



Los Angeles County
Department of Regional Planning



Planning for the Challenges Ahead

September 20, 2007

Bruce W. McClendon FAICP
Director of Planning

TO: Sorin Alexanian
Hearing Officer

FROM: Tina Fung, Senior Regional Planning Assistant
Land Divisions Section

**SUBJECT: AMENDMENT TO VESTING TENTATIVE TRACT MAP NO. 48086-(5)
DISCUSSION/POSSIBLE ACTION ITEM NO. 10, SEPTEMBER 25, 2007**

PROJECT BACKGROUND

Agenda Item No. 10 is a request to amend Vesting Tentative Tract Map No. 48086, which was approved by the Los Angeles County Board of Supervisors on August 3, 2004 to authorize the creation of 542 single-family residential lots, 1 fire station lot, 1 sheriff sub-station lot, 2 park lots and 3 open space lots on 548.1 gross acres, located north of the Antelope Valley Freeway and Soledad Canyon Road, between Shadow Pines Boulevard and Agua Dulce Canyon Road in the Soledad Zoned District.

As you may recall, the amended vesting tentative map dated May 16, 2007 depicts 499 single-family residential lots (an alternative design depicts 531 single-family residential lots if no school site provided), 1 school site, 1 fire station lot, 1 sheriff sub-station lot, 3 park lots, 3 open space lots, 12 debris basin lots and 1 water reservoir lot. The amended map proposes the following changes: Relocate an elementary school site from the adjacent Tract 36943 to the southwest corner of this Tract; adjust lot lines and lot configurations resulting in a total of 499 single-family residential lots (or a total of 531 single-family residential lots without the school site); redesign an active park with only one pad and no storm drains; revise street pattern; relocate a water reservoir from the upper northwestern portion to the upper northeastern portion of the project site; redesign drainage facilities and add desilting basins both onsite and offsite; add a 60" arch culvert under Yellowstone Lane for wildlife use; remove part of the existing pavement of the old Spring Canyon Road in order to provide a continuous wildlife corridor connecting Spring Canyon to the wildlife undercrossing at Stonecrest Road; add a landscaped parkway and a wildlife corridor on the south side of Yellowstone Lane; revise the cross section for the Stonecrest Road freeway undercrossing from having two retaining walls to having four retaining walls; add a sewer lift station; reconfigure Lots 317-319 to eliminate encroachment into the stream course; change grading footprint and grading amount from 4.2 million cubic yards cut and fill balanced onsite to 5.3 million cubic yards cut and fill balanced onsite; and other minor changes associated with the above changes.

August 21, 2007 Public Meeting

During the August 21, 2007 public meeting, a letter received from the Santa Clarita Organization for Planning and the Environment ("SCOPE") was distributed to you. While the

letter indicates that SCOPE supports improving the movement of wildlife in the area as well as the inclusion of the school site within the project area, the letter states that the project does not comply with the water supply requirements set forth in SB221 since water deliveries from Northern California may have to be cut back by as much as 33 percent due to a recent Federal Court decision that was intended to protect the delta smelt, a small fish threatened with extinction, by slowing the water that flows into the pumps. The applicant responded that the Newhall County Water District has already executed an agreement to provide water to the project, and there is adequate water supply to the project.

During the August 21, 2007 public meeting, a neighbor residing immediately to the west of the project site also spoke in opposition to the project, concerning the existing width of pavement (36 feet) on Shenandoah Lane, which is an offsite access to the subject property. Staff responded that 36 feet of pavement, which allows parking on both sides of the street, is a standard requirement by the Los Angeles County Fire Department and therefore should be adequate. After hearing comments from the applicant and the community, your Hearing Officer continued the matter to September 11, 2007 to allow staff sufficient time to investigate the water supply issue.

September 11, 2007 Public Meeting

Letters of opposition were received from SCOPE and from the California Water Impact Network. Both letters again stated that the project does not comply with the water supply requirements set forth in SB221 since water deliveries may have to be cut back by as much as 33 percent. The letters request your Hearing Officer to re-evaluate the water supply for the project before proceeding. The letters also request that a condition be added requiring the project to comply with all regulatory rules for projects of 500 or more units should the County decide to approve the project.

A letter dated September 10, 2007 was also received from the applicant. The letter argues that the assertions regarding recent litigation concerning water supply are inappropriate for this amendment request since the County's amendment map procedure is limited to the review of the requested changes only. The letter also states that the Newhall County Water District has already executed an agreement to provide water to the project, and the amendment proceeding cannot affect that approval. Finally, the letter states that the requested amendment does not change the Water Supply Assessment ("WSA") for the approved project, which is in the certified Final Environmental Impact Report ("EIR").

Since staff was out of the office on September 11, 2007, no staff report was prepared and staff was unable to forward the letters mentioned above to your Hearing Officer. Therefore, your Hearing Officer continued the matter to September 25, 2007. Attached with this memo, the letters mentioned above are forwarded to your Hearing Officer for the September 25 public meeting.

STAFF EVALUATION

Since the certified Final EIR includes the WSA for the overall project, and there is no

substantial evidence on record at this time that the recent legal decision will have an impact on water supply, staff recommends that the amendment map be approved, with a condition added to require the applicant to provide a "Written Verification" and supporting documents from the water supplier to confirm the availability of a "Sufficient Water Supply" consistent with the provisions of Section 66473.7 of the Subdivision Map Act (SB221) prior to filing any final map or parcel map for recordation (see attached revised Department of Public Works Water report dated September 20, 2007).

Therefore, in review of the changes requested by the applicant as a result of changes requested by the water district and the school district, the project footprint and design substantially reflect the approved project design.

RECOMMENDATION:

Approve the amendment to this previously approved project. This action is Categorically Exempt pursuant to Class 5 of the California Environmental Quality Guidelines.

- Add the following Department of Regional Planning conditions for Vesting Tentative Tract Map No. 48086:
 1. Permission is granted to develop the subdivision in accordance with the amendment dated May 16, 2007.
 2. Permission is granted to make the following changes to the tentative map: Relocate an elementary school site from the adjacent Tract 36943 to the southwest corner of this Tract; adjust lot lines and lot configurations resulting in a total of 499 single-family residential lots (or a total of 531 single-family residential lots without the school site); redesign an active park with only one pad and no storm drains; revise street pattern; relocate a water reservoir from the upper northwestern portion to the upper northeastern portion of the project site; redesign drainage facilities and add desilting basins both onsite and offsite; add a 60" arch culvert under Yellowstone Lane for wildlife use; remove part of the existing pavement of the old Spring Canyon Road in order to provide a continuous wildlife corridor connecting Spring Canyon to the wildlife undercrossing at Stonecrest Road; add a landscaped parkway and a wildlife corridor on the south side of Yellowstone Lane; revise the cross section for the Stonecrest Road freeway undercrossing from having two retaining walls to having four retaining walls; add a sewer lift station; reconfigure Lots 317-319 to eliminate encroachment into the stream course; change grading footprint and grading amount from 4.2 million cubic yards cut and fill balanced onsite to 5.3 million cubic yards cut and fill balanced onsite; and other minor changes associated with the above changes.
 3. Delineate and label open space within private lots as shown on the May 16, 2007 Open Space Exhibit, as "Open Space-Restricted Use Area" on the final map. Add note on the final map dedicating the right to prohibit any development including grading, construction of any buildings or structures, or improvements, to the County of Los

Angeles.

- Approve the following revised reports:

Department of Public Works - Land Development Division - Subdivision (9-20-07)
Geotechnical and Materials Engineering Division -
Geology (6-18-07)
Geotechnical and Materials Engineering Division - Soils
(6-19-07)
Land Development Division - Drainage and Grading Unit
(6-12-07)
Land Development Division - Road (9-20-07)
Land Development Division - Sewer (6-27-07)
Land Development Division - Water (9-20-07)

Fire Department (8-20-07)

Department of Parks and Recreation - Park and Open Space Conditions (8-1-07)
Park Obligation Report (8-2-07)
Trails Report (7-18-07)

Department of Public Health (6-26-07)

Since minor changes are proposed for the original approved exhibit map, the amended map also serves as a Revised Exhibit "A" to the approved Conditional Use Permit. All other conditions applicable to the area covered by this amendment map shall remain as previously approved.

The above recommendation is subject to change based on oral comments or documentary evidence submitted during this process.

SMT:TF
9/20/07

We have no objections to the amendment requests. The following reports/conditions are recommended for inclusion in the conditions of tentative approval:

1. Within 30 days of the approval date of this land use entitlement or at the time of first plan check submittal, the applicant shall deposit the sum of \$2,000 (Minor Land Divisions) or \$5,000 (Major Land Divisions) with Public Works to defray the cost of verifying conditions of approval for the purpose of issuing final map clearances. This deposit will cover the actual cost of reviewing conditions of approval for Conditional Use Permits, Tentative Tract and Parcel Maps, Vesting Tentative Tract and Parcel Maps, Oak Tree Permits, Specific Plans, General Plan Amendments, Zone Changes, CEQA Mitigation Monitoring Programs and Regulatory Permits from State and Federal Agencies (Fish and Game, USF&W, Army Corps, RWQCB, etc.) as they relate to the various plan check activities and improvement plan designs. In addition, this deposit will be used to conduct site field reviews and attend meetings requested by the applicant and/or his agents for the purpose of resolving technical issues on condition compliance as they relate to improvement plan design, engineering studies, highway alignment studies and tract/parcel map boundary, title and easement issues. When 80% of the deposit is expended, the applicant will be required to provide additional funds to restore the initial deposit. Remaining balances in the deposit account will be refunded upon final map recordation.
2. Comply with the attached 2-page drainage/grading conditions.
3. Comply with the attached 2-page geology/soils conditions.
4. Comply with the attached 13-page Road/Traffic conditions (revised 09-20-2007).
5. Comply with the attached 1-page Sewer conditions.
6. Comply with the attached 1-page Water conditions (revised 09-20-2007).
7. Comply with all other previously approved conditions to the satisfaction of Public Works.

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**COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION
SUBDIVISION PLAN CHECKING SECTION
DRAINAGE AND GRADING UNIT**

TRACT MAP NO. 48086

REVISED AMENDED TENTATIVE MAP DATED 05/16/07

DRAINAGE CONDITIONS

1. Provide drainage facilities to remove the flood hazard and dedicate and show necessary easements and/or right of way on the final map. This is required to the satisfaction of the Department of Public Works prior to the filing of the final map.
2. Place a note of flood hazard on the final map and delineate the areas subject to flood hazard. Show and label all natural drainage courses. Dedicate to the County the right to restrict the erection of buildings in the flood hazard area. This is required to the satisfaction of the Department of Public Works prior to the filing of the final map.
3. Provide fee title lot for debris basins/inlets to the satisfaction of the Department of Public Works.
4. Notify the State Department of Fish and Game prior to commencement of work within any natural drainage course. If non-jurisdiction is established by the Department of Fish and Game, submit a letter of non-jurisdiction to Public Works (Land Development Division).
5. Contact the State Water Resources Control Board to determine if a Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) are required to meet National Pollution Discharge Elimination System (NPDES) construction requirements for this site.
6. Comply with Caltrans permit conditions for encroaching and connecting to their drainage systems.
7. Contact the Corps of Engineers to determine if a permit is required for any proposed work within the major watercourse. Provide a copy of the 404 Permit upon processing of the drainage plans. If non-jurisdiction is established by the Corps of Engineers, submit a letter of non-jurisdiction to Public Works (Land Development Division).
8. Prior to recordation of the final map, form an assessment district to finance the future ongoing maintenance and capital replacement of SUSMP devices/systems identified on the latest approved Drainage Concept. The developer shall cooperate fully with Public Works in the formation of the assessment district, including, without limitation, the preparation of the operation, maintenance, and capital replacement plan for the SUSMP devices/systems and the prompt submittal of this information to Land Development Division. The developer shall pay for all costs associated with the formation of the assessment district. SUSMP devices/systems shall include but are not limited to catch basin inserts, debris excluders, biotreatment basins, vortex separation type systems, and other devices/systems for stormwater quality.
9. Prior to recordation of the final map, the developer shall deposit the first year's total assessment for the entire assessment district, based on the engineers estimate as approved by Public Works. This will fund the first year's maintenance after the facilities are accepted. The County will collect the second and subsequent years' assessment from the owner(s) of each parcel within the assessment district.
10. The alternative shown in lieu of the elementary school site must comply with the requirements of the revised drainage concept / Hydrology / Standard Urban Stormwater Mitigation Plan (SUSMP) plan which was conceptually approved on 05/10/07 to the satisfaction of Public Works.



COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS
LAND DEVELOPMENT DIVISION
SUBDIVISION PLAN CHECKING SECTION
DRAINAGE AND GRADING UNIT

TRACT MAP NO. 48086

REVISED AMENDED TENTATIVE MAP DATED 05/16/07

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GRADING CONDITIONS:

1. Comply with the requirements of the revised drainage concept / Hydrology / Standard Urban Stormwater Mitigation Plan (SUSMP) plan which was conceptually approved on 05/10/07 to the satisfaction of Public Works.
2. A grading plan and soil and geology report must be submitted and approved prior to approval of the final map. The grading plans must show and call out the construction of at least all the drainage devices and details, the paved driveways, the elevation and drainage of all pads, and the SUSMP devices. The applicant is required to show and call out all existing easements on the grading plans and obtain the easement holder approvals prior to the grading plans approval.

Name Ernesto Rivera
ERNESTO J RIVERA

Date 06/12/07 Phone (626) 458-4921

County of Los Angeles Department of Public Works
GEOTECHNICAL AND MATERIALS ENGINEERING DIVISION
GEOLOGIC REVIEW SHEET
900 So. Fremont Ave., Alhambra, CA 91803
TEL. (626) 458-4925

DISTRIBUTION
1 Geologist
1 Soils Engineer
1 GMED File
1 Subdivision

TENTATIVE TRACT MAP 48086 TENTATIVE MAP DATED 5/16/07 (Revision)
SUBDIVIDER ASL Sand Canyon, LTD LOCATION Spring Canyon
ENGINEER RBF Consulting
GEOLOGIST & SOILS ENGINEER The J. Byer Group, Inc. REPORT DATE 6/22/05, 4/19/05, 1/31/05

Additional reports reviewed: Pacific Soils Engineering, Inc.: 5/15/00, 12/17/97, 11/12/97.

TENTATIVE MAP FEASIBILITY IS RECOMMENDED FOR APPROVAL. PRIOR TO FILING THE FINAL LAND DIVISION MAP, THE FOLLOWING CONDITIONS MUST BE FULFILLED:

- The final map must be approved by the Geotechnical and Materials Engineering Division (GMED) to assure that all geotechnical factors have been properly evaluated.
- A grading plan must be geotechnically approved by the GMED. This grading plan must be based on a detailed engineering geology report and/or soils engineering report and show all recommendations submitted by them. It must also agree with the tentative map and conditions as approved by the Planning Commission. If the subdivision is to be recorded prior to the completion and acceptance of grading, corrective geologic bonds will be required.
- All geologic hazards associated with this proposed development must be eliminated,
or
delineate restricted use areas, approved by the consultant geologist and/or soils engineer, to the satisfaction of the Geology and Soils Sections, and dedicate to the County the right to prohibit the erection of buildings or other structures within the restricted use areas.
- A statement entitled: "Geotechnical Note(s), Potential Building Site: For grading and corrective work requirements for access and building areas for Lot(s) No(s). _____ refer to the Soils Report(s) by _____, dated _____."
- The Soils Engineering review dated 6/19/07 is attached.

TENTATIVE MAP IS APPROVED FOR FEASIBILITY. THE FOLLOWING INFORMATION IS APPLICABLE TO THIS DIVISION OF LAND:

- This project may not qualify for a waiver of final map under section 21.48.140 of the Los Angeles County Title 21 Subdivision Code.
- The subdivider is advised that approval of this division of land is contingent upon the installation and use of a sewer system.
- Geology and/or soils engineering reports may be required prior to approval of building or grading plans.
- Groundwater is less than 10 feet from the ground surface on lots _____
- The Soils Engineering review dated _____ is attached.

Prepared by  Reviewed by _____ Date 6/18/07
Geir R. Mathisen

**COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS
GEOTECHNICAL AND MATERIALS ENGINEERING DIVISION**

SOILS ENGINEERING REVIEW SHEET

Address: 900 S. Fremont Ave., Alhambra, CA 91803
Telephone: (626) 458-4925
Fax: (626) 458-4913

District Office 8.2
PCA LX001129
Sheet 1 of 1

Tentative Tract Map 48086
Location Spring Canyon
Developer/Owner ASL Sand Canyon, LTD
Engineer/Architect RBF Consulting
Soils Engineer The J. Byer Group, Inc. (JB 19660-B)
Geologist The J. Byer Group, Inc.

DISTRIBUTION:

Drainage
 Grading
 Geo/Soils Central File
 District Engineer
 Geologist
 Soils Engineer
 Engineer/Architect

Review of:

Tentative Map Dated by Regional Planning 5/16/07 (rev.)
Previous Review Sheet Dated 6/15/06

ACTION:

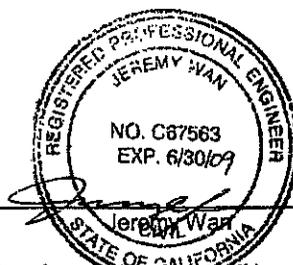
Tentative Map feasibility is recommended for approval, subject to conditions below:

REMARKS:

1. At the grading plan stage: Provide additional direct shear test results to verify shear strength parameters utilized within the slope stability analyses (i.e. older alluvium, compacted fill, Tmc, etc.). Also, provide additional geotechnical cross sections and slope stability analyses at 40-scale for the natural descending slope along the eastern portion of the subject site (i.e. Lots 302-316, etc.). Recommend mitigation if factors of safety are below County minimum standards.
2. At the grading plan stage, submit two sets of grading plans to the Soils Section for verification of compliance with County codes and policies.

NOTE(S) TO THE PLAN CHECKER/BUILDING AND SAFETY ENGINEER:
ONSITE SOILS ARE CORROSIVE TO FERROUS MATERIALS.


Prepared by _____



Date 6/19/07

NOTICE: Public safety, relative to geotechnical subsurface exploration shall be provided in accordance with current codes for excavations, inclusive of the Los Angeles County Code, Chapter 11.48, and the State of California, Title 8, Construction Safety Orders.
P:\gmpubl\Soils Review\Jeremy\TR 48086, Spring Canyon, TTM-A_18.doc

We have no objection to the amendment requests. The following revised conditions are recommended for inclusion in the tentative approval:

1. This previously approved road condition, "*Adjust the location of the PRC on "B" Street near Lot 154 so that it is either at or outside the BCR of "F" Street.*" is eliminated.
2. Adjust the location of the PRC on "B" Street so that it is either at or outside the BCR of "F" Street. If unavoidable, maintain a minimum centerline radius of 400 feet.
3. This previously approved portion of a road condition, "Dedicate right of way 32 feet from centerline on "B" St., "I" St. from "H" St. to "N" St., "J" St. from Valley Canyon Rd. to "K" St." is eliminated.
4. This previously approved portion of a road condition, "*Dedicate right of way 30 feet from centerline on "D" St. from "C" St. to "W" St., on "I" St. from "J" St. to "N" St., on "J" St. from "I" St. to "K" St., on "V" St., and on "T" St. from "H" St. to "U" St.*" is eliminated.
5. Dedicate right of way 30 feet from centerline on "B" St., on "D" St., on "I" St., on "J" St., "J" St. cul-de-sac south of Valley Canyon Rd., "V" St. from "A" St. to "U" St., and "T" St. from "H" St. to "V" St. plus additional right of way for a standard knuckle." Provide a unique name for the portion of "T" St. from the knuckle to "V" St.
6. This previously approved road condition, "*Dedicate right of way 29 feet from centerline on all remaining cul-de-sac streets.*" is eliminated.
7. Dedicate right of way 32 feet from centerline on Yellowstone Lane between Stonecrest Road and the westerly tract boundary. Permission is granted to reduce the parkway from 12 feet to 3 feet on the south side of Yellowstone Lane adjacent to the Freeway 14 right of way (Typical Section D-D) only at locations to the satisfaction of Public Works. Sidewalk is not required on south side of Yellowstone Lane between Stonecrest Road and the westerly tract boundary (Typical Sections C-C and D-D).
8. Dedicate right of way 29 feet from centerline plus additional right of way for a standard cul-de-sac bulb on "C" St. west of "D" St., "D" St., "E" St. west of "B" St., "F" St., "G" St., "J" St. north of "I" Street, "L" St. south of "K" St. and north of "M" St., "M" St., "N" St., "O" St., "V" St. west of "U" St., "W" St., "X" St., and "Z" St.

HW

9. Dedicate vehicular access rights on "X" St. from the school lot. If the Department of Regional Planning requires the construction of a wall, complete access rights shall be dedicated.
10. If the "Alternative to Elementary School Site" detail is used, dedicate right of way 30 feet from centerline on "P" St. including the cul-de-sac street, 29 feet from centerline plus additional right of way for a standard cul-de-sac bulb on "R" St., and "Q" St.
11. Permission is granted to reduce the road right of way from 32 feet to approximately 23 feet from centerline on the easterly half of Stonecrest Road in the vicinity under the Antelope Valley Freeway adjacent to the proposed equestrian/wildlife trail to the satisfaction of Public Works. Sidewalks are not required on the east side of Stonecrest Road in the vicinity under the freeway adjacent to the proposed equestrian/wildlife trail. The proposed equestrian/wildlife trail shall be located outside of the road right of way.
12. This previously approved road condition is modified to, *"Provide adequate landing area at a maximum 3% grade on all "tee" intersections except "F" St. and "Z" St. to the satisfaction of Public Works. Permission is granted to provide adequate landing area at a maximum grade of 4 percent on "F" St. and "Z" St."*
13. This previously approved portion of a road condition, *"Provide intersection sight distance commensurate with a design speed of 40 mph (415 feet) on "A" St. from "V" St.; on "B" St. from "F" St. (southerly direction); and on Valley Canyon Rd. from "A" St."* is eliminated.
14. Provide intersection sight distance for a design speed of 40 mph (415 feet) on "A" St. from "B" Street (northerly direction) and from "O" Street (southerly direction); on "H" St. from "I" St. (westerly direction); and on Valley Canyon Rd. from the proposed driveways serving Lot 498 (both directions). Line of sight shall be within right of way or dedicate airspace easement to the satisfaction of the Department of Public Works. Additional grading may be required.
15. This previously approved road condition is modified to, *"Provide intersection sight distance commensurate with a design speed of 30 mph (310 feet) on "E" St. from "C" St. (southerly direction), on "J" St. from "I" St. (southerly direction); on "V" St. from "S" St. (southerly direction); and on "T" St. from "U" St. (northerly direction). Line of sight shall be within right of way or dedicate airspace easement to the satisfaction of the Department of Public Works. Additional grading may be required."*

16. This previously approved road condition is modified to, *"Provide stopping sight distance commensurate with a design speed of 30 mph along all points of the ~~375 365-foot-radius~~ curve on "E" St. in the vicinity of ~~lots 116 through 125~~ Lots 93 to 106. Line of sight shall be within right of way or dedicate airspace easements to the satisfaction of the Department of Public Works. Additional grading may be required."*
17. In determining the adequate sight distance with respect to the position of the vehicle at the minor road, the driver of the vehicle is presumed to be located 4 feet right of centerline and 10 feet back the top of curb (TC) or flow line (FL) prolongation. When looking left, we consider the target to be located at the center of the lane nearest to the parkway curb. We use 6 feet from TC as a conservative rule. When looking right, the target is the center of the lane nearest to the centerline or from the median TC (when present). The lines of sight and/or airspace easements as depicted on the amendment map are not necessarily approved.
18. This previously approved portion of a road condition, *"Permission is granted for street grades up to 12% on the offsite portion of Valley Canyon Rd. within Tract 36943 and 11.5% on "E" St. only at locations to the satisfaction of Public Works."* is eliminated.
19. Permission is granted for street grades up to 12.5% on the off-site portion of Valley Canyon Rd. within Tract 36943 and 11% on "E" St. only at locations to the satisfaction of Public Works.
20. This previously approved road condition, *"A deposit is required to review documents and plans for final map clearance."* is eliminated.
21. If applicable, provide a longer driveway on Lot 521 (elementary school site) to avoid queuing problems on Valley Canyon Road and for a more efficient drop-off/pick-up area to the satisfaction of Public Works.
22. Prepare signing and striping plans for Valley Canyon Rd. within or abutting this subdivision to the satisfaction of Public Works.

