing conditions, which is the case applied to the analyses conducted for the Proposed Project in the IS-MND. The IS-MND (p. 8) clearly acknowledges the current baseline water diversions by NSJWCD under its water right as about 3,000 acre-feet per year (i.e., having declined from

diversion rates of up to approximately 9,700 acre-feet in the 1970's). Moreover, the assessment of hydrologic effects in the fisheries analysis (Table 7, p. 83) uses the minimum and average historical reservoir and Mokelumne River flow rates for the 1996-2012 period to reflect representative baseline conditions. Therefore, the analysis accurately represents the effects to Mokelumne River flow conditions with the Proposed Project implementation.

Comment 3: Commenter states it is unclear if NSJWCD is seeking to obtain diversions in all years including years when water would not be available under Permit 10477.

Response: NSJWCD is only seeking to divert water for the project when water is available under Permit 10477. The commenter states, "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 normally and above years, not drier year types." While the statement may be true in a general sense, in the upper range of the 50% drier water years (i.e., in what the SWRCB classifies as below normal water years) some, but admittedly not all, of the 20,000 AF may be available to NSJWCD.

Comment 4: Commenter states the project purpose is unclear as to how the Tracy Lake Project will reduce groundwater overdraft in other portions of NSJWCD.

Response: The Project includes the use of water under Permit 10477 in NSJWCD's existing facilities, as well as for the Tracy Lake Groundwater Recharge Project. Use of Mokelumne River water in all of these facilities will help alleviate groundwater overdraft that exists in the larger district area. If more Mokelumne River water and funding were available on an annual basis to NSJWCD, then NSJWCD would seek to target larger areas of the district to provide surface water in lieu of groundwater to help alleviate overdraft. The commenter appears to be criticizing NSJWCD for lacking sufficient surface water and funds to do more to alleviate the overdraft in Eastern San Joaquin County, which is caused in large part by the export of Mokelumne River water out of the area-of-origin basin.

Comment 5: Commenter states that the MND needs to conduct a separate analysis of environmental impacts from increased diversions.

Response: EBMUD's Draft EIR, relied on in the MND, analyzed the environmental impacts of full use of 20,000 af by NSJWCD under Permit 10477. The MND includes an additional analysis of the specific impacts of increased diversions by NSJWCD on pages 62-98 and 121-127 (analyzing both construction and operations impacts) and in Appendix B, analyzing the new Tracy Lake Groundwater Recharge diversion facility specifically.

Comment 6: Commenter states that impacts to the Lower Mokelumne River and Delta should be assessed.

Response: The Project will use water under Permit 10477 that is stored in Camanche by EBMUD and then released by EBMUD for diversion by NSJWCD. These releases "ride on top" of other releases in the

river. Because NSJWCD may only divert what has been released by EBMUD for this purpose, pursuant to the terms and conditions of the JSA, the Project will not adversely impact the existing flow regime in the river. Moreover, as discussed in the fisheries assessment section (Table 8, p. 84), the effects to streamflow are shown to occur only within the Mokelumne River between Camanche Dam and the diversion site, and there are no effects to hydrology downstream of the diversion site. If this water were not released, it would be carried over in storage and then released as flood flows. To the extent that the Proposed Project would have any effect on water quality downstream of the site, the issue regarding potential effects to river temperature conditions with the Proposed Project is discussed on p. 88 and identifies that the additional flow released between Camanche Dam and the diversion site is likely to reduce temperatures, in general, and thus would appear to be an incrementally beneficial effect for fisheries, especially for summer salmonid rearing. These effects described in detail for the Tracy Lake diversions would be the similar for other future NSJWCD diversions that would occur at the other locations upstream of the Tracy Lake site. The impact of this change in reservoir operations was already fully analyzed by EBMUD in its Draft EIR.

Comment 7: Commenter states the MND should discuss growth inducing impacts and potential cumulative Impacts of water use by others.

Response: CEQA Guidelines allow discussion of cumulative impacts at a lesser level of detail than direct or indirect effects of the project. NSJWCD acknowledges that many future anticipated uses of water in the Mokelumne River watershed may affect the overall water supply in any given year. However, the Proposed Project would only operate when water is available under the water rights. Thus, any potential effects of the multiple demands and deliveries of water to other users would be reflected in the ultimate quantity of water available to NSJWCD. NSJWCD is unaware of any potential growth inducing impacts from the Project.

Comment 8: Commenter states that the Tracy Lake Project's biological impacts analysis is insufficient. Response: The following provides responses to distinct topics identified in this comment, as identified by text boxes inserted in the attached comment letter.

Response: The following provides responses to distinct topics identified in this comment, as identified by text boxes inserted in the attached comment letter.

Response 8a. Because the water diverted will be delivered in agreement with EBMUD, and thus reflect water released from Camanche Reservoir storage in addition to the streamflows existing at the time in the Mokelumne River, the Project diversions are not dependent on, nor will they be regulated relative to, any minimum river flow requirements. Since EBMUD is a party to the JSA, EBMUD will ensure that water released for delivery to the Tracy Lake Project diversion point will be released in accordance with the JSA requirements. The comment is not correct that effects of the Proposed Project on minimum flows, and maximum diversion rates, were not analyzed. In particular, Table 3 identifies the maximum pumping station capacity and anticipated monthly maximum diversion schedule. Additionally, the

analysis of fisheries (Table 7 and Table 8, pp. 83-84) addresses potential hydrologic effects to Camanche Reservoir and Mokelumne River relative to historical minimum and average baseline conditions.