23. Prior to recordation of the phase containing Lot 521 and/or prior to issuance of building permit(s) for Lot 521, the developer shall coordinate with and notify the Sulphur Springs School District (SSSD) that the preliminary school site plan, traffic circulation plan, the informational packets or brochures, and the student drop-off/pick-up procedures shall be prepared and submitted to our Traffic and Lighting Division for review and approval. We recommend a mechanism for enforcement and levying of non-compliance penalties be included in the plan. The SSSD shall prepare informational packets containing the approved student drop-off/pick-up procedures and provide them to the parents/guardians of the students.
24. Comply with the mitigation measures identified in the attached March 27, 2003 and October 30, 2002 memoranda to the satisfaction of Public Works.
25. Comply with all other previously approved conditions to the satisfaction of Public Works.

HW

Prepared by John Chin
tr48086ra-rev3(05-16-07)-(rev'd 09-20-07).doc

Phone (626) 458-4915

Date Rev. 09-20-2007



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC WORKS

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P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE REFER TO FILE: **WM-4**

March 27, 2003

TO: Daryl Koutnik
Department of Regional Planning

FROM: Rod Kubomoto
Watershed Management Division

**RESPONSE TO A SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT
SPRING CANYON PROJECT (Vesting Tentative Tract No. 48086)
UNINCORPORATED COUNTY OF
LOS ANGELES AREA OF SPRING CANYON**

Thank you for the opportunity to provide comments on the Environmental Impact Report for the Spring Canyon Project. The project consists of the subdivision of a currently vacant site into 542 single-family residential lots, one fire station lot, two private park sites, and one lot for future elementary school use. The project site is located immediately north of the Antelope Valley Freeway (Highway 14) and Soledad Canyon Road within the unincorporated County of Los Angeles area of Spring Canyon. We have reviewed the submittal and offer the following comments:

Traffic and Lighting

The project, upon its anticipated completion in 2005, is estimated to generate approximately 6,056 daily vehicle trips, with 626 vehicle trips, and 547 vehicle trips during the a.m. and p.m. peak hours, respectively.

The Significance Criteria Section on Page 20 for the County of Los Angeles is incorrect and shall be corrected as follows:

According to the County of Los Angeles' Traffic/Access Guidelines for intersections, a significant project-related traffic impact is determined based on the following:

<u>Pre-Project V/C</u>	<u>LOS</u>	<u>Project-Related Increase in V/C</u>
0.71 to 0.80	C	0.04 or more
0.81 to 0.90	D	0.02 or more
0.91 or more	E/F	0.01 or more

We agree with the study that the project traffic alone will significantly impact the following intersections and roadways and the following improvements will fully mitigate the project's impacts to a level of less than significant. The project shall be solely responsible for these improvements.

Spring Canyon Road/Soledad Canyon Road

This is the project's main entrance. The intersection shall be modified to provide one shared left-right-turn lane and one exclusive right-turn lane on the north approach. On the east approach, provide sufficient pavement on Soledad Canyon Road for one through lane and one shared through/right-turn lane (instead of one through lane and one right-turn lane recommended in the Supplemental Environmental Impact Report), and on the west approach, a left-turn lane and one through lane.

Pay the entire cost for the installation of the traffic signals. Traffic signals shall only be installed when actual traffic conditions warrant the signals.

Install a crosswalk on the east side of the intersection rather than on the west side to avoid heavy dual-lane right-turn vehicle movements in conflict with pedestrian movements.

Detailed striping and signal plans for these improvements shall be prepared and submitted to Public Works for review and approval.

Spring Canyon Road

A minimum vehicle lane width of 18 feet should be provided from north of the State Route 14 (SR-14) overpass columns to Valley Canyon Road for disabled vehicle refuge.

Daryl Koutnik
March 27, 2003
Page 3

Any grade change in pedestrian sidewalk must comply with the Americans with Disabilities Act.

Seventeen feet of vertical clearance should be provided at the SR-14 overpass and Spring Canyon Road.

Detailed striping, signage, and signal plans for these improvements shall be prepared and submitted to Public Works and to the State of California Department of Transportation (Caltrans) for review and approval.

Soledad Canyon Road

Widen Spring Canyon Road from SR-14 eastbound ramps to Spring Canyon Road to provide a total of three lanes. A three-lane section of roadway shall include one lane in each direction in addition to a center passing lane in the upgrade portion of the roadway that could serve both westbound and eastbound traffic.

Detailed road construction, striping and signage plans shall be prepared and submitted to Public Works for review and approval.

Since this project is within the Eastside Bridge and Major Thoroughfare Construction Fee District, the cost of this improvement will be given as a credit toward the project's Bridge and Major Thoroughfare District fee.

SR-14 Southbound Ramps/Soledad Canyon Road

Pay the entire cost for the installation of the traffic signal. Traffic signals shall only be installed when actual traffic conditions warrant the signals. Since the signalization of the intersections is included in the Eastside Bridge and Major Thoroughfare Construction Fee District, the project shall be given the credit against the District fees.

The cumulative traffic of the project and related projects in the study will significantly impact the following intersections. The project shall pay its fair share of the cost for the following improvements needed to fully mitigate its cumulative traffic impacts to a level of insignificance.

SR-14 Northbound Ramps/Soledad Canyon Road

Restripe the south approach of this intersection to provide for two through lanes. The two through lanes will be carried north of the intersection under the SR-14 Freeway bridge to join two westbound lanes which currently exist.

The project is within the Eastside Bridge and Major Thoroughfare Construction Fee District. The project shall pay its fair share of the District fees.

The project will not have any impact to a Congestion Management Program route, intersections, or freeways.

The following intersections impacted by the project traffic alone are within the City of Santa Clarita's jurisdiction. Therefore, the City's approval is needed to implement these mitigation measures:

Sand Canyon Road/Soledad Canyon Road

Pay project's fair share of the cost to improve the south approach of the intersection for the ultimate improvements that will provide dual left-turn lanes, two through lanes, two right-turn lanes, and modification of traffic signals.

SR-14 Southbound Ramps North of Sand Canyon Road/Soledad Canyon Road

Pay project's fair share of the cost to improve the east approach of the intersection for the ultimate improvements that will provide dual left-turn lanes, three through lanes, and modification of traffic signals.

A freeway traffic impact analysis has been conducted and determined that no project-related significant traffic impact will occur to the mainline freeways. Inasmuch as Caltrans has the jurisdiction over the freeway system, Caltrans shall review this document for any CEQA traffic impacts and mitigation measures proposed as necessary.

If you have any questions, please contact James Chon of our Traffic Studies Section at (626) 300-4721.

Daryl Koutnik
March 27, 2003
Page 5

Waterworks and Sewer Maintenance

We have reviewed the subject document and have no comments.

If you have any questions, please contact Kyle Kornelis at (626) 300-3322.

Watershed Management

The proposed project should include investigation of watershed management opportunities to maximize capture of local rainfall on the project site, eliminate incremental increases in flows to the storm drain system, and provide filtering of flows to capture contaminants originating from the project site.

If you have any questions regarding the above comments or the environmental review process of Public Works, please contact Massie Munroe at the above address or at (626) 458-4359.

MM:kk
A:\EIR231.DOC

bc: Traffic and Lighting ✓
Waterworks and Sewer Maintenance
Watershed Management (Lafferty)

dam



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE
REFER TO FILE: T-4

October 30, 2002

TO: James E. Hartl
Planning Director
Department of Regional Planning

Attention Daryl Koutnik

FROM: James A. Noyes
Director of Public Works

SHADOW PINES PROJECT TRAFFIC IMPACT STUDY (JULY 30, 2002) VESTING TENTATIVE TRACT MAP NO. 48086

We have reviewed the above-mentioned document submitted by the Project traffic consultant and agree with the analysis and conclusions in the study.

The Project is generally located north of Soledad Canyon Road at Spring Canyon Road in the unincorporated County of Los Angeles area. The Project consists of the development of 542 single-family residential lots, three open space lots, a fire station lot, a sheriff's substation lot, and two park site lots. Contiguous to, but not a part of, the Project is a nine-acre elementary school site for a maximum student capacity of 750 students.

The Project upon its anticipated completion year in 2005 is estimated to generate approximately 6,056 daily vehicle trips with 626 vehicle trips and 547 vehicle trips during the a.m. and p.m. peak hours, respectively.

We agree with the study that the Project traffic alone will significantly impact the following intersections and roadways and the following improvements will fully mitigate the Project's impacts to a level insignificance. The Project shall be solely responsible for these improvements.

FILE COPY

James E. Hartl
October 30, 2002
Page 2

Spring Canyon Road/Soledad Canyon Road

This is the Project's main entrance. The intersection shall be modified to provide one shared left-/right-turn lane and one exclusive right-turn lane to the north approach. On the east approach, provide sufficient pavement on Soledad Canyon Road for one through lane and one shared through/right-turn lane, and on the west approach, a left-turn lane and one through lane.

Pay the entire cost for the installation of the traffic signals. Traffic signals shall only be installed when actual traffic conditions warrant the signals.

Install a crosswalk on the east side of the intersection rather than on the west side to avoid heavy dual-lane right-turn vehicle movements in conflict with pedestrian movements.

Detailed striping and signal plans for these improvements shall be prepared and submitted to Public Works for review and approval.

Spring Canyon Road

A minimum vehicle width of 18 feet should be provided from north of the SR-14 overpass columns to Valley Canyon Road for disabled vehicle refuge.

Any grade change in pedestrian sidewalk must comply with the Americans with Disabilities Act.

Seventeen feet of vertical clearance should be provided at the SR-14 overpass and Spring Canyon Road.

Detailed striping, signage, and signal plans for these improvements shall be prepared and submitted to Public Works and to the State of California Department of Transportation for review and approval.

Soledad Canyon Road

Widen Spring Canyon Road from SR 14 eastbound ramps to Spring Canyon Road to provide a total of three lanes. A three-lane section of roadway shall include one lane in each direction plus a center passing lane in the upgrade portion of the roadway that could serve both westbound and eastbound.

Detailed striping and signage plans shall be prepared and submitted to Public Works for review and approval.

The cumulative traffic of the Project and related Projects in the study will significantly impact the following intersections. The Project shall pay its fair share of the cost for the following improvements needed to fully mitigate its cumulative traffic impacts to a level insignificance:

Soledad Canyon Road/SR-14 Eastbound Ramps

Restripe the south approach of this intersection to provide for two through lanes. The two through lanes will be carried north of the intersection under the SR-14 Freeway bridge to join two northbound lanes which currently exist.

The Project is within the Eastside Bridge and Major Thoroughfare Construction Fee District. The Project shall pay its fair share of the District fees.

The Project will not have any impact to a Congestion Management Program route, intersections, or freeways.

The following intersections impacted by the Project traffic alone are within the City of Santa Clarita's jurisdiction and thus City's approval is needed to implement these mitigation measures:

Soledad Canyon Road/Sand Canyon Road

Pay Project's fair share of the cost to improve the south approach of the intersection for the ultimate improvements that will provide dual left-turn lanes, two through lanes, two right-turn lanes, and modification of traffic signals.

Soledad Canyon Road/SR-14 Westbound Ramps East of Sand Canyon Road

Pay Project's fair share of the cost to improve the east approach of the intersection for the ultimate improvements that will provide dual left-turn lanes and three through lanes and modification of traffic signals.

James E. Hartl
October 30, 2002
Page 4

If you have any questions, please contact James Chon of our Traffic and Lighting Division at (626) 300-4721.

VLC JHC:cn
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ON
cc: Land Design Consultants, Inc. (Christy Cuba)

bc: Ronald J. Ornee
T. M. Alexander
Land Development (Hunter, Ruiz, Witler)
Watershed Management (David)

The subdivision shall conform to the design standards and policies of Public Works, in particular, but not limited to the following items:

1. The subdivider shall install and dedicate main line sewers and serve each building/lot with a separate house lateral or have approved and bonded sewer plans on file with Public Works.
2. The subdivider shall submit an area study to Public Works to determine if capacity is available in the proposed and existing sewerage system servicing this land division. The sewer area study and outlet approval shall also be reviewed and approved by the City of Santa Clarita. The approved sewer area study shall remain valid for two years after initial approval of the tentative map. After this period of time, an update of the area study shall be submitted by the applicant if determined to be warranted by Public Works.
3. If the existing sewer system is found to have insufficient capacity, upgrade the proposed and existing sewerage system (both on and off-site) to the satisfaction of Public Works.
4. The subdivider shall send a print of the land division map to the County Sanitation District with a request for annexation. The request for annexation must be approved prior to final map approval.
5. Sewer reimbursement charges as determined by the Director of Public Works shall be paid to the County of Los Angeles before the filing of this land division map.
6. The subdivider shall install off-site sewer mainline to serve this subdivision to the satisfaction of Public Works.
7. The subdivider shall provide any necessary off-site easements to construct the off-site sewer improvements to the satisfaction of Public Works. It shall be the sole responsibility of the subdivider to acquire the necessary easements and/or right of way.

HW

The subdivision shall conform to the design standards and policies of Public Works, in particular, but not limited to the following items:

1. A water system maintained by the water purveyor (including off-site pump station), with appurtenant facilities to serve all lots in the land division, must be provided. The system shall include fire hydrants of the type and location (both on-site and off-site) as determined by the Fire Department. The water mains shall be sized to accommodate the total domestic and fire flows.
2. There shall be filed with Public Works a statement from the water purveyor indicating that the water system will be operated by the purveyor, and that under normal conditions, the system will meet the requirements for the land division, and that water service will be provided to each lot.
3. Install off-site water mainline to serve this subdivision to the satisfaction of Public Works.
4. Easements (including off-site easements) shall be granted to the County, appropriate agency or entity for the purpose of ingress, egress, construction, and maintenance of all infrastructures constructed for this land division to the satisfaction of Public Works.
5. Submit landscape and irrigation plans for each open space lot in the land division, with landscape area greater than 2,500 square feet, in accordance with the Water Efficient Landscape Ordinance.
6. Depict all line of sight easements on the landscaping and grading plans.
7. Provide a "Written Verification" and supporting documents from the water supplier to confirm the availability of a "Sufficient Water Supply" consistent with the provisions of Section 66473.7 of the Subdivision Map Act (SB 221) prior to filing any final map or parcel map for recordation to the satisfaction of Public Works and the Department of Regional Planning. For additional information, please contact Mr. Massoud Esfahani of Land Development Division at (626) 458-4921.

HW



COUNTY OF LOS ANGELES

FIRE DEPARTMENT

5823 Rickenbacker Road
Commerced, California 90040

CONDITIONS OF APPROVAL FOR SUBDIVISION - UNINCORPORATED

Subdivision: TR 48086 Map Date May 16, 2007

C.U.P. 89-213 Vicinity Spring Canyon

- FIRE DEPARTMENT HOLD** on the tentative map shall remain until verification from the Los Angeles County Fire Dept. Planning Section is received, stating adequacy of service. Contact (323) 881-2404.
- Access shall comply with Title 21 (County of Los Angeles Subdivision Code) and Section 902 of the Fire Code, which requires all weather access. All weather access may require paving.
- Fire Department access shall be extended to within 150 feet distance of any exterior portion of all structures.
- Where driveways extend further than 300 feet and are of single access design, turnarounds suitable for fire protection equipment use shall be provided and shown on the final map. Turnarounds shall be designed, constructed and maintained to insure their integrity for Fire Department use. Where topography dictates, turnarounds shall be provided for driveways that extend over 150 feet in length.
- The private driveways shall be indicated on the final map as "Private Driveway and Firelane" with the widths clearly depicted. Driveways shall be maintained in accordance with the Fire Code.
- Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. All required fire hydrants shall be installed, tested and accepted prior to construction.
- This property is located within the area described by the Fire Department as "Very High Fire Hazard Severity Zone" (formerly Fire Zone 4). A "Fuel Modification Plan" shall be submitted and approved prior to final map clearance. (Contact: Fuel Modification Unit, Fire Station #32, 605 North Angeleno Avenue, Azusa, CA 91702-2904, Phone (626) 969-5205 for details).
- Provide Fire Department or City approved street signs and building access numbers prior to occupancy.
- Additional fire protection systems shall be installed in lieu of suitable access and/or fire protection water.
- The final concept map, which has been submitted to this department for review, has fulfilled the conditions of approval recommended by this department for access only.
- These conditions must be secured by a C.U.P. and/or Covenant and Agreement approved by the County of Los Angeles Fire Department prior to final map clearance.
- The Fire Department has no additional requirements for this division of land.

Comments: **The proposed passive park located off "H" Street shall provide for a minimum paved width of 24'. The on-site driveway shall be designed to the satisfaction of the Fire Department and Public Works Department. Individual flag lots shall provide adequate widths necessary to accommodate 20' of paved vehicular access, provide verification of said width on the final map. Attached are the Conditions of Approval for Lot 495, Fire Station Site**

By Inspector: Janna Masi Date August 20, 2007



COUNTY OF LOS ANGELES

FIRE DEPARTMENT

5823 Rickenbacker Road
Commerce, California 90040

WATER SYSTEM REQUIREMENTS - UNINCORPORATED

Subdivision No. TR 48086 Tentative Map Date May 16, 2007

Revised Report yes

- The County Forester and Fire Warden is prohibited from setting requirements for water mains, fire hydrants and fire flows as a condition of approval for this division of land as presently zoned and/or submitted. However, water requirements may be necessary at the time of building permit issuance.
The required fire flow for public fire hydrants at this location is 1250 gallons per minute at 20 psi for a duration of 2 hours, over and above maximum daily domestic demand. 1 Hydrant(s) flowing simultaneously may be used to achieve the required fire flow.
The required fire flow for private on-site hydrants is ___ gallons per minute at 20 psi. Each private on-site hydrant must be capable of flowing ___ gallons per minute at 20 psi with two hydrants flowing simultaneously, one of which must be the furthest from the public water source.
Fire hydrant requirements are as follows:
Install 41 public fire hydrant(s). Upgrade / Verify existing ___ public fire hydrant(s).
Install ___ private on-site fire hydrant(s).
All hydrants shall measure 6"x 4"x 2-1/2" brass or bronze, conforming to current AWWA standard C503 or approved equal. All on-site hydrants shall be installed a minimum of 25' feet from a structure or protected by a two (2) hour rated firewall.
Location: As per map on file with the office.
Other location: ___
All required fire hydrants shall be installed, tested and accepted or bonded for prior to Final Map approval. Vehicular access shall be provided and maintained serviceable throughout construction.
The County of Los Angeles Fire Department is not setting requirements for water mains, fire hydrants and fire flows as a condition of approval for this division of land as presently zoned and/or submitted.
Additional water system requirements will be required when this land is further subdivided and/or during the building permit process.
Hydrants and fire flows are adequate to meet current Fire Department requirements.
Upgrade not necessary, if existing hydrant(s) meet(s) fire flow requirements. Submit original water availability form to our office.

Comments: _____

All hydrants shall be installed in conformance with Title 20, County of Los Angeles Government Code and County of Los Angeles Fire Code, or appropriate city regulations. This shall include minimum six-inch diameter mains. Arrangements to meet these requirements must be made with the water purveyor serving the area.

By Inspector Janna Masi Date August 20, 2007



COUNTY OF LOS ANGELES FIRE DEPARTMENT
(also known as the Consolidated Fire Protection District)

CONDITIONS OF APPROVAL – VTTM 48086
FIRE STATION 100 SITE REQUIREMENTS

DEVELOPER shall convey an improved FIRE STATION SITE to the DISTRICT (actual title to be transferred to "Consolidated Fire Protection District of Los Angeles County") prior to the issuance of the building permit for the 50th unit for VTTM 48086⁽¹⁾. DEVELOPER shall improve the FIRE STATION SITE at its sole cost and expense (the only compensation due the DEVELOPER is a credit for developer fees equal to the appraised value of the improved site as provided through a Developer Fee Credit Agreement⁽²⁾). Improvements shall include:

1. The FIRE STATION SITE shall have a minimum net buildable pad of 1.10 acres (gross lot size is 1.40± acres).
2. Grading of the FIRE STATION SITE must meet the following minimum requirements: **a building pad area** that measures approximately **217'** (width, fronting a public street) X **229'** (depth). The pad shall be graded flat to +/- 0.1 and tops and toes of slopes to +/- 0.3. The required pad dimensions shall be free of any easements, slopes or any other conditions that would restrict full use of the pad area. The site is to be graded in relation to the street which fronts the site such that the emergency vehicle egress driveway can be constructed with a maximum slope of 2% and the ingress driveway with a maximum slope of 5%. The emergency egress driveway begins at the rear of the 12' approach and extends sixty feet to the apparatus doors. The ingress driveway begins at the back of the 12' approach and extends fifty feet into the property. The DEVELOPER shall submit the final site / plot plan to the DISTRICT for review and approval.
3. A two-inch diameter domestic water line with a meter box and jumper installed to a DISTRICT approved location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the property line (P/L). DEVELOPER will obtain and provide the DISTRICT with a "Will Serve Letter" from the water purveyor.
4. A one-inch irrigation water line (reclaimed if available) with a meter box and jumper installed to a DISTRICT approved location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L. DEVELOPER will obtain and provide the DISTRICT with a "Will Serve Letter" from the water purveyor.
5. A six-inch diameter fire sprinkler service line installed to a DISTRICT approved location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L with a shut-off valve located within the public street.
6. A fire hydrant within the public right-of-way fronting the address side of the FIRE STATION SITE as approved by the Los Angeles County Fire Department, Fire Prevention Division.
7. A 6" sewer lateral installed to a DISTRICT approved location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L. DEVELOPER will obtain and provide the DISTRICT with a "Will Serve Letter" from the permitting agency.
8. A storm drain connection (sized to accommodate both onsite and DISTRICT approved offsite drainage) installed to a DISTRICT approved location. The invert of the storm drain pipe must be at an elevation that allows for collection of all surface flows and piped drainage systems. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L.
9. Electric Service, (208/120 V, 3 Phase, 4 Wire, 800 Amps) stubbed to a DISTRICT APPROVED location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L.
10. Telephone Service, 25 pair phone line (fiber optics if available) stubbed to a DISTRICT APPROVED location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L.
11. Television Service, stubbed to a DISTRICT APPROVED location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L.
12. Natural gas, 1" line stubbed to a DISTRICT approved location. Point of connection shall extend into the FIRE STATION SITE a minimum of 12'0" from the P/L.



COUNTY OF LOS ANGELES FIRE DEPARTMENT
(also known as the Consolidated Fire Protection District)

CONDITIONS OF APPROVAL – VTTM 48086
FIRE STATION 100 SITE REQUIREMENTS

13. Install flex post at the termination points of all required wet and dry utilities. The flex post shall be imbedded 2'0" into the ground and extend 4'0" above the ground. Each utility must be clearly identified on the top of the flex post.
14. All offsite public right-of-way improvements fronting the FIRE STATION SITE which at a minimum shall include: curbs, gutters, streets, sidewalks, parkway landscaping, driveway approaches (maximum of 3), traffic signs, traffic signal, street lights and median breaks with full turn movements at both the emergency vehicle egress driveway and ingress driveway.
15. As required by the DISTRICT, installation of a traffic signal(s), with FIRE STATION SITE preemption, that allows for controlled access from the FIRE STATION SITE emergency egress driveway onto the public roadway fronting the FIRE STATION SITE. In addition, the DISTRICT shall have the ability to control/preempt the signals at Spring Canyon & Soledad Canyon Road. The traffic signal(s) must be operational by the time the fire station is placed into service.
16. The Completion of a Phase I Site Assessment, and if warranted, a Phase II Site Assessment, and removal or remediation of any hazardous materials located at or adjacent to the FIRE STATION SITE, as required by all applicable Federal, State and local laws (to be provided at the completion of all required site improvements).
17. **Verification of full compliance with the "California Environmental Quality Act" for the development and operational impacts associated with a first responder fire station. Written verification must be obtained from the County of Los Angeles Regional Planning Department.**
18. The FIRE STATION SITE shall be free of any soils and geological hazards. The County / City approved geo-technical reports for the underlying and adjacent grading must be submitted to the DISTRICT for review and approval.
19. The DEVELOPER must provide verification from the Los Angeles County Department of Public Works, Flood Control Division, that the FIRE STATION SITE is located outside of the 50-year capital flood zone.
20. A geo-technical report that meets the requirements of the California Geological Survey (CGS) Note 48 "Checklist for the Review of Engineering Geology and Seismology Reports for California Public Schools, Hospitals, and Essential Services Buildings (fire stations)" must be submitted to the DISTRICT for review and approval. The DISTRICT will also obtain a third party peer review of the report. For information regarding the CGS Note 48 refer to the following website:
http://www.conservation.ca.gov/cgs/information/publications/cgs_notes/index.htm
21. Provide the following property monuments: 1.5" iron pipes with brass markers at all corners and angle points, chisel crosses at curb lines.
22. Any common property line walls either existing or to be built by the Developer must be engineered and built to a minimum height of 8'0". Wall plans must be submitted to the DISTRICT for review and approval.
23. All driveway approaches shall be constructed to commercial standards with a 12'0" cross section (8'0" of grade change (invert of gutter to ADA sidewalk) and 4'0" ADA sidewalk). The approaches shall be engineered to accommodate DISTRICT apparatus weighing up to 80,000 pounds.
24. All required erosion control devices shall be in place prior to transfer to the DISTRICT.
25. The FIRE STATION SITE shall be fenced on all sides with 6'0" chain link (new material) and a 20'0" double wide gate. Those fencing sections facing public streets shall include tan colored screening slats.
26. The FIRE STATION SITE shall be free of vegetation, trash and other construction debris at time of transfer to the DISTRICT.



**COUNTY OF LOS ANGELES FIRE DEPARTMENT
(also known as the Consolidated Fire Protection District)**

**CONDITIONS OF APPROVAL – VTTM 48086
FIRE STATION 100 SITE REQUIREMENTS**

27. The FIRE STATION SITE shall be free of easements, except as expressly approved by the DISTRICT.
 28. A current American Land Title Association survey (ALTA) must be submitted to the DISTRICT for review and approval.
 29. The FIRE STATION SITE shall not contain slopes or hillsides for the DISTRICT to maintain. The DEVELOPER must arrange for the sloped area to be maintained by a third party, such as a Landscaping Maintenance District (LMD), at no cost to the DISTRICT.
 30. Provide the DISTRICT with the information outlined on the "Request for Information" (RFI) form.
 31. Remediation of any defects of the property to the satisfaction of the DISTRICT.
 32. Any other requirements as reasonably determined by the DISTRICT that are necessary before construction of a fire station can begin on the FIRE STATION SITE.
- (1) Developer shall provide a copy to and receive approval of the title language for the FIRE STATION SITE from the DISTRICT's Planning Division prior to Land Development's final map clearance.
 - (2) Prior to a developer fee credit being issued, an agreement must be approved by the DISTRICT Fire Chief. No refunds of developer fees are made for any building permits issued prior to developer fee credit issuance. This agreement takes approximately 30 days to process after DEVELOPER has submitted approved copies to the DISTRICT. The Fire Chief of the DISTRICT and the DEVELOPER may modify these requirements as mutually agreeable and set in the developer fee credit agreement.

Revised: August 16, 2007

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COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"
Russ Guiney, Director

August 1, 2007

Ms. Susan Tae, AICP
Land Divisions/Research Section
Department of Regional Planning
320 West Temple Street, Room 1346
Los Angeles, California 90012

Dear Ms. Tae:

**SPRING CANYON
CONDITIONS OF MAP APPROVAL
AMENDED VESTING TENTATIVE TRACT MAP 48086
Regional Planning Map dated May 16, 2007**

The Department's recommended park and open space conditions of map approval are listed below for Amended Vesting Tentative Tract Map (AVTTM) 48086 and in the Park Obligation Report and Worksheet attached to this letter. Neither the "active" park on Lot 500 nor the "passive" park on Lot 497 will be conveyed to the County; however, Condition 41 of Conditional Use Permit No. 96-044-(5) approved by the Board of Supervisors on August 3, 2004 provides that the expenditures the permittee makes on required improvements to these parks be credited against the subdivision's remaining Quimby obligation otherwise payable by the permittee, and that the permittee shall otherwise bear the entire costs to complete such park improvements.

1. Dedicate natural open space Lot 501 and Lot 502 to the County.
2. Create a Landscaping and Lighting Act District (LLAD) prior to the County accepting title to the open space lots for the mutual benefit of Subdivider and the County to maintain the trails and open space lots. When LLAD maintenance areas are planned on private, fee simple lots, LLAD easements must be recorded prior to clearance of final (unit) maps by the Department.
3. Active Park (Lot 500)
 - 3.1. Complete the active park to the satisfaction of the Department prior to the Department clearing the 213th residential unit for recordation or any unit map which when cleared by the Department would result in more than 213 units being cleared.

- 3.2. The active park shall be approximately 18 acres in size (includes slopes) with a total usable pad of approximately 4.30 acres and consisting of at least the following improvements: parking lot, youth soccer field, recreational turf and landscaping, and restroom facilities in accordance with the plans approved by the Department's Design Review Committee on October 31, 2005.
4. Passive Park (Lot 497)
 - 4.2. The developer shall complete the passive park to the satisfaction of the Department prior to the Department clearing the 380th residential unit for recordation or any unit map which when cleared by the Department would result in more than 380 units being cleared.
 - 4.2. The passive park shall consist of turf, irrigation, and other improvements consistent with the plans approved by the Department's Design Review Committee on October 31, 2005.
5. Prior to the Department clearing the first final (unit) map:
 - 5.1. Enter into a Park Development Agreement (PDA) with the Department for development of the parks on Lot 500 (active park) and Lot 497 (passive park) and post Faithful Performance and Labor and Materials bonds with the Department to cover design and construction of the parks in accordance with cost estimates for the parks. The PDA shall be substantially similar in form and content to the PDA approved by the Board of Supervisors on August 8, 2006, and the content of the bonds shall be substantially similar in form and content to the bonds used by the Los Angeles County Department of Public Works (DPW).
 - 5.2. Prior to the Department clearing the unit map containing either the active or passive park, Subdivider shall deliver the final version of the covenants, conditions and restrictions (CC&Rs) requiring the park lots to be used for park purposes only and to be owned, operated, and maintained by the homeowner's association ("Association"), along with a letter stating that the CC&Rs will be recorded after the recordation of the final map and approval by the Department of Real Estate. The CC&Rs shall contain the following provision: "the active park shall, at all times and under all conditions, be equally open and available to residents and nonresidents of the subdivision and there shall be no discrimination against or preference, gratuity, bonus or other benefit given residents of the subdivision not equally accorded non-residents of the subdivision." Recorded copies of the CC&Rs shall be delivered to: County of Los Angeles Department of Parks and Recreation, 510 S. Vermont Avenue, Room 201, Attention:

Chief of Planning, Los Angeles, CA 90020. The unit map containing respectively the active or passive park shall contain a notation dedicating to the County the right to prohibit residential construction on the park lot and each park lot shall be clearly labeled on the final map.

- 5.3. Submit critical path method (CPM) schedules for completing the active park and passive park (one for each park) encompassing design development submittals, and submittals required for the various stages of construction document development, permits and approvals, including the encroachment permit from Caltrans, and park construction and completion dates. Subdivider shall update the Park Delivery Schedule on a monthly basis to show actual progress compared to planned progress and submit the updates to the Department on the first County business day of each month. If as a result of these monthly schedule updates it appears that the Park Delivery Schedule does not comply with the critical path, the Subdivider shall submit a Recovery Schedule as a revision to the Park Delivery Schedule showing how all work will be completed within the period for park delivery. In the event Subdivider fails to comply with this condition, the Department shall give written notice to Subdivider describing such breach. Notice is deemed given when sent by Certified Mail, Return Receipt Requested with postage prepaid addressed to Subdivider, or by a reliable over-night courier with charges prepaid, or by personal delivery to Subdivider's relevant address set forth in the PDA. Failure to comply with this condition, or to complete construction by the thresholds established in Condition 3.1 or Condition 4.1, may result in the Department not clearing additional units/maps to record until the respective park is built and/or updated park delivery schedule is received.
6. Subdivider shall pay prevailing wage for the park improvements. Subdivider shall receive a Quimby parkland credit in an amount not to exceed \$180,254 for the park improvements, calculated as shown on the attached Park Obligation Report and Worksheet. Subdivider shall otherwise bear the entire costs to complete the park improvements.
7. Subdivider is responsible for developing the parks in accordance with the park improvement plans approved by the Department, using standard construction activities and responsible contractors licensed by the State of California to perform this type of work. Sole responsibility for completion of the park improvements, and payment of all costs incurred, lies with Subdivider.
8. Obtain all applicable jurisdictional approvals, comply with all applicable federal, state, and local laws, rules, codes, and regulations; obtain, coordinate and pay for all studies, permits, fees and agency inspections required to design and build

the parks; provide one (1) copy of all studies, permits, inspection reports, and written approvals to the Department's representative; provide the County with certification that any playground constructed within the parks meet American Society for Testing and Materials (ASTM) standards, United States Consumer Product Safety Commission (USCPSC) standards, and all State of California accessibility playground guidelines.

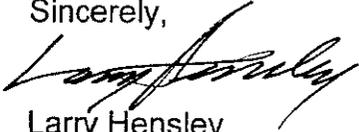
9. Submit to the Department park plans and specifications to the Department for review and approval during the design development stage, fifty percent (50%), seventy five percent (75%), ninety percent (90%), and one hundred percent (100%) stages of construction document development. Specifications and a grading plan (scale: 1 inch = 40 feet, or as required by the Department) shall be submitted to the Department concurrent with the final grading plan submittal to DPW. The respective stage of each submittal shall be clearly labeled on the drawings. Plan submittals shall be made by giving the Department three (3) sets of drawings and a CD-ROM containing the drawings in AutoCad 2000 format. The Department shall have twenty-one (21) County business days from receipt of any design/construction document submittal to review and approve it. If the Department does not respond within said time period, the submittal shall be deemed approved by the Department. Any corrections or changes made by the Department during review of one stage shall be incorporated into a revision of the current drawings and specifications and resubmitted for the Department's approval of the next said stage unless it is determined that the change is significant whereas the construction document would be resubmitted prior to permission by the Department for Subdivider to proceed with the next stage.
10. Provide the Department with written Notice of Construction Commencement for each park. Construction Commencement is defined as when the Subdivider starts precise grading and/or installing utilities for the park. The Construction Phase is defined as the period of time from said notice to the date the Department issues its Notice of Approval of Completed Park Improvements, inclusive of the 90-day plant establishment period. Upon completing park construction, and obtaining final sign off from DPW on all code compliance issues, notify the Department in writing by submitting a Notice of Completion of Park Construction. Within thirty (30) days after receipt of said notice, Department shall inspect the park and reasonably determine whether or not the park improvements have been constructed in accordance with the construction documents, and to a level of quality and workmanship for the Department to issue its Notice of Approval of Completed Park Improvements. If park construction is unacceptable, within fifteen (15) County business days after inspection, Department shall provide Subdivider with a list of items that need to be corrected, after receipt of said list, in order for the Department to issue its Notice of Approval of Completed Park Improvements, or issuance of said notice will be delayed until the items on the list are corrected.

11. Designate and identify a project manager who will oversee design and construction of the parks. The project manager shall communicate by providing written documentation via facsimile, e-mail, or mail to County's representative and abide by County's requirements and direction to ensure acceptable park completion; provide County with reasonable access to the park sites and the park improvements for inspection purposes and at a minimum shall initiate and coordinate the following inspections and approvals during the course of construction with not less than two (2) County business days advanced notice of any request for inspection or approval: (1) contractor orientation/pre-construction meeting; (2) construction staking and layout; (3) progress/installation inspections to be scheduled on a weekly basis or as required to insure conformance with construction documents; (4) irrigation mainline and equipment layout; (5) irrigation pressure test; (6) irrigation coverage test; (7) weed abatement after abatement cycle, to review degree of kill; (8) plant material approval; (9) plant material/Hydroseed/pre-maintenance inspection; (10) substantial completion and commencement of maintenance period; (11) final walk through and approval. Continued work without inspection and approval shall make Subdivider and its subcontractors solely responsible for any and all expenses incurred for required changes or modifications. County reserves the right to reject all work not approved in conformance with this condition.
12. During park construction and for each respective (active, passive) park, developer shall submit a schedule of values and progress payment statements at least quarterly with supporting documentation sufficient for the Department to verify the developer's construction cost expenditures for Quimby credit.
13. Upon completing construction of each private park, and after Subdivider having first obtained final sign off from DPW on all code compliance issues, Subdivider shall notify the Department in writing by submitting a Notice of Completion of Park Construction. Within thirty (30) County business days after receipt of said notice, the Department shall inspect the park and reasonably determine whether or not the park improvements have been constructed in accordance with the construction documents, and to a level of quality and workmanship for the Department to issue its Notice of Approval of Completed Park Improvements. If park construction is unacceptable, within fifteen (15) County business days after inspection, the Department shall provide Subdivider with a list of items that need to be corrected after receipt of said list in order for Department to issue its Notice of Approval of Completed Park Improvements, or issuance of said notice will be delayed until the items on the list are corrected.

Should you have any questions regarding this matter, please contact Mr. James Barber of my staff at (213) 351-5117.

Ms. Susan Tae
August 1, 2007
Page 6 of 6

Sincerely,



Larry Hensley
Chief of Planning

LH:JB (c: AVTTM 48086 Spring Canyon)

Attachments

1. Park Obligation Report & Worksheet

c: Kathleen Ritner, Jim McCarthy, Susan Pearson (Parks and Recreation)
Patrick Malekian (LLAD)
Roger Hernandez, CAO Real Estate Division



**LOS ANGELES COUNTY
DEPARTMENT OF PARKS AND RECREATION**



PARK OBLIGATION REPORT

Tentative Map #	48086	DRP Map Date:05/16/2007	SCM Date: / /	Report Date: 08/02/2007
Park Planning Area #	43B	AGUA DULCE / ACTON		Map Type:REV. (REV RECD)

Total Units = Proposed Units + Exempt Units

Sections 21.24.340, 21.24.350, 21.28.120, 21.28.130, and 21.28.140, the County of Los Angeles Code, Title 21, Subdivision Ordinance provide that the County will determine whether the development's park obligation is to be met by:

- 1) the dedication of land for public or private park purpose or,
- 2) the payment of in-lieu fees or,
- 3) the provision of amenities or any combination of the above.

The specific determination of how the park obligation will be satisfied will be based on the conditions of approval by the advisory agency as recommended by the Department of Parks and Recreation.

Park land obligation in acres or in-lieu fees:

ACRES:	4.95
IN-LIEU FEES:	\$180,254

Conditions of the map approval:

Developer shall receive Quimby credit for park improvements up to \$180,254 and shall otherwise bear the entire costs to complete the private park improvements. Also see attached letter dated August 1, 2007 for additional Department conditions.

The park obligation for this development will be met by:

Contributing \$180,254 in park improvements.
Conditions of approval attached to report.

Trails:

See also attached Trail Report. For trail requirements, please contact Robert Ettleman, Trails Coordinator at (213) 351-5134.

Comments:

In-lieu fee based on fee schedule in effect on 08/03/04 Board approval date.

Contact Patrocenia T. Sobrepeña, Departmental Facilities Planner I, Department of Parks and Recreation, 510 South Vermont Avenue, Los Angeles, California, 90020 at (213) 351-5120 for further information or an appointment to make an in-lieu fee payment.

For information on Hiking and Equestrian Trail requirements contact Trail Coordinator at (213) 351-5135.

By: James Barber
James Barber, Developer Obligations/Land Acquisitions



**LOS ANGELES COUNTY
DEPARTMENT OF PARKS AND RECREATION**



PARK OBLIGATION WORKSHEET

Tentative Map #	48086	DRP Map Date:	05/16/2007	SMC Date:	/ /	Report Date:	08/02/2007
Park Planning Area #	43B		AGUA DULCE / ACTON			Map Type:	REV. (REV RECD)

The formula for calculating the acreage obligation and or In-lieu fee is as follows:

(P)people x (0.003) Goal x (U)nits = (X) acres obligation

(X) acres obligation x RLV/Acre = In-Lieu Base Fee

- Where: P = Estimate of number of People per dwelling unit according to the type of dwelling unit as determined by the 2000 U.S. Census*. Assume * people for detached single-family residences; Assume * people for attached single-family (townhouse) residences, two-family residences, and apartment houses containing fewer than five dwelling units; Assume * people for apartment houses containing five or more dwelling units; Assume * people for mobile homes.
- Goal = The subdivision ordinance allows for the goal of 3.0 acres of park land for each 1,000 people generated by the development. This goal is calculated as "0.0030" in the formula.
- U = Total approved number of Dwelling Units.
- X = Local park space obligation expressed in terms of acres.
- RLV/Acre = Representative Land Value per Acre by Park Planning Area.

Total Units = Proposed Units + Exempt Units

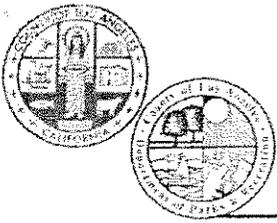
	People*	Goal 3.0 Acres / 1000 People	Number of Units	Acre Obligation
Detached S.F. Units	3.11	0.0030	531	4.95
M.F. < 5 Units	2.02	0.0030	0	0.00
M.F. >= 5 Units	2.51	0.0030	0	0.00
Mobile Units	2.40	0.0030	0	0.00
Exempt Units			0	
Total Acre Obligation =				4.95

Park Planning Area = 43B AGUA DULCE / ACTON

Goal	Acre Obligation	RLV / Acre	In-Lieu Base Fee
@(0.0030)	4.95	\$36,415	\$180,254

Lot #	Provided Space	Provided Acres	Credit (%)	Acre Credit	Land
None					
Total Provided Acre Credit:				0.00	

Acre Obligation	Public Land Crdt.	Priv. Land Crdt.	Net Obligation	RLV/ Acre	In-Lieu Fee Due
4.95	0.00	0.00	4.95	\$36,415	\$180,254



COUNTY OF LOS ANGELES
DEPARTMENT OF PARKS AND RECREATION
"Creating Community Through People, Parks and Programs"

Russ Guiney, Director

July 18, 2007

Ms. Tina Fung
Regional Planning Assistant II
Land Divisions Section
Department of Regional Planning
320 West Temple Street, Room 1346
Los Angeles, California 90012

Dear Ms. Fung:

TRAIL CONDITIONS OF MAP APPROVAL
Amended Vesting Tentative Tract Map # 48086
Map Dated: May 16, 2007

The Department of Parks and Recreation has completed the review of Amended Vesting Tentative Tract Map #48086. We currently have No Trail Hold on this amended vesting tentative tract map. Trail alignment as shown on map is approved. Applicant is required to construct the Spring Canyon variable width (6-12 foot) Trail within the twenty (20) foot easement to the satisfaction of the Department of Parks and Recreation trail standards. The Department is approving the trail alignment as shown, with the following conditions prior to final map recordation:

1. The exact following language must be shown for trail dedications prior to final map recordation:
 - a. Title Page: We hereby dedicate to the County of Los Angeles, Department of Parks and Recreation a 20' width easement, designated as the Spring Canyon Trail.
 - b. If a waiver is filed, a Plat Map depicting the trail alignment must accompany the waiver.
2. Request a 20' wide easement for the Spring Canyon Trail (SCVTAC).
3. Applicant to construct the variable-width (6-12) foot wide riding and hiking trail within the 20' easement to the Department of Parks and Recreation standards.
4. Full public access shall be provided for non-motorized multiuse of the trail easement.

5. If, open space lots 501 and 502 are dedicated to Los Angeles County, then Applicant is responsible to dedicate a twenty foot easement for the Spring Canyon Trail, where trail alignment meanders through proposed residential lots (279 through 412), as shown on map.
6. If, lot 500 is proposed as a private park, then the Applicant is responsible to dedicate a twenty-foot easement for the Spring Canyon Trail that meanders through the northern end, as shown on map.
7. Delineate on map approximate alignment of trail easement either within or outside of lot 598 if proposed as a private park. Note: Trail alignment is missing from north end of lot 598 to the Stonecrest Road under-crossing.
8. Delineate on map at prudent intervals along trail alignment: "20' LACOPR Non-Motorized Multiuse (Equestrian, Hiking and Mtn. Biking) Trail Easement."
9. Delineate on map sheet #4, within Detail "B," the proposed clearance height for the 8' wide section of the Spring Canyon Trail, that traverses outside the road right-of-way for the Stonecrest Road under-crossing. (Note: LACOPR requires a minimum of 10' clearance).
10. Applicant is responsible to negotiate a 20' trail easement for a portion of the Spring Canyon Trail that traverses roughly 800' within the Gas Line utility easement. See map sheet #3, south of the reservoir site, and northwest of lot 277, 278, and 279.
11. If trail narrows to six feet wide for more than five-hundred feet, supply turnaround for passing of trail users i.e. equestrians etc.
12. The Applicant shall provide the submittal of the rough grading plans, to include detailed grading information for the segment of trails the County will accept. The detailed grading information for the trail construction, shall include all pertinent information required, per Department trail standards and all applicable codes, but not limited to the following:
 - a. Cross slope gradients not to exceed two percent (2%), and longitudinal (running) slope gradients not to exceed fifteen percent (15%) for more than 300 feet. The Department will review and allow slopes slightly greater than fifteen percent (15%) on a case by case basis.
 - b. Typical trail section and details to include:
 - Longitudinal (running) gradients.