Response 8b. The circular screen specified for this project was specifically selected, as they are designed for shallow, silty and debris prone intake locations. Conical design of the screen provides for a large screen area in shallow water applications. This conical design also provides for a smooth, in river, hydraulic profile which facilitates uniform velocities over the face of the screen. Field testing by the National Marine Fisheries Services, California Department of Water Resources and University of California at Davis have verified the performance of the screen design.

The lower Mokelumne River is a controlled river in that it is regulated by upstream reservoirs. Specifically, flows in the lower Mokelumne River are controlled by East Bay Municipal Utilities District's (EBMUD's) releases from Comanche Reservoir in response to a variety of downstream needs. Flows to be diverted by this project will be released into the Mokelumne in response to a request from North San Joaquin Water Conservation District (NSJWCD) to EBMUD. These flows will be in addition to the flows being released for other identified and known flow requirements in the river. Therefore, as the proposed operating plan requires NSJWCD to notify both EBMUD and Woodbridge Irrigation District (WID) of its need for water, it is assumed EBMUD should ensure that NSJWCD will be notified in a timely manner of any significant reductions in releases by EBMUD. Thus thereby allowing NSJWCD can to monitor any changes in submergence of the diversion screen and accordingly adjust the amount of diversion for the project if as required.

Response 8c. The IS-MND (p. 82) acknowledges that the fish screen structure may incrementally increase the risk of predation near the site. When diverting, the channel flow conditions would be anticipated to be 50-100 feet wide; thus, there would be ample area for fish to pass the screen location. Moreover, the implied risk of increased predation is not accurately reflected by only the additional screen placement. Rather, the lower Mokelumne River reach upstream and downstream of the Tracy Lake diversion site has substantial overhanging vegetation and woody debris that provides cover for predators and salmon. Therefore, the additional diversion facility minimally changes the existing risk of predation.

Response 8d. The IS-MND identifies several project design features, BMPs (Appendix B), and mitigation measures (Proposed Negative Declaration) that would be implemented to avoid and minimize potential adverse construction-related effects to salmonids including scheduling in-river work for the months when any salmon present would be least abundant, use of erosion control and contaminant spill BMPs, dewatering of the construction site and salvaging any fish trapped within the dewatered area, and minimizing construction noise.

Comment 9: Commenter notes concerns about the denoted time frame for construction work.

Response: NSJWCD acknowledges the discrepancy between the construction schedule in the project description (Appendix B, p. 11) that states in-river work is anticipated to be complete by September 30,

and other sections of the assessment (e.g., fisheries Section 3.6) that indicates construction may occur up until about October 30. NSJWCD is committed to completing in-river construction as early as possible to avoid the peak salmonid migration. Moreover, consultations will occur with NOAA Fisheries and a Section 1600 Streambed Alteration Agreement will be acquired in which the allowable in-river construction work schedule will be determined.

Comment 10: Commenter notes concerns about the Tracy Lake Quarry Project and possible cumulative impacts.

Response: The Tracy Lake Quarry Project is not a project of NSJWCD and is not associated with the Project analyzed in the MND. The owners of the land underlying Tracy Lake are the proponents of the Quarry Project. The commenter incorrectly characterizes the Tracy Lake landowners as being “Tracy Lake Project proponents.” The Tracy Lake landowners have elected not to join NSJWCD’s Tracy Lake Improvement District and, consequently, they will not be receiving any Mokelumne River water for irrigation from NSJWCD’s Tracy Lake Project and they do not have any right to use for consumptive purposes any Mokelumne River water diverted into Tracy Lake by NSJWCD. The Quarry Project will be subject to its own environmental review and permitting. The Tracy Lake landowners have agreed that any excavation of Tracy Lake shall not result in more river water being required to be diverted in order to serve the lands within the Tracy Lake Improvement District. NSJWCD is not aware of how the Quarry Project would cause any substantial change in the operation of the Tracy Lake Groundwater Recharge Project or result in an environmental impact that has not already been analyzed in the MND.

Response to Comments of State Lands Commission

General Comment: Commenter notes that a lease and formal authorization from the Commission is not required if NSJWCD obtains one of the permits listed in Public Resources Code section 6327.

Response: Comment noted.

Comment 1: Commenter suggests the Project’s greenhouse gas emissions be quantified and included in the MND.

Response: Pages 113-14 of the MND/IS discuss greenhouse gas emissions and note that the San Joaquin Valley Unified Air Pollution Control District has not adopted a significance threshold for the type of short-term construction activities involved with this Project. Page 114 notes that the Project could result in a net reduction in long term GHG emissions.

Comment 2: Commenter suggests that the MND should mention the Commission’s title to cultural resources in the tide and submerged lands and requests consultation with Commission staff counsel if cultural resources within the jurisdiction of the Commission are discovered during construction.

Response: The comment is noted and the request for consultation upon discovery will be honored.