- Cross slope gradients.
 - Name of trail.
 - Width of trail or if requested by Department of Parks and Recreation, denote as variable width.
- c. Bush Hammer finish at minimum width of trail for crossings at all concrete surfaces.
- d. Appropriate retaining walls as needed.
- e. Appropriate fencing where deemed necessary, for user safety and property security, as approved by the Department, etc.
- f. Trail easement, must be outside of the road right-of-way.
13. The Applicant shall submit a cost estimate for the construction of the trails with the rough grading plans. An electronic copy (Autocad 2005 or newer version) of the rough grading plans shall also be submitted in a burned CD or DVD with the cost estimate.
14. After Department approval of the trail alignment shown on the rough grading plans, the Applicant shall post Faithful Performance and Labor and Materials (FPLM) bonds with the Department for construction of the trail.
15. The Applicant then shall submit a preliminary construction schedule showing milestones for completing the trail.
16. Prior to the start of trail construction, the Applicant's authorized representative (project manager, licensed surveyor, etc.) shall stake or flag the centerline of the trail. The Applicant's representative shall then schedule a site meeting with the Department's Trail Coordinator for the Department's inspection and approval.
17. The Applicant's representative shall provide updated trail construction schedules to the Department on a monthly basis. All schedule submittals shall provide a "Two Week Look-Ahead" schedule, to reflect any modifications to the original schedule.
18. After completion of the trail, the Applicant shall notify the Department within five (5) business days for a Final Inspection Trail Walk.
19. After the initial Final Inspection Trail Walk, any portions of the constructed trail, not approved shall be corrected and brought into compliance, with the County of Los Angeles Department of Parks and Recreation Standards within thirty (30)

Ms. Tina Fung
July 18, 2007
Page 4

calendar days. Applicant shall then call for another final inspection with the Department.

20. Upon Department approval and acceptance of the trail construction, the Applicant shall:
 - a. Issue a letter to the Department requesting acceptance of the dedicated trail.
 - b. Submit copies of the As-Built Trail drawings.

If you have any questions and comments, please contact Robert Ettleman, Trails Coordinator, at (213) 351-5134.

Sincerely,



Larry R. Hensley
Chief of Planning

LH:RE:tl:Z:Trails:AVTTM48086_07c

- c: Marc Cannon, (Pardee Homes), Adrianna Perez (RBF Engineering)
Tina Fung, (Department of Regional Planning)
James Barber, Patrick Reynolds, and Robert Ettleman (Parks and Recreation)



JONATHAN E. FIELDING, M.D., M.P.H.
Director and Health Officer

JOHN F. SCHUNHOFF, Ph.D.
Chief Deputy

Environmental Health
TERRANCE POWELL, R.E.H.S.
Acting Director of Environmental Health

Bureau of Environmental Protection
Land Use Program
5050 Commerce Drive, Baldwin Park, CA 91706-1423
TEL (626)430-5380 · FAX (626)813-3016
www.lapublichealth.org/eh/progs/envirp.htm

BOARD OF SUPERVISORS

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June 26, 2007

RFS No. 07-0013832

Tract Map No. 48086

Vicinity: Soledad

Tract Map Date: May 16, 2006 (3rd Revision to Amendment)

The County of Los Angeles Department of Public Health has no objection to this subdivision and **Amended Vesting Tentative Tract Map 48086** is cleared for public hearing. The following conditions still apply and are in force:

1. Potable water will be supplied by the **Newhall County Water District**, a public water system, which guarantees water connection and service to all lots.
2. Sewage disposal will be provided through the public sewer and wastewater treatment facilities of the **Los Angeles County Sanitation District #26** as proposed.

If you have any questions or need additional information, please contact me at (626) 430-5380.

Respectfully,

A handwritten signature in black ink that reads "Becky Valenti".

Becky Valenti, E.H.S. IV
Land Use Program

**HEARING OFFICER
SEPTEMBER 25, 2007
AGENDA ITEM NO. 10**

**ADDITIONAL INFORMATION
FROM THE APPLICANT**



Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, California 90067-3284
P 310.277.4222 F 310.277.7889

Charles J. Moore
310.284.2286
cmoore@coxcastle.com

File No. 46022

September 10, 2007

Mr. Sorin Alexanian
Hearing Officer
Department of Regional Planning
County of Los Angeles
1390 Hall of Records
320 West Temple Street
Los Angeles, California 90012-3225

Re: Amendment to Approved Vesting Tentative Tract Map No. 48068-(5); Spring Canyon

Dear Mr. Alexanian:

The Board of Supervisors approved the Spring Canyon development project three years ago, thereby authorizing the creation of 542 single-family lots, a fire station site, a sheriff substation site, two park lots, and three open space lots on our client's property. An off-site elementary school site was also included as part of the project.

The entitlements approved for the project include: amendments to the General Plan and Santa Clarita Valley Area Plan; a tentative tract map; conditional use permit; and oak tree permit. The Board of Supervisors also certified a Final Environmental Impact Report ("EIR") to support the project approval. The certified Final EIR includes a water supply assessment approved by the Newhall County Water District pursuant to Water Code Section 10910.

Since the project was approved in August 2004, the Sulphur Springs School District has requested that Pardee Homes, the developer, make minor technical changes to the approved tentative map to relocate the off-site school site within the project boundaries. Other minor engineering changes to the approved tentative map were also requested by County agencies.

Most approved tentative tract maps for large residential projects require some technical modifications during final engineering, which of course continues long after the public hearing process has concluded. The County for many years has employed an administrative process to allow minor technical amendments to approved tentative maps. The amendment process has been used successfully, and is essential to the continued delivery of service to the building industry.

Utilizing the County's process, Pardee Homes applied for an amendment to authorize the minor technical changes to its approved map needed to accommodate the school site and the requests by County agencies.

The Santa Clarita Organization for Planning and the Environment (SCOPE) has used the opportunity presented by the limited amendment procedure to attempt reopening of the prior project approval to reconsider the water supply assessment and analysis.

SCOPE's assertions regarding recent litigation concerning water supply are inappropriate for this limited amendment proceeding.

The County's Amendment Procedure is Limited

The only issues before the County currently are whether the school site should be moved within the project boundaries and whether other minor technical changes requested by County agencies should be applied to the approved tentative tract map.

The Spring Canyon development is an approved project and is not before the County today.

The County's typical procedures for amendments to approved tentative maps acknowledge the limited role of the amendment request. Amendments are reviewed by the subdivision committee and are now approved by a hearing officer. The County as a policy matter requires the applicant to post the site ten days prior to a meeting at the hearing officer, but no further public notice is provided. The public notice provided certainly does not comply with state planning and zoning laws and the County notice requirements (Government Code Sections 65090, 65091 and 66451.3; Los Angeles County Code Section 21.16.070). In addition, the hearing officer is not required to hear testimony from the applicant and the public.

The developer's narrow amendment request does not allow interest groups or the County to reopen the public hearings and conduct further environmental review for the project. Issues relating to water supply were analyzed three years ago, during the prior public hearings and in the detailed analysis of environmental impacts in the certified Final EIR for the original tentative map. Indeed, to give a degree of finality to the very expensive and time consuming environmental review process, CEQA includes a strong presumption against requiring any further environmental review once an EIR has been certified for a project. See Public Resources Section 21166; CEQA Guidelines Section 15162.

The limited nature of the amendment proceeding does not allow the County to enlarge its prior environmental review to reconsider issues unrelated to the amendment. CEQA does not grant the County additional authority independent of the powers granted to it by other laws. See CEQA Guideline Section 15040. Because the County's amendment proceeding is narrow, any associated environmental review is equally limited.

Newhall County Water District Has Already Executed an Agreement to Provide Water to the Project, and this Amendment Proceeding Cannot Affect that Approval

On October 12, 2006, the Newhall County Water District approved a water and sewer service agreement for the project. The District also prepared and adopted an addendum to the

Mr. Sorin Alexanian
September 10, 2007
Page 3

County's certified Final EIR to support the approval of the agreement. Prior to the completion of construction of the project and water delivery facilities, there is no more definite assurance of water availability that a project can obtain than a water service agreement. The water and sewer service agreement is final and cannot be affected by this limited amendment proceeding.

The Requested Amendment Does Not Change the Water Supply Analysis for the Approved Project

This amendment is desired only to improve upon an approved project to meet the needs of the school district and County agencies. The requested technical amendments do not change the project's impacts to water supply as analyzed previously in the County's certified Final EIR and Newhall County Water District's adopted addendum.

Indeed, this amendment actually reduces water demand for the project. The number of homes are reduced from 542 to 499, a difference of 43 homes. The school site, although off-site, was always included as part of the approved project, and was analyzed in Newhall County Water District's water supply assessment for the approved project and in the certified Final EIR.

In conclusion, the Spring Canyon development is an approved project and this limited amendment request should not be used by SCOPE to reconsider issues decided three years ago, which are unrelated to the request before the County today.

Sincerely,

Charles Moore

Charles J. Moore *by JMO*

46022\1301796v1

cc: Bruce McClendon
Jon Sanabria
Susan Tae
Tina Fung

**HEARING OFFICER
SEPTEMBER 25, 2007
AGENDA ITEM NO. 10**

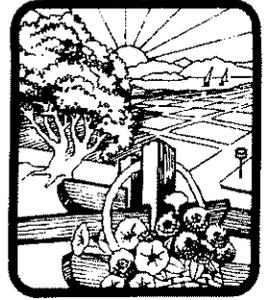
**CORRESPONDENCES
FROM THE PUBLIC**

SCOPE

Santa Clarita Organization for Planning and the Environment

TO PROMOTE, PROTECT AND PRESERVE THE ENVIRONMENT, ECOLOGY
AND QUALITY OF LIFE IN THE SANTA CLARITA VALLEY

POST OFFICE BOX 1182, SANTA CLARITA, CA 91386



9-11-07

Mr. McCarthy
Hearing Officer
Los Angeles County Regional Planning
320 W. Temple St.
Los Angeles, CA 90012

Re: Tract # 48086, Santa Clarita Area
Hearing Officer Agenda Item #10a and 24, Ms. Tina Fung Planner and Ms.
Tae

Dear Mr. McCarthy:

We appreciate the delay of the approval of this project for one month as ordered by Mr. Alexanian in order to address the water supply issue. However, we reviewed the hearing officer package on line and did not see where any additional information on water supply had been received for your review. We request that no approval be made on this project until you have received a response to our concerns. We see that Castaic Lake Water Agency has a scheduled up date on these serious issues on their next Water Resources committee agenda. We urge the County to request an update as well.

We note that the proposed housing reduction will bring the project to a number just below the 500 unit baseline required for compliance with certain air pollution and water laws. If the County chooses to proceed with this approval, we request that a condition be added that the project must comply with all regulatory rules for projects of 500 or more units.

However, the Regional Planning Commission should note that the EIR for the 41,000 AF State Water Transfer to Castaic Lake Water Agency was set aside in May of this year by the Los Angeles Superior Court. Therefore this project does not comply with SB221 and the County's rules regarding compliance with this law. The Sacramento-San Joaquin Delta is in serious trouble. A recent Federal Court decision by Judge Wanger regarding the Delta may require pumping cutbacks that will reduce water deliveries as much as 33%. We have attached the sworn testimony of John Leahigh entered into that litigation by the Department of Water Resources. We therefore urgently request that you re-evaluate the water supply for this project before moving forward on this approval and make that evaluation available to the public.

We believe that it is imperative that adequate state water be ensured for the residents of the Santa Clarita Valley before additional housing units are added. This is particularly important for projects, such as this one, that are added in an area that MUST be supplied by state water. As

you are undoubtedly well aware, there is not an adequate ground water supply in the upper Santa Clara River area to provide water service without the imported state water supply.

As previously stated, we support any amendment that would improve the movement of wildlife in this area, since this project virtually blocked movement to the Santa Clara River. We also support inclusion of the school within the project area, since that will hopefully enable students to walk or bike to school and provide safer commuting options.

Again, we request that you thoroughly investigate the issue of water supply before proceeding with the approval of this amendment or a tract map extension. It is unfair to both the developer and the community to proceed without an adequate water supply.

Thank you in advance for your careful consideration of this issue.

Sincerely,

Cam Noltemeyer

Board Member

Attachments:

Leahigh Testimony

News Articles on Court Decision

1 EDMUND G. BROWN JR.
Attorney General of the State of California
2 MARY E. HACKENBRACHT
Senior Assistant Attorney General
3 DEBORAH A. WORDHAM, SBN: 180508
CLIFFORD T. LEE, SBN: 74687
4 Deputy Attorneys General
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5546
6 Fax: (415) 703-5480
Email: Cliff.Lee@doj.ca.gov

7 Attorneys for Defendant-Intervenor
8
9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 **NATURAL RESOURCES DEFENSE
13 COUNCIL, et al.,**

14 Plaintiffs,

15 v.

16 **DIRK KEMPTHORNE, in his official capacity
as Secretary of the Interior, et al.,**

17 Defendants,
18

19 **SAN LUIS & DELTA-MENDOTA WATER
AUTHORITY and WESTLANDS WATER
DISTRICT; CALIFORNIA FARM BUREAU
20 FEDERATION; GLENN-COLUSA
IRRIGATION DISTRICT, et al.;**
21 **CALIFORNIA DEPARTMENT OF WATER
RESOURCES, and STATE WATER
22 CONTRACTORS,**

23 Defendant-Intervenors.
24

05 CV 01207 OWW (LJO)

**DECLARATION OF JOHN
LEAHIGH IN SUPPORT OF THE
CALIFORNIA DEPARTMENT OF
WATER RESOURCES'
PROPOSED INTERIM REMEDY**

Hearing: August 21, 2007
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Oliver W. Wanger

25 I, John Leahigh, declare as follows:

26 1. I am employed by the Department of Water Resources (DWR) as Chief of the Project
27 Operations Planning Branch (POPB) within the Division of Operations and Maintenance. I have
28 been in my current position since March 2005.

1 2. I am responsible for short-term planning of water operations for the State Water Project
2 (SWP). These planning responsibilities include the estimation of delivery capabilities of the SWP
3 and forecasted water export operations from the Sacramento/San Joaquin Delta (Delta) through the
4 Harvey O. Banks Delta Pumping Plant (Banks), Skinner Fish Protection Facility (Skinner), and
5 Clifton Court Forebay (CCF).

6 3. Prior to taking the position of Chief of the POPB, I worked within the branch in various
7 engineering classifications from November 1996 through February 2005. I have worked for DWR
8 since May 1992. I received a Bachelor's degree in Civil Engineering from the University of New
9 Mexico in 1989 and a Master's degree in Civil Engineering with emphasis on Water Resources
10 Engineering from California State University at Sacramento in 1999. I am a registered Civil
11 Engineer in the State of California.

12 4. One of my responsibilities as Chief of the POPB is to supervise the work of engineering
13 staff that develop and monitor studies, projections and delivery capabilities of the SWP. I coordinate
14 with a team of engineers to plan and schedule water export operations based on water availability,
15 water permit/quality restrictions, environmental needs, and projected hydrology.

16 5. I have personal knowledge of the facts stated herein, and, if called to do so, could and
17 would testify competently thereto.

18 6. I am familiar with and contributed to the development of the proposed remedy actions, set
19 forth in the Delta Smelt Action Matrix for Water Year 2008 (Action Matrix)^{1/}, proposed by the
20 United States Fish and Wildlife Service (USFWS), as supported by DWR. The Action Matrix has
21 been developed to minimize and prevent adverse impacts to delta smelt and its habitat from SWP
22 and CVP operations during the interim period pending completion of the consultation on the delta
23 smelt with USFWS. I am informed and believe that the USFWS will complete the consultation and
24 issue its biological opinion before August 2008.

25 ///

26

27

28 1. A copy of the Action Matrix is attached as Exhibit A to the Declaration of Jerry Johns in Support of the California Department of Water Resources' Proposed Interim Remedy, filed concurrently herewith.

1 7. I have worked with POPB staff to develop an estimate of the water costs associated with
2 implementation of the Action Matrix through July 2008.

3 8. For the purposes of the following analysis, "water costs" are defined as the estimated
4 export reductions and the estimated reductions in deliveries of water to CVP/SWP contractors
5 for 2008 as a result of implementing the actions described in the Action Matrix.

6 9. The term "baseline" is defined as the expected delivery of water without implementing the
7 Actions proposed in the USFWS remedy matrix. Baseline water deliveries often vary depending
8 on hydrology and the costs estimates are based on two different hydrology assumptions, as
9 described in detail below.

10 10. Water supply forecasting requires a projection of initial reservoir storages and forecasted
11 runoff as a foundation to delivery estimates. Reliable projections are available for the initial
12 reservoir storages going into 2008, but the forecasted runoff is largely dependent on the amount
13 of precipitation that will be experienced next year, which is unknown and could vary greatly.
14 Water supply costs were analyzed for 2008 with two different assumptions on the amount of
15 precipitation that may be experienced in 2008: dry and average.

16 11. A year with low precipitation or a "dry year" for the purposes of my analysis assumes the
17 amount of precipitation in 2008 will be equal to the amount of precipitation that was exceeded
18 90% of the time over the past 85 years.

19 12. A year with average precipitation or an "average year" for the purposes of my analysis
20 assumes the amount of precipitation in 2008 will be equal to the amount of precipitation that was
21 exceeded 50% of the time over the past 85 years.

22 13. Although many different assumptions could be made for the amount of precipitation that
23 could occur in any year, assumptions of precipitation at a 90% and 50% chance of exceedence
24 are the most widely used water supply forecasting assumptions. These two hydrologic
25 assumptions generally give a good analytical range for project operations.

26 **EXISTING RESTRICTIONS ON WATER DELIVERIES**

27 14. DWR provides water to twenty-nine (29) contractors throughout California under water
28 right permits issued by the State Water Resources Control Board (SWRCB). These permits

1 include restrictions on water exports. The DWR permit most recently issued by the SWRCB
2 resulted in a SWRCB decision, known as Water Rights Decision 1641 (D-1641). Details of the
3 decision can be found at 14. DWR provides water to twenty-nine (29) contractors throughout
4 California under water right permits issued by the State Water Resources Control Board
5 (SWRCB). These permits include restrictions on water exports. The DWR permit most recently
6 issued by the SWRCB resulted in a SWRCB decision, known as Water Rights Decision 1641
7 (D-1641). Details of the decision can be found at
8 <http://www.waterrights.ca.gov/baydelta/d1641.htm>.

9 15. The water costs associated with the Action Matrix are measured against allowable
10 deliveries under baseline operations, considering all flow and water quality objectives required
11 by D-1641. Through D-1641, the SWRCB assigns responsibility for meeting water quality
12 objectives adopted in the Water Quality Control Plan ("WQCP") for the San Francisco
13 Bay/Sacramento-San Joaquin Delta Estuary. These WQCP objectives protect fish and wildlife,
14 and the agricultural, municipal and industrial uses of water.

15 16. The WQCP was updated in 2006. The new plan did not result in any changes in the
16 requirements of D-1641. The new WQCP can be found at
17 <http://www.waterrights.ca.gov/baydelta/docs/rev2006wqcp.pdf>.

18 17. A team of engineers and I took into account the restrictions imposed by meeting the
19 objectives of the WQCP when developing the estimates for water costs associated with the
20 implementation of the Action Matrix.

21 **ASSUMPTIONS FOR THE IMPLEMENTATION OF ACTIONS**

22 18. I assumed in the analysis that Action 1 would be triggered and implemented as of
23 December 25, 2007 and continue through January 3, 2008. December 25 is described as the first
24 possible day to trigger this 10-day Action in the Action Matrix.

25 19. I assumed in the analysis that delta smelt spawning will occur on February 20, 2008.
26 February 20 is the date on which DWR biologists have estimated that spawning has begun
27 historically. This assumption establishes the durations of Actions 2 and 3, which could vary
28 significantly. The end of Action 2 and the trigger for the start of Action 3 is the onset spawning

1 as described in the Action Matrix.

2 20. In the Action Matrix, Actions 3 and 4 assume a range of flow objectives. A range of Old
3 and Middle River upstream flows between 0 and 4000 cubic feet per second (cfs) is explicitly
4 described and assumed for analyzing Action 3.

5 21. Action 4 does not have targeted flow but allows a range similar to Action 3 (from zero to
6 approximately 4000 cfs).

7 22. Because the Action Matrix describes Actions 3 and 4 flow objectives as a range I
8 assumed a range for water costs as well. The high end of this range assumes that the Old and
9 Middle River objective is 0 cfs for both Actions 3 and 4. For determining the lower costs in the
10 range I assumed that Action 3 is implemented at the 4000 cfs flow objective and Action 4 is not
11 triggered, resulting is no water costs.

12 23. This range of cost was necessary as part of the analysis because of the uncertainty
13 related to the real-time distribution of delta smelt and the susceptibility of this distribution to the
14 exports as noted in footnotes of the Action Matrix.

15 **ESTIMATED EXPORT REDUCTIONS**
16 **ASSOCIATED WITH THE USFWS'S REMEDY PROPOSAL**

17 24. Implementation of flow objectives in the Action Matrix will require reductions in export
18 operations by the SWP and CVP. My team of engineers and I estimated ranges of export
19 reductions associated with each Action in the Action Matrix. The ranges are based on 2008
20 being dry or having average precipitation as defined earlier. In addition, Actions 3 and 4 have
21 sub-ranges due to their adaptive nature.

22 25. Action 1 - Winter Pulse Flow to Benefit Adult Spawning: CVP and SWP target upstream
23 Old and Middle River flow not to exceed 2,000 cfs for a 10-day period during late December or
24 early January. This action is estimated to reduce combined project exports by 100 thousand
25 acre-feet (taf) in a dry year and 160 taf in an average year.

26 26. Action 2 - Adult Salvage Minimized: CVP and SWP target upstream Old and Middle
27 River flow not to exceed 4,500 cfs from early January to late February. This action is estimated
28 to reduce combined project exports by 150 taf in a dry year and 500 taf in an average year.

1 27. Action 3 – Larval and Juvenile Protection: CVP and SWP target upstream Old and
2 Middle River flow between 4,000 cfs to 0 cfs from late February through the end of May. This
3 action is estimated to reduce combined project exports by 60 taf to 500 taf in a dry year and 640
4 taf to 1.3 million-acre feet (maf) in an average year.

5 28. Action 4 – Juvenile Protection: If triggered, the CVP and SWP may target upstream Old
6 and Middle River flow of up to 0 cfs in June. This action is estimated to reduce combined
7 project exports up to 130 taf in a dry year and up to 350 taf in an average year.

8 29. Action 5 - Barrier Operations: There were no additional export reductions associated
9 with this action.

10 **COMBINED SWP/CVP ESTIMATED DELIVERY REDUCTIONS**

11 30. I assumed in my analysis that both the SWP and CVP are equally responsible for meeting
12 the objectives in the Action Matrix. The estimated delivery reductions provided below represent
13 combined CVP/SWP delivery reductions.

14 31. Export reductions do not result in a one-for-one impact on deliveries because of a
15 multitude of complicating factors including system constraints, runoff patterns, annual delivery
16 patterns, and operational flexibility.

17 32. The export reductions for each action were entered into an operational spreadsheet
18 model developed by DWR staff that estimates the delivery capabilities of the SWP and CVP.
19 We modeled the remedy period with the implementation of the Action Matrix and without
20 implementation of the Action Matrix. A comparison of model output indicates what annual
21 delivery reduction could occur in 2008 if all proposed actions are implemented.

22 33. The resulting delivery reductions are expressed as a range for each hydrologic
23 assumption for the same reason that the export reductions were expressed as a range. Actions 3
24 and 4 of the Action Matrix have an adaptive management process that will vary the flow
25 objective.

26 34. The conclusion of the analysis is that the sum of all these export reductions in a dry year
27 is expected to decrease combined 2008 deliveries of the SWP and CVP by 6% (183 taf) to 25%
28 (814 taf) from a baseline delivery of 3.2 maf.

1 35. In an average year, the delivery reductions are expected to be between 14% (820 taf) to
2 37% (2.17 maf) from a baseline delivery of 5.9 maf.

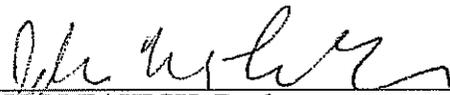
3 **SWP SHARE OF ESTIMATED DELIVERY REDUCTIONS**

4 36. The analysis showed that the SWP 2008 annual deliveries would be reduced 8% (91 taf)
5 to 27% (305 taf) from a baseline delivery of 1.15 maf in a dry year.

6 37. In an average year, SWP 2008 annual deliveries would be reduced 8% (252 taf) to 31%
7 (940 taf) from a baseline delivery of 3 maf.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed this 9th day of July, 2007 at Sacramento, California

11
12 
13 _____
JOHN LEAHIGH, Declarant.

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Water shortage ominous; Rationing may surface in Southland next year

LA Daily News – 9/5/07

By Alex Dobuzinskis, staff writer

Southern California water officials are drawing up plans that could force rationing in some cities as early as next year, officials said Wednesday.

For now, residents are being asked to voluntarily use less water, but the Metropolitan Water District of Southern California warned that mandatory rationing could become necessary for the first time since 1991.

The immediate trigger for concern arose from U.S. District Judge Oliver Wanger's ruling last week that to protect the delta smelt, a small fish threatened with extinction, water imports from Northern California must be cut by up to 30 percent.

Officials said the threat of earthquakes and flooding, saltwater intrusion and aging levees in the Sacramento-San Joaquin River Delta compound the problem.

"We have further evidence that the delta is in crisis, if there was any doubt about it," said Lester Snow, director of the state Department of Water Resources.

Officials said Wednesday that they are still trying to sift through Wanger's ruling to determine how much water they will be able to move through the delta and into Southern California.

Wanger did not specify how much less water could be pumped from the delta. Instead, he focused on protecting the smelt by slowing the water that flows into the pumps.

Tim Quinn, president of the Association of California Water Agencies, said that in a dry year there could be a 25 percent reduction in the amount of water pumped from the delta.

The MWD is preparing an allocation plan that would spell out how much water it might be able to provide the 26 cities and water agencies that it serves in six counties, including Los Angeles and Ventura counties, said Roger Patterson, the district's assistant general manager.

If the district tells its members it has less water to provide them, it would be up to them to decide how to ask residents to cut back.

"The question is how soon do we need to go into that kind of decision-making. Do we have to do that in 2008, or do we rely on our reserve account - or (banked water) savings - to not do that in 2008? Those are the policy decisions that will be made."

The district imports about 50 percent of the water used by member agencies. About two-thirds of the water comes from the delta and the rest from the Colorado River.

The amount of water the district stands to lose from the court decision amounts to more than 10 percent of all the water its members use in a typical year.

In the city of Los Angeles, which relies on the district for nearly 70 percent of its water, officials already are asking residents to use 10 percent less water this year. But it's a voluntary program.

"If we have rationing in Los Angeles, it won't be the first time that that has happened," said David Nahai, president of the board of the Los Angeles Department of Water and Power Commissioners. "If that is what will be needed in order to safeguard our water supplies, well, so be it. But we'll have to see just what this plan is that Metropolitan Water District will be putting forward."

The MWD plans to present its allocation plan to the board in the fall. But Patterson said officials will hope for plenty of rainfall this winter and voluntary conservation before they seek mandatory cuts. #

http://www.dailynews.com/search/ci_6812463?IADID=Search-www.dailynews.com-www.dailynews.com **Ruling spurs 'great deal of uncertainty' over water supply Riverside Press Enterprise – 9/5/07 By Jennifer Bowles and Jim Miller, staff writers** Another dry winter coupled with a judge's ruling that will severely reduce water supplies coming to the Inland region could lead to mandatory conservation measures in some areas, officials said Wednesday.

But most agencies said they would drill new wells, possibly increase water rates to customers who use large amounts and take other steps before forcing residents to conserve.

U.S. District Judge Oliver W. Wanger sided late Friday with environmental groups who said the pumps in the Sacramento delta that bring the water south were killing a tiny endangered fish known as the Delta smelt. His order could reduce water supplies by up to one-third when the fish spawn beginning in December.

Metropolitan Water District, whose customers include suppliers in western Riverside County and southwestern San Bernardino County, said it will create an emergency plan by November for possible cutbacks to its member agencies. The Inland area gets about one-third of its water from the delta.

Board members "want to have that tool available in the event we don't see a very good winter and we find ourselves wanting to use it," said Roger Patterson, MWD's assistant general manager.

"The bottom line on this is that we moved into an area of tremendous uncertainty as to where we go from here," Patterson said.

"It makes it hard for us to provide a reliable water supply to our customers."

John Rossi, general manager of Western Municipal Water District, said a cutback of 20 percent or more will spur the district that serves the western half of western Riverside County to look at some sort of mandatory conservation. He said it's likely to focus on outdoor watering, which can account for 60 percent of a home's water use.

Rossi said the district will first look at other options, such as buying water from cities like Riverside that have an abundant groundwater supply.

The San Geronio Pass Water Agency will focus initially on educating residents about the delta situation; officials at Perris-based Eastern Municipal Water District, which serves the eastern half of western Riverside County, said mandatory conservation is unlikely for their area; and agencies in the Coachella Valley don't get delta water directly.

'Crisis Is Indefinite'

Tim Quinn, president of the Association of California Water Agencies, said that while the judge's order will last a year, "the crisis is indefinite."

Randy Van Gelder, general manager of San Bernardino Valley Municipal Water District, which imports delta water for several cities, said unlike a natural drought, this decision can have lasting impacts.

"We've had droughts that have lasted one or two or three years, the potential here, though, because you're dealing with saving an endangered species, this could become a permanent way of life, not just a temporary drought," said Van Gelder.

Officials in the Schwarzenegger administration said it will be left up to individual agencies to adopt conservation plans because the disruption in the delta affects communities differently, said Lester Snow, director of the state Department of Water Resources.

Snow and others urged lawmakers to act on Gov. Schwarzenegger's \$5.95 billion water plan, which includes \$1 billion for delta restoration and a new system to divert water around the environmentally sensitive area. The proposal has been blocked by Democrats who oppose the plan's call for additional reservoirs. Snow said a lasting solution is needed for the delta.

Wanger's ruling "introduces a great deal of uncertainty into the water supply," Snow said. "This won't be the last court case, it won't be the last disaster in the delta, unless we proceed in a very, very comprehensive fashion dealing with conservation, storage, conveyance, wastewater recycling -- the entire package."

A Dire Situation

Even before the ruling, the Inland region's major water sources were in bad shape. The Colorado River is gripped by an eight-year drought; the water content of the Sierra Nevada snow pack was at its lowest level since 1990; and snowfall in local mountains that feed aquifers was 30 percent of normal. Rainfall this past season in Riverside was 1.93 inches, making it the driest year since at least 1883. Typically, it averages 10 to 12 inches.

If the dire water situation persists, agencies might consider an increase in rates as an incentive to get people to conserve.

"You see a number of areas in Southern California where they're talking about adopting a rate structure that if you use more than a certain amount of water, you pay a penalty," Van Gelder said. "We're not looking at that yet."

Chris Diggs, water resources manager for Redlands, said likely options would be drilling new wells into groundwater or treating water from contaminated wells. Both are costly.

He said mandatory conservation most likely won't be adopted, but the City Council would be the body to consider the policy change, he said.

"As staffers, we're going to do everything we can to prevent taking that to the council," Diggs said.

Peter Gleick, president of the Oakland-based Pacific Institute, said water agencies ought to promote ways to use water more efficiently.

"We can always drill another well and build another reservoir. But that thinking is killing our rivers and draining our aquifers," he said.

Susan Lien Longville, director of the Water Resources Institute at Cal State San Bernardino, said Inland agencies have increased their water-conservation activities. But she said it's also hard to talk conservation to residents when they see large parks and other public places irrigating several acres of water-thirsty grass.

"We need to set a good example," she said. "I suspect you'll see that more." #

http://www.pe.com/localnews/inland/stories/PE_News_Local_D_delta06.3d5752a.html **Valley Farmers May Have To Cut Back With Water Reduction Plan ABC Channel 30 – 9/5/07**

09/05/2007 - A federal judge's decision to protect the threatened Delta Smelt put a limit on the amount of water released from the reservoir. But farmers in central California worry there won't be enough water for crops next year.

Farmers continue to flinch at the news their water supply could be cut considerably next year. 25 million Californians rely on Delta water but maybe none more than local growers.

On the West side of the central valley, where water's scarce and ever drop counts, farmers rely on reservoirs to deliver. Gary Beene, Farmer, says "If you don't have the water you don't have the crops."

Farmer Gary Beene is one of the smaller growers in the valley. Almonds, tomatoes and cotton keep his family's business alive. But a recent federal court ruling to save a threatened Smelt fish will reduce water available from the Sacramento-San Joaquin River Delta, water farmers like Beene use to grow their crops.

Beene says this water reduction will force him to reduce the number of employees and crops on his farms. "We'll cut back 20 to 30% in high value crops and maybe as much as 75 to 100% on some of the lower value crops," says Beene.

Agriculture and water authorities from around the state met Wednesday afternoon with Governor Arnold Schwarzenegger's administration. Both parties agree a better water storage and delivery system throughout the state is needed.

Stephen Patricio, Western Growers Association, says "When farm workers don't go to work the entire economy feels it."

The governor says the federal courts ruling is further proof the legislature should adopt his \$5.9 billion comprehensive water plan. The money would aid in water storage, a new water delivery system and restoration of the Delta.

Lester Snow, Department of Water Resources, says "This won't be the last court case. It won't be the last disaster in the Delta, unless we proceed in a very, very comprehensive fashion."

Meanwhile Beene says he and other farmers have to go back to the drawing board and find ways to stretch out what little water's available.

The federal judge has order the water reduction plan to begin in December. Beene says unless the valley receives plenty of rain this winter, he will consider cutting jobs. #

<http://abclocal.go.com/kfsn/story?section=local&id=5638740> **SCV Loses Water Santa Clarita Signal – 9/5/07 By Katherine Geyer, staff**

writer The Santa Clarita Valley could see up to one-third less water coming from the State Water Project, following a federal court ruling Friday to reduce the amount of water coming from a key Northern California delta.

The pumps were shut down at the Sacramento-San Joaquin River delta for 10 days in June to help protect the delta smelt, a fish environmentalists say are endangered.

A judge gave a verbal ruling Friday that placed limits on the amount of water the state Department of Water Resources, which oversees the State Water Project, can pump from the delta. The Santa Clarita Valley gets about half its water from the State Water Project, which serves more than 25 million people throughout the state.

The restrictions will go into effect in December - when the smelt migrate to water near the pumps - until June when the smelt move to cooler waters.

Because the judge made a verbal ruling, the DWR does not yet know the details of the new limits.

"In an average year, it could be 10 percent up to one-third (less)," said Ted Thomas, spokesman for the DWR. "There still is some confusion about parts of it."

He said the decision is an interim ruling until the U.S. Fish and Wildlife Service determines another solution, which could be next year or possibly later.

When the DWR shut down the pumps in June, the Castaic Lake Water Agency was forced to use its existing water in Castaic Lake, which resulted in a noticeable drop in the lake's water level.

"(CLWA) will definitely be affected," said Dan Masnada, CLWA's general manager. "Our concern is if this winter is as dry as (last) winter, then we might have to take some water out of storage out of our water banks in Kern County."

He said that once the affected water agencies get more information on the details on the restrictions, CLWA will meet with local water purveyors and eventually city and county planning agencies to discuss the impact on future water supply. #

http://www.the-signal.com/?module=displaystory&story_id=50488&format=html

SOUTHERN CALIFORNIA CONSERVATION: Column: Water issue no mirage North County Times – 9/6/07 By Jim Trageser, columnist

Last week's ruling by a federal judge severely limiting the transfer of water from Northern California to local taps is causing another in a periodic wave of calls for more conservation of water in order to ... well, to accomplish what isn't exactly clear. Use less water, of course, but to what end?

The reality is that San Diego County is mostly desert and semidesert, with some small patches of alpine climate in the mountains and Mediterranean climate along the coast. For the most part, though, we live in an arid climate in which the majority of the water that sustains modern life for several million people has to be piped in from elsewhere. Were we forced to live on the amount of fresh water naturally available (as the local Indian communities did in the centuries before the Europeans arrived), then the population that could be supported here would be more on the scale of tens of thousands -- clearly, not the millions who live here now. With other states and northern Mexico now having their own population booms and starting to claim their fair share of the Colorado River water that has long slaked Southern California's thirst, this area is more dependent than ever on the Sacramento-San Joaquin Delta supply currently piped south. But that's the same supply the judge just ordered slashed in order to meet federal environmental laws to save an endangered fish, the delta smelt.

Which leaves us where?

The simple, fun answer is: Stop building more houses.

(We pretty much have done that for now, but that's due more to the crash and burn of the housing market than any sort of environmental or water conservation mandate.)

But recent figures show more people are moving out of Southern California than moving in -- meaning that our continuing population growth is native-born. Those are our kids, and they're going to need a place to live someday, too. It's not as simple as simply shutting the door to folks from Iowa, Idaho and Ohio who see the Chargers games on TV mid-December and want to relocate.

So if we are to conserve water, it isn't to help the environment, it's to preserve our ability to provide new housing for the generations to come.

And if we don't want to do so, it won't hurt Midwestern transplant-wannabes, but native-born kids who grew up here.

I sure don't see any easy answers on our water issues.

At some point, should our regional population continue to grow, Southern California will reach its carrying capacity. Whether it's water supply, air quality or other infrastructure issues, there is a limit to the number of people who can live in any one area.

What is worrying is that carrying capacity will be marked by nothing more than unmitigated market forces -- that people will begin moving away in droves because our quality of life, economic opportunities or cost of living have spiraled out of control.

Few of us want a Big Brother-style of government dictating who can and can't live here, but at the same time, water being a public commodity, the government is going to decide how much water each of us will get.

Will that mean the end of grass lawns and tropical foliage? Will we each be reduced to a Japanese tea garden or a yard full of cactus?

Tough decisions lie ahead, and neither conservation alone nor a building moratorium will solve them. #

[http://www.netimes.com/articles/2007/09/06/opinion/trageser/19 27 309 5 07.txt](http://www.netimes.com/articles/2007/09/06/opinion/trageser/19_27_309_5_07.txt)



california water impact network

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president

Lisa Coffman
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Lloyd G. Carter
director

Malinda Chouinard
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director

Jim Edmondson
director

Michael Jackson
director

Huey Johnson
director

Tom Stokely
director

9-9-07

Mr. McCarthy
Hearing Officer
Los Angeles County Regional Planning
320 W. Temple St.
Los Angeles, CA 90012

Ref: Hearing Officer Agenda Sept. 11, Item #10a and 24, Tract #
48086, Santa Clarita Area
Planners - Ms. Tina Fung Planner and Ms. Tae

Dear Mr. McCarthy:

The California Water Impact Network (C-WIN) is a state-wide organization that reviews water supply issues throughout California. We have been watching the Santa Clarita area for many years because it is the recipient of the largest transfer of Monterey Agreement water. This transfer of 41,000 AFY from the Kern County Water District to CLWA has been contested since its inception. As you may know, the Monterey Agreement EIR was set aside by the 3rd District Court of Appeal in *PCL v. DWR*, 2000. The Settlement Agreement reached in 2003 by the parties to the Monterey litigation specifically states that the 41,000 AFY transfer was not approved as final by the Settlement. Projects based on any transferred water after March 26, 2001 were not supposed to be approved until the new EIR was complete. (See attached settlement agreement). Both the County of Los Angeles and the City of Santa have continued to approve projects based in that water in defiance of the Agreement.

With the continued pressure on the Sacramento- San Joaquin Delta for water supply throughout the state, it is imperative that this EIR be completed before additional housing is built that will depend on that water source.

Although Castaic Lake Water Agency was a signatory to the Monterey Settlement, they have tried to go around the Settlement by preparing their own environmental document for the 41,000AF transfer. However, the Los Angeles Superior Court set aside the EIR for this 41,000 AF State Water Transfer to CLWA in May of this year. Therefore this project does not comply with SB221. The February 2007 California Supreme Court decision in *Vineyard Citizens v. City of Rancho Cordova* makes it clear that the Courts intend to support that law.

The Sacramento-San Joaquin Delta is in serious trouble. A recent Federal Court decision by Judge Wanger (attached) regarding the Delta may require pumping cutbacks that will reduce water deliveries as much as 33%. We have also attached the sworn testimony of John Leahigh entered into that litigation by the Department of Water Resources. We believe that you must re-evaluate the water supply for this project before moving forward on this approval. It is imperative that adequate state water be ensured for the residents of the Santa Clarita Valley before additional housing units are added. We request that we be provided a copy of any such evaluation that may be preformed.

We also wish to add our concern that the housing reduction proposed by this amendment will bring the project to a number just below the 500 unit baseline required for compliance with the 202 "show me the water" legislation, SB610 and SB221. Should the County choose to approve this project, we request the addition of a condition requiring that the project must comply with all regulatory rules for projects of 500 or more units.

Thank you in advance for your careful consideration of this issue.

Sincerely,



Carolee Krieger, President

Attachments:
Monterey Settlement Agreement
Wanger Decision
Leahigh Testimony

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9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 **NATURAL RESOURCES DEFENSE**
13 **COUNCIL, et al.,**

14 Plaintiffs,

15 v.

16 **DIRK KEMPTHORNE, in his official capacity**
as Secretary of the Interior, et al.,

17 Defendants,
18

19 **SAN LUIS & DELTA-MENDOTA WATER**
AUTHORITY and WESTLANDS WATER
20 **DISTRICT; CALIFORNIA FARM BUREAU**
FEDERATION; GLENN-COLUSA
21 **IRRIGATION DISTRICT, et al.;**
22 **CALIFORNIA DEPARTMENT OF WATER**
RESOURCES, and STATE WATER
CONTRACTORS,

23 Defendant-Intervenors.
24

05 CV 01207 OWW (LJO)

DECLARATION OF JOHN
LEAHIGH IN SUPPORT OF THE
CALIFORNIA DEPARTMENT OF
WATER RESOURCES'
PROPOSED INTERIM REMEDY

Hearing: August 21, 2007
Time: 9:00 a.m.
Courtroom: 3
Judge: Hon. Oliver W. Wanger

25 I, John Leahigh, declare as follows:

26 1. I am employed by the Department of Water Resources (DWR) as Chief of the Project
27 Operations Planning Branch (POPB) within the Division of Operations and Maintenance. I have
28 been in my current position since March 2005.

1 2. I am responsible for short-term planning of water operations for the State Water Project
2 (SWP). These planning responsibilities include the estimation of delivery capabilities of the SWP
3 and forecasted water export operations from the Sacramento/San Joaquin Delta (Delta) through the
4 Harvey O. Banks Delta Pumping Plant (Banks), Skinner Fish Protection Facility (Skinner), and
5 Clifton Court Forebay (CCF).

6 3. Prior to taking the position of Chief of the POPB, I worked within the branch in various
7 engineering classifications from November 1996 through February 2005. I have worked for DWR
8 since May 1992. I received a Bachelor's degree in Civil Engineering from the University of New
9 Mexico in 1989 and a Master's degree in Civil Engineering with emphasis on Water Resources
10 Engineering from California State University at Sacramento in 1999. I am a registered Civil
11 Engineer in the State of California.

12 4. One of my responsibilities as Chief of the POPB is to supervise the work of engineering
13 staff that develop and monitor studies, projections and delivery capabilities of the SWP. I coordinate
14 with a team of engineers to plan and schedule water export operations based on water availability,
15 water permit/quality restrictions, environmental needs, and projected hydrology.

16 5. I have personal knowledge of the facts stated herein, and, if called to do so, could and
17 would testify competently thereto.

18 6. I am familiar with and contributed to the development of the proposed remedy actions, set
19 forth in the Delta Smelt Action Matrix for Water Year 2008 (Action Matrix)^{1/}, proposed by the
20 United States Fish and Wildlife Service (USFWS), as supported by DWR. The Action Matrix has
21 been developed to minimize and prevent adverse impacts to delta smelt and its habitat from SWP
22 and CVP operations during the interim period pending completion of the consultation on the delta
23 smelt with USFWS. I am informed and believe that the USFWS will complete the consultation and
24 issue its biological opinion before August 2008.

25 ///

26

27

28 1. A copy of the Action Matrix is attached as Exhibit A to the Declaration of Jerry Johns in Support of the California Department of Water Resources' Proposed Interim Remedy, filed concurrently herewith.

1 7. I have worked with POPB staff to develop an estimate of the water costs associated with
2 implementation of the Action Matrix through July 2008.

3 8. For the purposes of the following analysis, "water costs" are defined as the estimated
4 export reductions and the estimated reductions in deliveries of water to CVP/SWP contractors
5 for 2008 as a result of implementing the actions described in the Action Matrix.

6 9. The term "baseline" is defined as the expected delivery of water without implementing the
7 Actions proposed in the USFWS remedy matrix. Baseline water deliveries often vary depending
8 on hydrology and the costs estimates are based on two different hydrology assumptions, as
9 described in detail below.

10 10. Water supply forecasting requires a projection of initial reservoir storages and forecasted
11 runoff as a foundation to delivery estimates. Reliable projections are available for the initial
12 reservoir storages going into 2008, but the forecasted runoff is largely dependent on the amount
13 of precipitation that will be experienced next year, which is unknown and could vary greatly.
14 Water supply costs were analyzed for 2008 with two different assumptions on the amount of
15 precipitation that may be experienced in 2008: dry and average.

16 11. A year with low precipitation or a "dry year" for the purposes of my analysis assumes the
17 amount of precipitation in 2008 will be equal to the amount of precipitation that was exceeded
18 90% of the time over the past 85 years.

19 12. A year with average precipitation or an "average year" for the purposes of my analysis
20 assumes the amount of precipitation in 2008 will be equal to the amount of precipitation that was
21 exceeded 50% of the time over the past 85 years.

22 13. Although many different assumptions could be made for the amount of precipitation that
23 could occur in any year, assumptions of precipitation at a 90% and 50% chance of exceedence
24 are the most widely used water supply forecasting assumptions. These two hydrologic
25 assumptions generally give a good analytical range for project operations.

26 **EXISTING RESTRICTIONS ON WATER DELIVERIES**

27 14. DWR provides water to twenty-nine (29) contractors throughout California under water
28 right permits issued by the State Water Resources Control Board (SWRCB). These permits

1 include restrictions on water exports. The DWR permit most recently issued by the SWRCB
2 resulted in a SWRCB decision, known as Water Rights Decision 1641 (D-1641). Details of the
3 decision can be found at 14. DWR provides water to twenty-nine (29) contractors throughout
4 California under water right permits issued by the State Water Resources Control Board
5 (SWRCB). These permits include restrictions on water exports. The DWR permit most recently
6 issued by the SWRCB resulted in a SWRCB decision, known as Water Rights Decision 1641
7 (D-1641). Details of the decision can be found at
8 <http://www.waterrights.ca.gov/baydelta/d1641.htm>.

9 15. The water costs associated with the Action Matrix are measured against allowable
10 deliveries under baseline operations, considering all flow and water quality objectives required
11 by D-1641. Through D-1641, the SWRCB assigns responsibility for meeting water quality
12 objectives adopted in the Water Quality Control Plan (“WQCP”) for the San Francisco
13 Bay/Sacramento-San Joaquin Delta Estuary. These WQCP objectives protect fish and wildlife,
14 and the agricultural, municipal and industrial uses of water.

15 16. The WQCP was updated in 2006. The new plan did not result in any changes in the
16 requirements of D-1641. The new WQCP can be found at
17 <http://www.waterrights.ca.gov/baydelta/docs/rev2006wqcp.pdf>.

18 17. A team of engineers and I took into account the restrictions imposed by meeting the
19 objectives of the WQCP when developing the estimates for water costs associated with the
20 implementation of the Action Matrix.

21 **ASSUMPTIONS FOR THE IMPLEMENTATION OF ACTIONS**

22 18. I assumed in the analysis that Action 1 would be triggered and implemented as of
23 December 25, 2007 and continue through January 3, 2008. December 25 is described as the first
24 possible day to trigger this 10-day Action in the Action Matrix.

25 19. I assumed in the analysis that delta smelt spawning will occur on February 20, 2008.
26 February 20 is the date on which DWR biologists have estimated that spawning has begun
27 historically. This assumption establishes the durations of Actions 2 and 3, which could vary
28 significantly. The end of Action 2 and the trigger for the start of Action 3 is the onset spawning

1 as described in the Action Matrix.

2 20. In the Action Matrix, Actions 3 and 4 assume a range of flow objectives. A range of Old
3 and Middle River upstream flows between 0 and 4000 cubic feet per second (cfs) is explicitly
4 described and assumed for analyzing Action 3.

5 21. Action 4 does not have targeted flow but allows a range similar to Action 3 (from zero to
6 approximately 4000 cfs).

7 22. Because the Action Matrix describes Actions 3 and 4 flow objectives as a range I
8 assumed a range for water costs as well. The high end of this range assumes that the Old and
9 Middle River objective is 0 cfs for both Actions 3 and 4. For determining the lower costs in the
10 range I assumed that Action 3 is implemented at the 4000 cfs flow objective and Action 4 is not
11 triggered, resulting is no water costs.

12 23. This range of cost was necessary as part of the analysis because of the uncertainty
13 related to the real-time distribution of delta smelt and the susceptibility of this distribution to the
14 exports as noted in footnotes of the Action Matrix.

15 **ESTIMATED EXPORT REDUCTIONS**
16 **ASSOCIATED WITH THE USFWS'S REMEDY PROPOSAL**

17 24. Implementation of flow objectives in the Action Matrix will require reductions in export
18 operations by the SWP and CVP. My team of engineers and I estimated ranges of export
19 reductions associated with each Action in the Action Matrix. The ranges are based on 2008
20 being dry or having average precipitation as defined earlier. In addition, Actions 3 and 4 have
21 sub-ranges due to their adaptive nature.

22 25. Action 1 - Winter Pulse Flow to Benefit Adult Spawning: CVP and SWP target upstream
23 Old and Middle River flow not to exceed 2,000 cfs for a 10-day period during late December or
24 early January. This action is estimated to reduce combined project exports by 100 thousand
25 acre-feet (taf) in a dry year and 160 taf in an average year.

26 26. Action 2 - Adult Salvage Minimized: CVP and SWP target upstream Old and Middle
27 River flow not to exceed 4,500 cfs from early January to late February. This action is estimated
28 to reduce combined project exports by 150 taf in a dry year and 500 taf in an average year.

1 27. Action 3 – Larval and Juvenile Protection: CVP and SWP target upstream Old and
2 Middle River flow between 4,000 cfs to 0 cfs from late February through the end of May. This
3 action is estimated to reduce combined project exports by 60 taf to 500 taf in a dry year and 640
4 taf to 1.3 million-acre feet (maf) in an average year.

5 28. Action 4 – Juvenile Protection: If triggered, the CVP and SWP may target upstream Old
6 and Middle River flow of up to 0 cfs in June. This action is estimated to reduce combined
7 project exports up to 130 taf in a dry year and up to 350 taf in an average year.

8 29. Action 5 - Barrier Operations: There were no additional export reductions associated
9 with this action.

10 **COMBINED SWP/CVP ESTIMATED DELIVERY REDUCTIONS**

11 30. I assumed in my analysis that both the SWP and CVP are equally responsible for meeting
12 the objectives in the Action Matrix. The estimated delivery reductions provided below represent
13 combined CVP/SWP delivery reductions.

14 31. Export reductions do not result in a one-for-one impact on deliveries because of a
15 multitude of complicating factors including system constraints, runoff patterns, annual delivery
16 patterns, and operational flexibility.

17 32. The export reductions for each action were entered into an operational spreadsheet
18 model developed by DWR staff that estimates the delivery capabilities of the SWP and CVP.
19 We modeled the remedy period with the implementation of the Action Matrix and without
20 implementation of the Action Matrix. A comparison of model output indicates what annual
21 delivery reduction could occur in 2008 if all proposed actions are implemented.

22 33. The resulting delivery reductions are expressed as a range for each hydrologic
23 assumption for the same reason that the export reductions were expressed as a range. Actions 3
24 and 4 of the Action Matrix have an adaptive management process that will vary the flow
25 objective.

26 34. The conclusion of the analysis is that the sum of all these export reductions in a dry year
27 is expected to decrease combined 2008 deliveries of the SWP and CVP by 6% (183 taf) to 25%
28 (814 taf) from a baseline delivery of 3.2 maf.

1 35. In an average year, the delivery reductions are expected to be between 14% (820 taf) to
2 37% (2.17 maf) from a baseline delivery of 5.9 maf.

3 **SWP SHARE OF ESTIMATED DELIVERY REDUCTIONS**

4 36. The analysis showed that the SWP 2008 annual deliveries would be reduced 8% (91 taf)
5 to 27% (305 taf) from a baseline delivery of 1.15 maf in a dry year.

6 37. In an average year, SWP 2008 annual deliveries would be reduced 8% (252 taf) to 31%
7 (940 taf) from a baseline delivery of 3 maf.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed this 9th day of July, 2007 at Sacramento, California

11
12 
13 JOHN LEAHIGH, Declarant.

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SETTLEMENT AGREEMENT

by and among

Planning and Conservation League, Plumas County Flood Control and Water Conservation
District, Citizens Planning Association of Santa Barbara County, Inc.

and

The State of California Department of Water Resources, Central Coast Water Authority, Kern
Water Bank Authority and those State Water Project Contractors identified herein.

_____, 2003

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Attachments

Attachment A	Amendment to SWP Contract
Attachment B	Principles Regarding State Water Project Reliability
Attachment C	Transfer Guidelines for Annual Table A Amounts
Attachment D	Principles Regarding Public Participation in SWP Contract Negotiations
Attachment E	Final Permanent Table A Amount Transfers from KCWA Subsequent to the Monterey Amendments

Exhibits

Exhibit 1	Plaintiffs' Expenses Trust Account Agreement
Exhibit 2	Kern Environmental Permits
Exhibit 3-A	Proposed 21168.9 Order
Exhibit 3-B	Proposed Writ of Mandate
Exhibit 4	Section VI Trust Account Agreement

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is entered into as of _____, 2003, by and among Planning and Conservation League, Plumas County Flood Control and Water Conservation District, Citizens Planning Association of Santa Barbara County, Inc., The State of California Department of Water Resources, Central Coast Water Authority, Kern Water Bank Authority and those SWP Contractors who have executed this Settlement Agreement. Certain terms used herein are defined in Section I.

RECITALS

WHEREAS, in 1951, the State of California Legislature authorized the construction of the State Water Project (“SWP”);

WHEREAS, eight years later, the Legislature authorized the submission for voter approval of a general obligation bond issue to build the SWP, which voters subsequently approved (California Water Code, Section 12930 et seq.);

WHEREAS, commencing in the early 1960’s, DWR, as operator of the SWP, entered into certain SWP Contracts with various water districts throughout California;

WHEREAS, in 1994, as a result of disputes arising from water shortages experienced during an extended drought period, DWR and certain of the SWP Contractors entered into an agreement known as the Monterey Agreement and thereafter implemented the terms of the Monterey Agreement by execution of the so-called Monterey Amendments;

WHEREAS, pursuant to CEQA, the environmental impact report for the Monterey Amendments was prepared in 1995 by CCWA as “lead agency,” and adopted by DWR as “responsible agency” (as those terms are defined in CEQA) (the “**1995 EIR**”);

WHEREAS, on December 27, 1995, PCL filed the PCL Complaint against DWR and CCWA challenging the sufficiency of the 1995 EIR;

WHEREAS, on February 12, 1996, Plaintiffs filed a First Amended Complaint adding the Validation Cause of Action;

WHEREAS, the trial court ultimately determined that although CCWA was not the appropriate lead agency for the 1995 EIR, such designation of CCWA was not fatal to the EIR, and ruled against Plaintiffs with respect to their challenge to the sufficiency of the 1995 EIR. The trial court also granted summary adjudication in favor of DWR and CCWA on the Validation Cause of Action. Plaintiffs appealed the trial court’s rulings;

WHEREAS, in Planning and Conservation League v. Department of Water Resources, 83 Cal. App. 4th 892 (2000), the Court of Appeal held that (i) DWR, not CCWA, had the statutory duty to serve as lead agency, (ii) the trial court erred by finding CCWA’s EIR sufficient despite its failure to discuss implementation of Article 18, subdivision (b) of the SWP Contracts, as a no-project alternative, (iii) said errors mandate preparation of a new EIR under the direction of DWR, and (iv) the trial court erroneously dismissed the challenge to DWR’s transfer of title to the KWB Lands (the Validation Cause of Action) and execution of amended SWP Contracts for failure to name and serve indispensable parties. The Court of Appeal remanded the case to the trial court, ordering it to take the following five actions: (1) vacate the trial court’s grant of the motion for summary adjudication of the Validation Cause

of Action; (2) issue a writ of mandate vacating the certification of the 1995 EIR; (3) determine the amount of attorney fees to be awarded Plaintiffs; (4) consider such orders it deems appropriate under Public Resources Code Section 21168.9(a) consistent with the views expressed in the Appellate Court's opinion; and (5) retain jurisdiction over the action until DWR, as lead agency, certifies an environmental impact report in accordance with CEQA standards and procedures, and the Superior Court determines that such environmental impact report meets the substantive requirements of CEQA;

WHEREAS, since the Court of Appeal ruling, representatives of the Parties to this Settlement Agreement have engaged in extensive settlement negotiations, mediated by retired Judge Daniel Weinstein, with the intent of avoiding further litigation and associated fees and providing for an effective way to cooperate in the preparation of a new environmental impact report and make such other improvements in the operation and responsiveness of the SWP as set forth in this Settlement Agreement;

WHEREAS, on July 22, 2002, an agreement was reached regarding the principles for a settlement; and

WHEREAS, the Parties now desire to formally enter into this Settlement Agreement.

AGREEMENT

NOW, THEREFORE, in exchange for the following covenants and agreements and other valuable and sufficient consideration, the receipt of which is acknowledged, the Parties agree as follows:

- I. **Definitions.** Certain terms, as used in this Settlement Agreement, are defined as follows.
 - A. **“Attachment A Amendments”** means those amendments in the substantive form of Attachment A hereto (conformed to the format of each individual SWP Contract and the parties thereto), to be executed by DWR and the SWP Contractors who are signatories to this Settlement Agreement pursuant to and in accordance with the terms and conditions of this Settlement Agreement.
 - B. **“Attachment B Principles”** means those principles set forth in Attachment B hereto regarding SWP reliability.
 - C. **“Attachment C Guidelines”** means the guidelines set forth in Attachment C hereto regarding review of proposed permanent transfers of Annual Table A Amounts (as such latter term is used in the SWP Contracts).
 - D. **“Attachment D Principles”** means those principles set forth in Attachment D hereto regarding public participation in SWP Contract negotiations.
 - E. **“Attachment E Transfers”** means those water transfers identified on Attachment E hereto.
 - F. **“CEQA”** means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq.
 - G. **“Citizens Planning Association”** means Citizens Planning Association of Santa Barbara County, Inc.

- H. **“CCWA”** means Central Coast Water Authority.
- I. **“Consent to Entry of Order Discharging Writ”** has the meaning given in Section VII(H)(1).
- J. **“DWR”** means The State of California Department of Water Resources.
- K. **“EIR Committee”** means a committee of no more than four (4) SWP Contractor representatives, and no more than four (4) Plaintiff representatives, chaired by a DWR representative, which has been formed for the purposes set forth in Section III(B).
- L. **“HCP”** means the Habitat Conservation Plan/Natural Community Conservation Plan prepared for the Kern Water Bank Authority and approved through an Implementation Agreement dated October 2, 1997, with the United States Fish and Wildlife Service and California Department of Fish and Game.
- M. **“Interim Implementation Order”** has the meaning given in Section VII(C).
- N. **“JAMS Trust Account”** means the account established by DWR with, and maintained by, the Mediator for the purpose set forth in Section VI.
- O. **“Kern-Castaic Transfer”** means the transfer of 41,000 acre-feet of water from Kern County Water Agency to the Castaic Lake Water Agency approved by DWR on March 31, 1999.
- P. **“Kern Environmental Permits”** means the HCP and certain other permits, approvals and agreements relating to the Kern Water Bank, as set forth in and contemplated by the Addendum to the 1995 EIR, including those specified in Exhibit 2 hereto and similar, related permits, approvals and agreements.

- Q. **“Kern Fan Element Transaction”** means DWR’s transfer of the KWB Lands to Kern County Water Agency, as described in Article 52 of the Monterey Amendments. Kern County Water Agency subsequently conveyed the KWB Lands to KWBA. Each of the stated conveyances occurred on August 9, 1996, based upon separate agreements dated December 13, 1995.
- R. **“KWB Lands”** means the property known as the Kern Fan Element, as more specifically described in that certain Deed, executed by the Kern County Water Agency in favor of KWBA, dated August 9, 1996, and recorded in the Official Records of Kern County as Instrument No. 0196101606.
- S. **“KWBA”** means Kern Water Bank Authority.
- T. **“Mediator”** means retired Judge Daniel Weinstein, unless Judge Weinstein is unavailable, in which case the Mediator shall be another retired jurist mutually agreed to by DWR and the other members of the EIR Committee with respect to matters referred to the Mediator under Section III(H), and for all other matters another retired jurist approved by agreement of the Parties.
- U. **“Mediation Issue”** means any issue relating exclusively to the compliance of the New EIR with any of the following requirements: (a) the requirements of CEQA; (b) the direction of the courts in the underlying litigation; or (c) the terms and conditions of this Settlement Agreement.
- V. **“Monterey Agreement”** means the formal agreement, dated as of December 1, 1994, by and among DWR and certain SWP Contractors that memorializes fourteen principles to address the distribution of water during shortages and various other issues under the SWP Contracts.

- W. **“Monterey Amendment”** means the amendment to the SWP Contracts entered into by DWR and certain SWP Contractors for purposes of implementing the Monterey Agreement.
- X. **“New EIR”** has the meaning given in Section III.
- Y. **“Party”** and **“Parties”** mean the signatories, individually and collectively, to this Settlement Agreement.
- Z. **“PCL”** means Planning and Conservation League.
- AA. **“PCL Complaint”** means the Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate filed December 27, 1995, by PCL in the Superior Court, as amended and supplemented by the First Amended Complaint filed February 12, 1996.
- BB. **“Plaintiffs”** means PCL, Citizens Planning Association and Plumas.
- CC. **“Plaintiffs’ Expenses Trust Account”** means the account maintained by JAMS for the purposes set forth in Section III(G).
- DD. **“Plumas”** means Plumas County Flood Control and Water Conservation District.
- EE. **“Plumas Amendment”** means an amendment to the Plumas SWP Contract to be entered into by DWR and Plumas pursuant to Section IV(C).
- FF. **“Plumas Arrearages”** means any amount owed by Plumas to DWR under its SWP Contract that accrued prior to the resumption of payments by Plumas under Section IV(F).
- GG. **“Return to Writ”** has the meaning given in Section VII(G).
- HH. **“Rossmann”** means the Law Offices of Antonio Rossmann.

- II. **“Section VI Trust Account Agreement”** means a trust account agreement regarding the disbursement by JAMS to Plaintiffs of those funds delivered by DWR pursuant to Section VI of this Settlement Agreement, the form of which agreement is attached hereto as Exhibit 4.
- JJ. **“Superior Court”** means the Superior Court of the State of California, County of Sacramento.
- KK. **“SWP”** means the State Water Project, officially called the State Water Resources Development System, as defined in Water Code Section 12931.
- LL. **“SWP Contracts”** means those long-term contracts entered into by and between DWR, as the operator of the SWP, and individual SWP Contractors for the delivery of water from the SWP.
- MM. **“SWP Contractors”** for purposes of this Settlement Agreement, means those contracting agencies identified in Table 1-6 of the DWR Bulletin 132-00, dated December 2001. All references to “SWP Contractors who are parties to this Settlement Agreement” are meant to exclude Plumas. Specific issues relating to Plumas are addressed in Section IV.
- NN. **“Validation Cause of Action”** means the fifth cause of action of the PCL Complaint.
- OO. **“Watershed Forum”** means a newly formed stakeholder group consisting of one or more representatives from each of Plumas, local community-based groups, DWR and the SWP Contractors who are parties to this Settlement Agreement, established for the purposes set forth in Section IV(B).

PP. “**Watershed Programs**” means programs, studies or projects approved by the Watershed Forum and implemented in pursuit of the goals set forth in Section IV, and other such activities approved by the Watershed Forum that are consistent with such purposes and goals.

QQ. “**1995 EIR**” means the Final Programmatic Environmental Impact Report for the Implementation of the Monterey Agreement Statement of Principles by State Water Project Contractors and the State of California Department of Water Resources for Potential Amendments to State Water Supply Contracts, prepared in October, 1995 by CCWA, as lead agency, and reviewed and considered in December 1995, by DWR, as a responsible agency, as each of those terms is defined in CEQA.

II. **Administration of the State Water Project Pending New Environmental Impact Report and Discharge of Writ of Mandate.**

Pending the Superior Court’s issuance of an order discharging the writ of mandate in the underlying litigation, the Parties will jointly request that the Superior Court enter an order approving this Settlement Agreement, and an order, pursuant to California Public Resources Code Section 21168.9, authorizing on an interim basis the administration and operation of the SWP and the Kern Water Bank in accordance with the Monterey Amendments, the terms of this Settlement Agreement and the Attachment A Amendments, as more specifically set forth in Section VII of this Settlement Agreement.

III. **New Environmental Impact Report**

A. **Preparation.** As lead agency (as defined in CEQA), DWR shall cause a new environmental impact report to be prepared with respect to the proposed “project” (as that term is defined in Public Resources Code Section 21065 and Section

15378 of the CEQA Guidelines), in accordance with and as further described in Section III(C) below (the “New EIR”).

- B. EIR Committee. To effectuate the desire of the Parties that the New EIR be the product of a cooperative effort and comply with the requirements of CEQA and the direction of the courts in the underlying litigation, the EIR Committee has been formed to provide advice and recommendations to DWR in connection with the preparation of the draft and final versions of the New EIR.
- C. New EIR Content. The proposed project to be analyzed in the New EIR will be specifically defined during the scoping process. Under all circumstances, in order to provide DWR, the responsible agencies, and the public with adequate disclosure to consider the potential environmental impacts of the Monterey Amendments, and the additional actions set forth in this Settlement Agreement, the environmental analysis in the New EIR shall evaluate, as components of the proposed project, the Monterey Amendments (including the provisions relating to the transfer of the KWB Lands) and the Attachment A Amendments. DWR shall ensure that the New EIR evaluates all proposed actions that are necessary to implement this Settlement Agreement. The New EIR shall include the following:
1. Information on water deliveries of the SWP over the relevant historical period (at least 1991 -2002), as well as data regarding the deliveries in the last extended drought (1987-1992), to be included in the description of the setting and the background for the proposed project;
 2. As part of the CEQA-mandated “no-project” alternative analysis, and in light of the Court of Appeal’s opinion, an analysis of the effect of pre-

Monterey Amendment SWP Contracts, including implementation of Article 18 therein. This analysis shall address, at a minimum, (a) the impacts that might result from application of the provisions of Article 18(b) of the SWP Contracts, as such provision existed prior to the Monterey Amendments, and (b) the related water delivery effects that might follow from any other provisions of the SWP Contracts;

3. Analysis of the potential environmental impacts of changes in SWP operations and deliveries resulting from implementation of the proposed project. If the proposed project results in modifications to the water sources relied upon for the SWP, those sources will be identified and the resulting environmental effects will be assessed;
4. Analysis of the potential environmental effects relating to (a) the Attachment E Transfers and (b) the Kern-Castaic Transfer, in each case as actions that relate to the potential environmental impacts of approving the Monterey Amendments; and
5. Analysis of the potential environmental effects relating to the implementation of this Settlement Agreement, including:
 - a. Evaluation of the potential environmental impacts arising from the payments to Plumas as described in Section IV; and
 - b. Analysis of the potential environmental effects relating to implementation of the provisions of this Settlement Agreement relating to the Kern Water Bank as discussed in Section V.

- D. Acknowledgement and Agreement Regarding Attachment E Transfers. With respect to Section III(C)(4)(a), notwithstanding the analysis of the potential impacts of the Attachment E Transfers in the New EIR and without specifically endorsing or opposing those transfers or any prior environmental assessments of them, the Parties recognize that such water transfers are final. Each of the Parties agrees not to, and it shall be a condition to the initial and continuing effectiveness of this Settlement Agreement that Plaintiffs do not, hereafter challenge the effectiveness or validity of such water transfers.
- E. Acknowledgement and Agreement Regarding Kern-Castaic Transfer. With respect to Section III(C)(4)(b) regarding the Kern-Castaic Transfer, the Parties recognize that such water transfer is subject to pending litigation in the Los Angeles County Superior Court following remand from the Second District Court of Appeal (*See Friends of the Santa Clara River v. Castaic Lake Water Agency*, 95 Cal. App. 4th 1373, 116 Cal. Rptr. 2d 54 (2002); *review denied* April 17, 2002). The Parties agree that jurisdiction with respect to that litigation should remain in that court and that nothing in this Settlement Agreement is intended to predispose the remedies or other actions that may occur in that pending litigation.
- F. Acknowledgement and Agreement Regarding Kern Water Bank. With respect to Section III(C)(5)(b) relating to the Kern Water Bank, the Parties acknowledge that the Kern Water Bank is currently operating under the Kern Environmental Permits, which were entered into based on an Addendum to the 1995 EIR. The Parties recognize that the Addendum has been completed and agree not to

challenge it in any manner. KWBA agrees that it will not rely on the Addendum to the 1995 EIR for any new KWBA project to the extent that such reliance is based on data or analysis incorporated into the Addendum from the 1995 EIR. In addition, the New EIR shall include an independent study by DWR, as the lead agency, and the exercise of its judgment regarding the impacts related to the transfer, development, and operation of the Kern Water Bank in light of the Kern Environmental Permits. Such study shall identify SWP and any non-SWP sources of water deliveries to the Kern Water Bank. The views of the trustee agencies, as evidenced by the requirements of the HCP, will be used to provide guidance to DWR. Finally, the Parties agree that this Settlement Agreement is not intended to and shall not affect the continuing effectiveness of the Kern Environmental Permits.

G. Reimbursement of Plaintiffs' Expenses for Participation in the Preparation of New EIR.

1. *DWR Obligation to Reimburse Plaintiffs.* Subject to and in accordance with clauses (2) and (3), DWR will provide up to \$300,000 to Plaintiffs for expenses actually incurred as needed to support Plaintiffs' participation in DWR's preparation of the New EIR, including service on the EIR Committee.
2. *Deposit into Trust Account.* The Parties acknowledge that in accordance with the principles of settlement, DWR caused to be deposited \$300,000 into the Plaintiffs' Expenses Trust Account at JAMS on August 22, 2002.

3. *Disbursement of Funds to Plaintiffs.* Funds provided by DWR under this Section III(G) are available for disbursement and will be disbursed to Plaintiffs by JAMS from the Plaintiffs' Expenses Trust Account in accordance with that certain Plaintiff's Expenses Trust Account Agreement dated August 15, 2002, attached hereto as Exhibit 1 and incorporated herein by this reference.

H. Disputes Regarding Mediation Issues.

1. *Referral to Director of DWR.* If the Plaintiffs' or SWP Contractors' representatives on the EIR Committee, or both, disagree with DWR's proposed approach with respect to a Mediation Issue, such representatives may refer the issue in writing to the Director of DWR.
2. *Referral to Mediator.* If (a) two-thirds of Plaintiffs' representatives or (b) three-fourths of the SWP Contractors' representatives, or both, disagree with the DWR Director's written decision with respect to a Mediation Issue (which issue shall have first been referred to the Director pursuant to Section III(H)(1)), such representative(s) may refer the issue in writing for consideration to the Mediator.
3. *Notices to Other Parties.* DWR shall inform the Parties to this Settlement Agreement of any referrals made pursuant to this Section III(H).
4. *Advisory Opinion by Mediator.* In the event of a referral as described above, the Mediator will consider the views of the representatives of the EIR Committee and the DWR Director, and will provide a written advisory opinion on the issue to the EIR Committee and DWR Director.

5. *Final Decision by DWR.* After receipt of an advisory opinion from the Mediator, the DWR Director shall make a final decision on the issue.
 6. *Mediator's Costs and Expenses.*
 - a. *Referrals by Plaintiffs' Representatives.* On any matter referred to the Mediator by Plaintiffs' representatives on the EIR Committee, the costs of the Mediator's services will be borne one-third (1/3) by the Plaintiffs and two-thirds (2/3) by DWR.
 - b. *Referrals by SWP Contractors' Representatives.* For any referral by the SWP Contractors who are representatives on the EIR Committee, the SWP Contractors who are signatory to this Settlement Agreement will compensate the Mediator for his services.
 - c. *Frivolous or Harassing Referrals.* In the event of frivolous or harassing matters referred to him/her, the Mediator shall have the authority to award costs to the prevailing party, as well as reasonable attorney fees in accordance with Section IX of this Settlement Agreement.
- I. Filing of New EIR upon Completion. Upon completion of the New EIR, in accordance with the procedure set forth in CEQA, and after final consideration by and good faith consultation with the EIR Committee, DWR shall cause the New EIR to be filed with the Superior Court as a return to the writ of mandate issued by such court in connection with this case.

IV. **Plumas Matters.**

A. Monetary Settlement.

1. *Agreement to Pay.* In accordance with the procedures and subject to the conditions described herein, DWR shall pay to Plumas the sum of \$8,000,000.

2. *Schedule of Payments.*

a. Annual Payments. A total sum of Four Million Dollars (\$4,000,000) shall be paid in accordance with this Section IV(A)(2)(a). DWR shall pay to Plumas One Million Dollars (\$1,000,000) within 30 days after approval of this Settlement Agreement by the Superior Court (or the first business day after said 30th day if the 30th day is not a business day).

On each anniversary date of the first \$1,000,000 payment until (and inclusive of) the third (3rd) anniversary, DWR shall pay to Plumas One Million Dollars (\$1,000,000).

b. Post Notice-of-Determination Payments. Subject to Section IV(A)(2)(c), the remaining Four Million Dollars (\$4,000,000) shall be paid in four annual installments of \$1,000,000 each, beginning on the later to occur of: (1) the date that is seventy days after the Notice of Determination (as defined in CEQA) has been filed for the New EIR (or the first business day after said 70th day if the 70th day is not a business day); or (2) the date that is one year after the last payment made under Section IV(A)(2)(a).

c. Effects of Litigation on Payment Obligation.

- (1) Suspension of Payment Obligation. If litigation is commenced by anyone challenging CEQA compliance for, or the validity of, any Monterey Amendment (or any portion thereof), including matters pertaining to the Kern Fan Element Transaction, the monetary obligations of DWR under Section IV(A)(2)(b) shall be suspended until the date that is forty-five (45) days after final conclusion of that litigation (without further right of appeal) in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction. Within thirty (30) days after final conclusion of any such litigation in said manner, DWR shall pay to Plumas any amounts then owed by DWR under this Section IV.
- (2) Termination of Payment Obligation. If any such litigation results in a final judgment (without further right of appeal) that invalidates any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction, the obligation for payments under Section IV(A)(2)(b) shall automatically terminate.

3. *Use of Funds.*

- a. *Funding of Watershed Programs.* Plumas shall apply a majority of all funds received each year pursuant to Section IV(A) to Watershed Programs.
- b. *Balance of Funds to General Purposes.* Plumas may apply the balance of funds received each year to other district-related purposes, as determined by Plumas with due consideration for the needs of the Watershed Forum.
- c. *Annual Carry-Over.* Funds received but not spent in any given year may be carried over to the succeeding year(s), provided, however, that any such funds shall continue to be subject to the restrictions under Sections IV(A)(3)(a) and (b).

B. Watershed Forum and Programs.

1. *Formation of Watershed Forum.* Prior to the date hereof, the Watershed Forum was formed. The Watershed Forum is locally driven but includes the active and committed participation of the SWP Contractor and DWR members of the Forum.
2. *Purpose and Goals*
 - a. *Generally.* The Watershed Forum's purpose is to implement watershed management and restoration activities for the mutual benefit of Plumas and the SWP. Forum activities include design of, participation in, implementation of, and review of studies and demonstration projects related to watershed restoration.

- b. Specific Goals. The specific focus of the Watershed Forum's activities is to implement programs designed to achieve the following benefits:
- (1) Improved retention (storage) of water for augmented base-flow in streams;
 - (2) Improved water quality (specifically, reduced sedimentation), and stream bank protection;
 - (3) Improved upland vegetative management; and
 - (4) Improved groundwater retention/storage in major aquifers.
- c. Emphasis on Feather River Watershed. The Watershed Forum specifically promotes and encourages restoration of the Feather River watershed, with particular focus on the drainages of the three SWP Upper Feather River reservoirs. The Watershed Forum seeks to obtain funding and investments in the Feather River watershed in order to facilitate programs that will generate significant local environmental and water supply benefits.
- d. Technical Advisors. The Watershed Forum will retain a committee of technical advisors to assist the Watershed Forum in identifying activities that can provide timely and practical benefits based on the best scientific and technical information.

3. *General Watershed Forum Issues*

- a. Cooperation. The Watershed Forum shall seek to foster mutual cooperation and support among Plumas, DWR and other SWP Contractors in achieving local and state-wide goals.
- b. Dispute Resolution. Any disputes between members of the Watershed Forum, or between Plumas and the Watershed Forum, with respect to Watershed Forum activities and funding will be resolved by retention of a third party neutral expert reasonably acceptable to all members of the Watershed Forum.
- c. Interruption in Funding. If payments by DWR are interrupted due to litigation challenging any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction, as set forth in Section IV(A)(2)(c), the Parties shall, depending on the success of the watershed work and the litigation situation, give due consideration to the importance of funding watershed work in consecutive years without interruption.
- d. No Limitation on DWR Obligations. DWR's participation in the Watershed Forum shall not compromise DWR's obligation to be impartial in the distribution of matching funds from public funding sources under its jurisdiction.

- C. Plumas Amendment. Upon completion of any necessary environmental review(s), DWR shall offer to Plumas the Plumas Amendment which shall include (1) DWR's agreement that water supplied to Plumas shall be determined

based on availability of water supply from Lake Davis, and (2) DWR's agreement that water deliveries to Plumas will not be reduced during SWP shortages so long as sufficient water is available from Lake Davis. The Plumas Amendment shall apply only to the maximum Table A amount in Plumas' SWP Contract on the date that this Settlement Agreement is executed. The Plumas Amendment shall also contain assurances that Plumas' claim to area-of-origin rights will not be affected by the Amendment. The Plumas Amendment may also contain the Monterey Amendment, as modified to reflect current conditions relating to Plumas, and the Attachment A Amendments.

- D. Dialogue between Plumas and DWR. Subject to Plumas' execution of this Settlement Agreement and compliance with the terms herein, DWR agrees to confer with Plumas to develop strategies and actions for the management, operation, and control of SWP facilities in Plumas County in order to increase water supply, recreational, and environmental benefits to Plumas from such facilities. In furtherance thereof, DWR and Plumas agree to evaluate and give due consideration to:
1. the potential re-operation of SWP facilities in Plumas County to increase the water supply available to Plumas;
 2. the potential release of water from reservoirs, as part of planned operations, for Plumas' benefit; and
 3. the appropriateness of certain charges in Plumas' SWP Contract in light of current circumstances and whether amendments thereto are warranted.

- E. Future Relations. Upon the Superior Court's approval of this Settlement Agreement, Plumas agrees to maintain a positive relationship with the SWP Contractors and DWR, and to support the Monterey Amendments and the Attachment A Amendments. Plumas reserves the right to review critically the New EIR.
- F. Contract Payments. Plumas shall resume and maintain timely payments under its SWP Contract. Such payments shall begin upon the earlier of (1) the first payment under Section IV(A)(2)(a) or (2) the date that Plumas or its member unit resumes taking water from Lake Davis, and shall cover the period beginning January 1 of that same year. DWR will not seek to collect the amount of any Plumas Arrearages.

V. **Kern Water Bank.**

- A. Title. KWBA shall retain title to the KWB Lands. KWBA may continue to operate and administer the KWB Lands including the water bank, subject to the restrictions herein.
- B. Restrictions on Use of KWB Lands.
 - 1. *Continued Use as Water Bank*. As noted in Section III(F), the KWB Lands are subject to the HCP, which documents a plan to accomplish, among other things, certain water conservation and environmental objectives. Except as provided in Sections V(B)(2) and (3), the KWB Lands shall continue to be used for the operation of a water bank and other uses authorized by the HCP, so long as such use remains legally and economically feasible.

2. *Use of KWB Lands for other SWP Purposes.* If (a) the use of the KWB Lands as a water bank is determined by KWBA to no longer be economically and/or legally feasible, (b) DWR concurs with such determination, (c) the KWB Lands can be feasibly used for any of the SWP purposes provided in California Water Code §12930 et seq., and (d) DWR and KWBA agree on terms and conditions for such use, then the KWB Lands may be so used.
3. *Use of KWB Lands for other than SWP Purposes.* If (a) the KWB Lands can not feasibly be used for any of the SWP purposes provided in California Water Code §12930 et seq., or (b) KWBA and DWR are unable to agree on terms and conditions for such use, or (c) DWR determines not to use the KWB Lands for such purposes, then KWBA may transfer or develop all or a portion of the KWB Lands for alternative use(s), provided that any alternate use will not result in unmitigated environmental impacts. A finding by KWBA that such impacts will not occur will be subject to DWR's concurrence.
4. *The 490 Acres.* The approximately 490 acres currently subject to restrictions in the HCP, permitting use thereof as Conservation Bank Lands (as defined in the HCP), but which may be developed under the HCP, will continue to be subject to the restrictions in the HCP but may not be developed.
5. *Application of HCP Restrictions.* All of the KWB Lands, including the 490 acres, will remain subject to the restrictions contained in the HCP.

The restrictions will remain in effect regardless of amendment to, or termination of, the HCP, unless, in the event of such amendment or termination, DWR, after consultation with Plaintiffs, finds that such amendment or termination will not result in unmitigated environmental impacts. The provisions of this clause shall not apply to “Minor Amendments” to the HCP as that term is utilized in the HCP.

6. *Land Use Changes Subject to CEQA.* Changes to the allowable uses of the KWB Lands shall be subject to appropriate environmental review under CEQA.
- C. Transfer/Development Proceeds. If all of the KWB Lands are transferred or developed by KWBA, the proceeds of such transfer or development (net of transaction or development costs) will be used for water management purposes identified by KWBA, subject to concurrence by DWR that such use is for bona fide water management purposes; provided, however, so long as the KWB Lands continue to be used for operation of a water bank, the proceeds (net of transaction or development costs) resulting from the transfer or development of a portion of the KWB Lands (which must be consistent with Section V(B)(5)) will be used for water management purposes identified by KWBA, subject to concurrence by DWR that the expenditure is consistent with such purposes.
- D. Consultation with Plaintiffs.
1. Except as provided in Section V(D)(2), with respect to any matter that requires DWR’s concurrence pursuant to Section V(B) and (C), DWR

shall consult with Plaintiffs prior to making any decision with respect thereto.

2. In lieu of consulting with Plaintiffs, following the conclusion of all litigation challenging CEQA compliance for, or the validity of, the Monterey Amendments, DWR may first provide notice and opportunity to comment to Plaintiffs and the public, and then, at Plaintiffs' request, shall consult with Plaintiffs.

E. Scope of Restrictions. The foregoing restrictions shall only apply to the KWB Lands and shall not affect the use or disposition of water stored under or withdrawn from the KWB Lands.

F. Effective Date of Restrictions. The foregoing restrictions in this Section V shall not be effective unless and until the court in the above-referenced litigation issues an order approving this Settlement Agreement and the Interim Implementation Order (as defined in Section VII(c)). The restrictions in this Section V shall become final only upon (1) filing of the Notice of Determination following the completion of New EIR, (2) discharge of the writ of mandate in the underlying litigation as provided below, and (3) conclusion of all litigation in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction. The continuing effectiveness of the restrictions in this Section V, and the obligations under this Settlement Agreement to comply with these restrictions, are subject to the terms of Section VII(K) below.

VI. Funding To Plaintiffs

- A. Agreement to Pay. In accordance with the procedures and subject to the conditions described herein, DWR shall pay to Plaintiffs, collectively, the sum of \$5,500,000 (in addition to the \$300,000 paid pursuant to Section III(G)).
- B. Schedule of Payments.
1. On or before the date that is thirty (30) days after approval of this Settlement Agreement by the Superior Court and issuance of the Interim Implementation Order under Section VII, DWR shall pay to Plaintiffs One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000).
 2. On or before the first anniversary after the date upon which delivery of funds are made by DWR pursuant to Section VI(B)(1), DWR shall pay to Plaintiffs One Million Eight Hundred Seventy-Five Thousand Dollars (\$1,875,000).
 3. Subject to Section VI(C), on or before the seventieth (70th) day after the Notice of Determination has been filed for the New EIR (or the first business day after said 70th day if the 70th day is not a business day), DWR shall pay to Plaintiffs One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000).
 4. All amounts to be paid by DWR under this Section VI(B) shall be paid by wire transfer, in immediately available funds, to a JAMS Trust Account from which funds are to be disbursed therefrom to Plaintiffs in accordance with the Section VI Trust Account Agreement.

- C. Effects of Litigation on Payment Obligations.
1. *Suspension of Payment Obligation.* If litigation is commenced by anyone challenging CEQA compliance for, or the validity of, any Monterey Amendment (or any portion thereof), including matters pertaining to the Kern Fan Element Transaction, the monetary obligations of DWR under Section VI(B)(3) shall be suspended until the date that is forty-five (45) days after conclusion of such litigation (without further right of appeal) in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction. Within thirty (30) days after final conclusion of any such litigation in said manner, DWR shall pay to Plaintiffs any amounts then owing under this Section VI.
 2. *Termination of Payment Obligation.* If any such litigation results in a final judgment that invalidates any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction, the obligation for payments under Section VI(B)(3) shall automatically terminate.
- D. Use of Funds. The funds paid to Plaintiffs under this Section VI shall be used to implement this settlement, as determined by Plaintiffs in their reasonable judgment, including watershed restoration projects, follow-up actions arising from this settlement, and technical studies.
- E. Unrelated to Attorney Fees. The payments under this Section VI are exclusive of, and in addition to, any amounts owing by DWR with respect to Plaintiffs' attorney fees, the latter of which are addressed by Section VIII.

VII. Sequence and Process for Implementation of Settlement

This Section VII addresses the process of implementing the terms of this Settlement Agreement to the extent not already addressed in this Settlement Agreement. All issues relating to the implementation of this Settlement Agreement not addressed by this Section VII or elsewhere herein shall be resolved through good faith discussions and mutual agreement among the Parties. If the Parties are unable to agree, the disputed matter shall be referred to and resolved by the Mediator.

- A. Non-Reliance on 1995 EIR. DWR and the SWP Contractors who are signatories to this Settlement Agreement agree that they will not approve any new project or activity in reliance on the 1995 EIR, that was not approved, initiated or implemented prior to March 26, 2001, and the approval, initiation or implementation of which would require a separate environmental impact report or negative declaration under CEQA (other than, or in addition to, the 1995 EIR).
- B. Attachment A Amendments. Within sixty (60) days after this Settlement Agreement is executed by all of the Parties, each of the SWP Contractors who are parties to this Settlement Agreement shall cause a duly authorized representative to execute an Attachment A Amendment, and deliver the executed Amendment to DWR. Upon approval of this Settlement Agreement by the Superior Court and issuance of the Interim Implementation Order, as discussed in Section VII(C), DWR shall execute the Attachment A Amendments. Thereupon, the Attachment A Amendments shall be deemed effective on an interim basis, and will not thereafter be modified without the written consent of the Plaintiffs, prior to the discharge of the writ of mandate. The Attachment A Amendments shall become

final upon (1) the filing of the Notice of Determination following the completion of the New EIR, (2) discharge of the writ of mandate in the underlying litigation as provided below, and (3) conclusion of all litigation in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction.

- C. Motion for Order Approving Settlement Agreement and Interim Implementation Order. As soon as practical after the execution of this Settlement Agreement, the Parties shall jointly file with the Superior Court a motion for (1) an order approving this Settlement Agreement, and (2) an order (the “**Interim Implementation Order**”) specifically authorizing on an interim basis, pursuant to Public Resources Code Section 21168.9, the administration and operation of the SWP and the KWB Lands, pending discharge of the writ of mandate in the underlying litigation, in accordance with the Monterey Amendments (as limited by Section VII(A) above), as supplemented by the Attachment A Amendments and the other terms and conditions of this Settlement Agreement, including the provisions in Section V(B) regarding the KWB Lands. Said motion shall include the proposed Section 21168.9 order attached hereto as Exhibit 3-A, and the proposed writ of mandate referenced therein and attached hereto as Exhibit 3-B. The parties shall jointly move the Superior Court for approval of said order and writ. Subject to Section VII(J), and except as provided in Section VII(I), Plaintiffs shall not seek any further order or writ concerning the Monterey Amendments or the New EIR.

- D. Implementation of New Policies, Procedures and Guidelines. DWR has issued a [draft] Report of State Water Project Supply Reliability in response to paragraph 1 of the Attachment B Principles. Upon the Superior Court's approval of this Settlement Agreement, DWR shall issue Contractors' Memos on (1) the Attachment C Guidelines and (2) the Attachment D Principles. After the Superior Court's approval of this Settlement Agreement, and in no event later than January 1, 2004, DWR shall issue Contractors' Memos on the remainder of the Attachment B Principles (i.e., paragraphs 2 and 3). DWR may rely on DWR publications previously issued to comply with paragraph 2 of the Attachment B Principles, if appropriate.
- E. Dismissal of Validation Cause of Action. Upon the execution of this Settlement Agreement by all the Parties and execution of the Attachment A Amendments as set forth in Section VII(B) and issuance by DWR of the Contractor Memos referenced in the second sentence of Section VII(D), Plaintiffs shall file a request for dismissal without prejudice of the Validation Cause of Action. So long as such conditions are timely met, Plaintiffs covenant and agree not to refile the Validation Cause of Action, nor any new cause of action relating thereto, nor a new claim challenging the validity of any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction.
- F. Tolling of Statute of Limitations. As between Plaintiffs, DWR and the SWP Contractors who are signatories to this Settlement Agreement, it is agreed that the statute of limitations relating to the Validation Cause of Action shall be tolled as

to Plaintiffs until the date that is forty-five (45) days after the filing of the Notice of Determination for the New EIR.

G. Notice of Determination, Return to Writ and Motion for Order Discharging Writ.

Upon completion of the New EIR, DWR will file with the Superior Court (1) a Notice of Determination including a copy of the New EIR, (2) a return to writ of mandate (the “**Return to Writ**”), (3) a request for an order discharging the writ of mandate previously issued by the Superior Court in the underlying case and (4) any other information required by the Superior Court for a discharge of writ.

H. Consent to Entry of Order Discharging Writ.

1. *Obligation to File.* Concurrent with DWR’s filings referenced in Section VII(G), subject only to Sections VII(H)(2) and (3), and provided Plaintiffs have not challenged the Return to Writ (under the procedures set forth in Section VII(I)), Plaintiffs shall file with the Superior Court a pleading consenting to entry of an order discharging the writ of mandate (the “**Consent to Entry of Order Discharging Writ**”).
2. *Conditions Precedent to Filing.* Plaintiffs’ obligation to file the Consent to Entry of Order Discharging Writ shall be subject to, and conditioned upon, satisfaction of the requirement set forth in Section VII(B).
3. *Earliest Effective Date of Discharge of Writ.* The discharge of the writ of mandate shall not be effective until at least forty-five (45) days after the filing of the Notice of Determination for the New EIR.

I. Subsequent CEQA Challenge.

1. *Limited Basis for Challenge.* Plaintiffs may only challenge the Return to Writ if, during the preparation and review of the New EIR, (a) Plaintiffs objected to the Mediator based on one or more Mediation Issues, (b) the Mediator upheld that objection in a written advisory opinion as described in Section III(H), (c) DWR rejected such written advisory opinion in its final decision, either expressly or as evidenced by the contents of the final New EIR, and (d) the challenge that Plaintiffs file to the Return to Writ is on the same ground(s) as the objection upheld by Mediator in the advisory opinion. Where such an objection was made to the Mediator and Plaintiffs file such a challenge to the Return to Writ, DWR shall maintain the advisory opinion as a public record. With respect to clause (c) of this subsection (I)(1), if the Parties dispute whether DWR has rejected the Mediator's advisory opinion, such matter shall be referred to the Mediator and (s)he shall make a final determination with respect thereto in accordance with Article IX.
2. *Stipulation to Continued Operations.* In the event of such a challenge, the challenging party will stipulate that, pending compliance with such writ as the court may issue, administration and operation of the SWP may continue in accordance with the Interim Implementation Order.
3. *Order for New EIR.* If such a challenge results in an order that DWR must prepare a new or supplemental environmental impact report, the provisions set out in Section III (regarding preparation of New EIR) shall be followed, and at the conclusion of the process, the provisions of Section

VII(H) (filing of a Consent to Entry of Order Discharging Writ) and this Section VII(I) shall apply.

- J. No Future Challenges. Except as specifically authorized herein, and as a condition to the initial and continuing effectiveness of this Settlement Agreement, Plaintiffs agree not to initiate any future litigation challenging the validity of any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction.
- K. Mutual Interdependency. On an interim and final basis, the Attachment A Amendments, the Plumas Amendment, the provisions regarding the KWB Lands described in Section V(B), and the continued operations of the SWP based on the Monterey Amendments are mutually interdependent.
- L. Implementation Dispute Resolution. Disputes arising in the implementation of this Settlement Agreement shall be addressed in accordance with Section IX.

VIII. Attorney Fees

Within forty-five (45) days after the execution of this Settlement Agreement by all Parties, the Parties shall engage in arbitration to determine the amount of attorney fees and costs to be paid to Rossmann as Plaintiffs' counsel. Such arbitration shall be conducted pursuant to the following terms and conditions:

- A. The arbitrator will be selected by mutual agreement of the Parties. If the Parties cannot agree on the arbitrator, the Mediator will designate the arbitrator. JAMS arbitration rules will apply, providing for limited and focused discovery, but the arbitrator may be anyone the Parties select regardless of his/her professional affiliation.
- B. Within five (5) business days after commencement of the arbitration, Rossmann shall file with the arbitrator a petition for fees. The petition for fees shall identify,

in sufficient detail acceptable to the arbitrator, all fees for: (1) past service in the underlying litigation; (2) fees for participation in the settlement mediation to the date thereof; and (3) projected fees for services to be rendered in implementing the Settlement Agreement, including fees incurred in advising Plaintiffs in connection with their participation in, and service on, the EIR Committee.

- C. Rossmann may apply for a multiplier on fees earned in the underlying litigation. The award for fees relating to mediation and settlement implementation shall be subject to the lodestar amount and shall not include a multiplier.
- D. The costs of the arbitration will be borne one-third (1/3) by Plaintiffs and two-thirds (2/3) by DWR.
- E. DWR and CCWA reserve all rights and defenses, except the right to challenge Rossmann's entitlement to fees relating to the mediation and settlement implementation stages.
- F. The arbitrator shall determine the amount of the award within thirty (30) days after submission of the fee petition to the arbitrator. The arbitrator's determination shall be binding upon the Parties.
- G. DWR shall pay the fee award to Rossmann in accordance with the following schedule:
 - 1. Sixty percent (60%) within thirty (30) days after the award;
 - 2. Thirty percent (30%) within thirty (30) days after the filing of the Return to Writ with the Superior Court; and
 - 3. Ten percent (10%) within thirty (30) days after the Plaintiffs' filing of the Consent to Entry of Order Discharging Writ with the Superior Court.

H. The amount of \$100,000 previously paid as attorney fees to Rossmann by DWR will be credited toward the amount owed by DWR hereunder as determined by the arbitrator.

IX. Dispute Resolution

The Parties agree to cooperate in implementing this Settlement Agreement and to try in good faith to resolve any disputes. In addition, until the conclusion of the underlying litigation, as evidenced by the issuance of an order discharging the writ of mandate, the Mediator will decide all unresolved issues involving the interpretation and implementation of this Settlement Agreement and, to the extent permitted by law, will be authorized to enforce its terms, except for those matters properly reserved to the jurisdiction of the Superior Court. Any party may request a conference before the Mediator on seventy-two (72) hours' advance written notice to the Mediator and the other Parties. The Mediator will have the power to award reasonable attorney fees to the prevailing party in the event of frivolous, harassing or untimely motions. The party who initiates a dispute resolution proceeding with the Mediator pursuant to this Section IX shall be solely responsible for the payment of the Mediator's costs and expenses, except as otherwise provided herein.

X. Miscellaneous

A. No Admission. By entering into this Settlement Agreement, the Plaintiffs do not endorse or admit the validity of the Monterey Amendments, and neither DWR, KWBA, nor any of the SWP Contractors who are signatories hereto admit any of the Plaintiffs' allegations in the pending litigation including those concerning the Monterey Amendments and/or the Kern Fan Element Transaction.

- B. Compliance with Laws. The Parties agree that nothing in this Settlement Agreement is intended to limit the discretion granted by law, including CEQA, to DWR, as lead agency and as the State agency responsible for administration and operation of the SWP, or the duty of DWR to comply with applicable requirements of law, including those of CEQA and the California Water Code.
- C. Authority. Each of the Parties represents that: (1) it has the authority to execute and enter into this Settlement Agreement; (2) the individual executing this Settlement Agreement on behalf of the Party has the authority and has been specifically authorized to execute and deliver this Settlement Agreement on behalf of such Party; (3) upon execution by such person on behalf of the Party, this Settlement Agreement shall be valid and enforceable against such Party in accordance with the terms hereof; (4) the Party is authorized to implement this Settlement Agreement, without further action by the Party or its governing body, board of directors, or any other person or entity, as the case may be; and (5) the execution and entry into this Settlement Agreement and the implementation of its terms by the Party is not in violation of any applicable law or any other contract or agreement by which it is bound or to which it is a party. The Parties acknowledge that although DWR plans to make payments required under this Agreement pursuant to its authority under the State Water Resources Development System (Water Code Sections 12930 et seq.), and that under such authority accruals are continuously appropriated without regard to fiscal years (Water Code Section 12938), any such payments may nevertheless be contingent on the annual Budget Act and, under certain circumstances, payments may be

delayed or halted by non-party government authorities. If any payment under this Settlement Agreement is delayed beyond the date it is due, the amount due shall accrue interest at the rate of the State Pooled Money Investment Fund for the first forty-five (45) days after it is due and at eight percent (8%) per annum thereafter. The foregoing does not limit Plaintiff's rights to seek legal or equitable relief in the event of a breach of this Settlement Agreement.

- D. Not a General Appearance or Concession to Jurisdiction. The execution of this Settlement Agreement by the SWP Contractors and KWBA does not constitute a general appearance in the underlying litigation, nor does it constitute a concession to jurisdiction of the Superior Court over the SWP Contractors or KWBA other than for the purpose of enforcing the terms of this settlement.
- E. Successors and Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns. No Party may assign their rights under this Settlement Agreement without the prior written consent of the other Parties.
- F. Governance. This Agreement shall be construed under and enforced in accordance with the substantive laws of the State of California.
- G. Entirety of Agreement; No Amendment. This Settlement Agreement sets forth the entire agreement among the Parties and supersedes all prior oral or written agreements, negotiations, discussions, or understandings concerning the subject matter hereof. The terms of this Settlement Agreement may not be altered, amended, waived or modified, except by a further written agreement signed by all Parties.

- H. Mutual Preparation. The Parties each cooperated in the drafting and preparation of this Settlement Agreement. Thus, the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party as the drafter thereof.
- I. Further Acts. Each Party agrees to make, execute and deliver such other instruments or documents, and to do or cause to be done such further or additional acts, as reasonably may be necessary in order to effectuate the purposes or to implement the terms of this Settlement Agreement.
- J. No Waiver. No waiver of any breach of any term or provision of this Settlement Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Settlement Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach. With respect to any breach of this Settlement Agreement by Plaintiffs, such breach may only be waived in writing by DWR, KCWA and The Metropolitan Water District of Southern California. With respect to any breach of this Settlement Agreement by the non-Plaintiffs, such breach may only be waived in writing by the Plaintiffs.
- K. No Representations or Warranties. Each of Parties represents and declares that in executing this Settlement Agreement, it has relied solely upon its own judgment, belief and knowledge, and on the advice and recommendations of its independently selected counsel, concerning the nature, extent and duration of its rights and claims and that it has not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any of the Parties or by any person representing them or any of them.

Each Party acknowledges that no other Party nor any of their representatives has made any promise, representation or warranty whatsoever, written or oral, as any inducement to enter into this Settlement Agreement, except as expressly set forth in this Settlement Agreement.

- L. Independent Investigations. Each Party has made such investigation of the facts pertaining to this settlement and this Settlement Agreement and of all matters pertaining thereto as it deems necessary.
- M. Survival. The representations, warranties and covenants contained in this Settlement Agreement are deemed to and shall survive the execution and delivery of this Settlement Agreement by all of the Parties.
- N. Headings. All headings in this Settlement Agreement are included for convenience and reference only and shall not constitute a part of this Settlement Agreement for any purpose.
- O. Not Binding on Others. This Settlement Agreement is not intended to, nor shall it (1) bind any non-Party persons or entities as to any claims or defenses they may otherwise now or in the future hold, or (2) waive any claims or defenses any Party hereto may have now or in the future against such non-Party persons or entities.
- P. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement, provided each signing Party shall have received a copy of the signature page signed by every other Party.
- Q. Voluntary and Knowing Execution. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS THOROUGHLY READ AND CONSIDERED

ALL ASPECTS OF THIS SETTLEMENT AGREEMENT, THAT IT UNDERSTANDS ALL PROVISIONS OF THIS SETTLEMENT AGREEMENT, THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL THROUGHOUT THIS PROCESS AND THAT IT IS VOLUNTARILY ENTERING INTO THIS SETTLEMENT AGREEMENT OF ITS OWN FREE WILL, WITHOUT DURESS OR COERCION OF ANY KIND.

- R. Obligations Dependent on Validity of Monterey Amendments. With respect to any obligation in this Settlement Agreement that terminates or is suspended upon a challenge to or final judgment that invalidates any portion of any Monterey Amendment, such termination or suspension of such obligation may be avoided if such invalidity is explicitly and irrevocably waived in accordance with the procedures set forth in Paragraph 29 of the Monterey Amendments.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date first set forth above.

PLANNING AND CONSERVATION LEAGUE

By: _____
Name: _____
Title: _____

PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Name: _____
Title: _____

CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.

By: _____
Name: _____
Title: _____

[Remainder of Page Intentionally Blank – Additional Signatures Follow]

ATTACHMENT A

AMENDMENT TO STATE WATER PROJECT CONTRACT

**STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES**

**AMENDMENT NO. ____ TO THE WATER SUPPLY CONTRACT
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT
OF WATER RESOURCES AND _____**

This amendment is made this ____ day of _____, 2003, pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, hereinafter referred to as the "State", and _____, hereinafter referred to as the "District" [or "Agency"].

RECITALS

WHEREAS, the State and the District entered into and subsequently amended a water supply contract (the "contract") providing that the State shall supply certain quantities of water to the District and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, on December 1, 1994, the State and representatives of certain State Water Project contractors executed a document entitled "Monterey Agreement – Statement of Principles – By The State Water Contractors And The State Of California Department Of Water Resources For Potential Amendments To The State Water Supply Contracts" (the "Monterey Agreement"); and

WHEREAS, the State, the Central Coast Water Authority ("CCWA") and those contractors intending to be subject to the Monterey Agreement subsequently negotiated an amendment to their contracts to implement provisions of the Monterey Agreement, and such amendment was named the "Monterey Amendment"; and

WHEREAS, in October 1995, an environmental impact report ("EIR") for the Monterey Amendment was completed and certified by CCWA as the lead agency, and thereafter the District and the State executed the Monterey Amendment; and

WHEREAS, the EIR certified by the CCWA was challenged by several parties (the "Plaintiffs") in the Sacramento County Superior Court and thereafter in the Third District Court of Appeal, resulting in a decision in *Planning and Conservation League, et al. v. Department of*

Water Resources, 83 Cal.App.4th 892 (2000), which case is hereinafter referred to as “PCL v. DWR”; and

WHEREAS, in its decision, the Court of Appeal held that (i) the Department of Water Resources (“DWR”), not CCWA, had the statutory duty to serve as lead agency, (ii) the trial court erred by finding CCWA’s EIR sufficient despite its failure to discuss implementation of Article 18, subdivision (b) of the State Water Project contracts, as a no-project alternative, (iii) said errors mandate preparation of a new EIR under the direction of DWR, and (iv) the trial court erroneously dismissed the challenge to DWR’s transfer of title to certain lands to Kern County Water Agency (the “Validation Cause of Action”) and execution of amended State Water Project contracts for failure to name and serve indispensable parties. The Court of Appeal remanded the case to the trial court, ordering it to take the following five actions: (1) vacate the trial court’s grant of the motion for summary adjudication of the Validation Cause of Action; (2) issue a writ of mandate vacating the certification of the EIR; (3) determine the amount of attorney fees to be awarded Plaintiffs; (4) consider such orders it deems appropriate under Public Resources Code Section 21168.9(a) consistent with the views expressed in the Appellate Court’s opinion; and (5) retain jurisdiction over the action until DWR, as lead agency, certifies an environmental impact report in accordance with CEQA standards and procedures, and the Superior Court determines that such environmental impact report meets the substantive requirements of CEQA; and

WHEREAS, the State, the contractors, and the Plaintiffs in *PCL v. DWR* reached an agreement to settle *PCL v. DWR*, as documented by that certain Settlement Agreement dated _____, 2003 (the “Settlement Agreement”), and in such Settlement Agreement have agreed that the contracts should be amended, for clarification purposes, to delete terms such as “annual entitlement” and “maximum annual entitlement” so that the public, and particularly land use planning agencies, will better understand the contracts; and

WHEREAS, pursuant to the Settlement Agreement, the State and the District desire to so amend the District’s contract, with the understanding and intent that the amendments herein with respect to subsections (m), (n), and (o) of Article 1, subsection (b) of Article 6, and subsection (a) of Article 16, and to Table A of the District’s contract are solely for clarification purposes and that such amendments are not intended to and do not in any way change the rights, obligations or limitations on liability of the State or the District established by or set forth in the contract; and

WHEREAS, pursuant to the Settlement Agreement, the State, the contractors and the Plaintiffs in *PCL v. DWR* also agreed that the contracts should be amended to include a new Article 58 addressing the determination of dependable annual supply of State Water Project water to be made available by existing Project facilities, and the State and District desire to so amend the District’s contract.

NOW THEREFORE, IT IS MUTUALLY AGREED, as follows:

1. Article 1(n) is amended to read:¹

(n) Annual Table A Amount

“Annual Table A Amount” shall mean the amount of project water set forth in Table A of this contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the District at the delivery structures provided for the District. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the District. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions the District will receive its full Annual Table A Amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the District. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term “annual entitlement” appears elsewhere in this contract, it shall mean “Annual Table A Amount.” The State agrees that in future amendments to this and other contractor’s contracts, in lieu of the term “annual entitlement,” the term “Annual Table A Amount” will be used and will have the same meaning as “annual entitlement” wherever that term is used.

2. Article 1(o) is amended to read:

(o) Maximum Annual Table A Amount

“Maximum annual entitlement” shall mean the maximum annual amounts set forth in Table A of this contract, and where the term “maximum annual entitlement” appears elsewhere in this contract it shall mean “Maximum Annual Table A Amounts.”

3. Article 1(m) is amended to read:

(m) Minimum Project Yield

“Minimum project yield” shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project’s capability of providing the minimum project yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors including but not limited to: (1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts

¹ The number of the articles is not the same for all the Water Supply Contractors. Article 1(n) is intended to be the article presently entitled “Annual Entitlement”, whatever its number may be in each District’s contract. The article numbers may have to be changed for each contractor to reflect the numbers in its contract.

for all contractors and the characteristic distributions of demands for these two uses throughout the year; and (2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

4. Article 6(b) is amended to read:

(b) District's Annual Table A Amounts

Commencing with the year of initial water delivery to the District, the State each year shall make available for delivery to the District the amounts of project water designated in Table A of this contract, which amounts shall be subject to change as provided for in Article 7(a) and are referred to in this contract as the District's Annual Table A Amounts.

5. Article 16(a) is amended to read:

(a) Limit on Total of all Maximum Annual Table A Amounts

The District's Maximum Annual Table A Amount hereunder, together with the maximum Table A amounts of all other contractors, shall aggregate no more than 4,185,000 acre-feet of project water.

6. Article 58 is added to read:

58. Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities.

In order to provide current information regarding the delivery capability of existing project conservation facilities, commencing in 2003 and every two years thereafter the State shall prepare and mail a report to all contractors, and all California city, county, and regional planning departments and agencies within the contractors' project service areas. This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor.

7. Add the following language at the bottom of Table A:

In any year, the amounts designated in this Table A shall not be interpreted to mean that the State is able to deliver those amounts in all years. Article 58 describes the State's process for providing current information for project delivery capability.

8. Except for Article 58, the changes made by this amendment are solely for clarification purposes, and are not intended to nor do they in any way change the rights, obligations or

limitations on liability of the State or the District established by or set forth in the contract, and this amendment shall be interpreted in accordance with this intent.

9. At the time of execution of this Agreement and thereafter, the effectiveness of this Amendment is dependent upon the effectiveness of the District's Monterey Amendment (all provisions therein) and the Kern Fan Element Transaction.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date first above written.

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Name: _____
Title: Director

Approved as to legal form and sufficiency:

By: _____
Name: _____
Title: Chief Counsel

Attest:

_____ **DISTRICT**

By: _____
Name: _____
Title: _____

ATTACHMENT B

PRINCIPLES REGARDING STATE WATER PROJECT AVAILABILITY

Note: These principles are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.

1. Commencing in 2003, and every two years thereafter, the Department of Water Resources (DWR) shall prepare and deliver to all State Water Project (SWP) contractors, all city and county planning departments, and all regional and metropolitan planning departments within the project service area a report which accurately sets forth, under a range of hydrologic conditions, the then existing overall delivery capability of the project facilities and the allocation of that capacity to each contractor. The range of hydrologic conditions shall include the historic extended dry cycle and long-term average. The biennial report shall also disclose, for each of the ten years immediately preceding the report, the total amount of project water delivered and the amount of project water delivered to each contractor. The information presented in each report shall be presented in a manner readily understandable by the public.
2. DWR shall develop and, by January 1, 2004, publish guidelines to assist Municipal and Industrial Contractors in providing accurate information to land-use planning agencies with jurisdiction within the Contractors' respective service areas regarding local and regional programs to manage or supplement SWP supplies. DWR shall consult with the plaintiffs and contractors in developing the guidelines.
3. DWR shall provide assistance to enable all Municipal and Industrial Contractors to provide complete and accurate information to relevant land-use planning agencies to assure that local land-use decisions reflect accurate information on the availability of water from state, local, and other sources.

ATTACHMENT C

DWR GUIDELINES FOR REVIEW OF PROPOSED PERMANENT TRANSFERS OF STATE WATER PROJECT ANNUAL TABLE A AMOUNTS

Note: These guidelines are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.

1. **Purpose:** The purpose of these guidelines is to describe the process for DWR's review of proposed permanent transfers of SWP Annual Table A Amounts and by so doing, provide disclosure to SWP Contractors and to the public of DWR's process and policy on approving permanent transfer of SWP Annual Table A Amounts. Such disclosure should assist contractors in developing their transfer proposals and obtaining DWR review expeditiously, and assist the public in participating in that review.
2. **Coverage:** These guidelines will apply to DWR's approval of permanent transfers of water among existing SWP Contractors and, if and when appropriate, to permanent transfers of water from an existing SWP Contractor to a new SWP Contractor.
3. **Interpretation:** These guidelines are in furtherance of the state policy in favor of voluntary water transfers and shall be interpreted consistent with the law, including but not limited to Water Code Section 109, the Burns-Porter Act, the Central Valley Project Act, the California Environmental Quality Act, area of origin laws, the public trust doctrine, and with existing contracts and bond covenants. These guidelines are not intended to change or augment existing law.
4. **Format:** The guidelines shall be issued by DWR as a "Notice to State Water Contractors."
5. **Revisions:** Revisions may be made to these guidelines as necessary to meet changed circumstances, changes in the law or long-term water supply contracts, or to address conditions unanticipated when the guidelines are adopted. Revisions shall be in accordance with the settlement agreement reached in *Planning and Conservation League vs. Department of Water Resources*.
6. **Distribution:** The transfer guidelines shall be published by DWR in the next available edition of Bulletin 132, and also as part of the biennial disclosure of SWP reliability as described in the PCL v. DWR Settlement Agreement.
7. **Contract Amendment:** Permanent transfers of SWP water are accomplished by amendment of each participating contractor's long-term water supply contract. The amendment consists of amending the Table A upwards for a buying contractor and downwards for a selling contractor. The amendment shall be in conformity with all provisions of the long-term water supply contracts, applicable laws, and bond covenants. Other issues to be addressed in the contract amendment will be subject to negotiation among DWR and the two participating contractors. The negotiations will be conducted in public, pursuant to the settlement agreement in PCL vs. DWR.

8. Financial issues: The purchasing contractor must demonstrate to the DWR's satisfaction that it has the financial ability to assume payments associated with the transferred water. If the purchasing entity was not a SWP Contractor as of 2001, special financial requirements pertain as described below, as well as additional qualifications.

9. Compliance with CEQA: Consistent with CEQA, the State's policy to preserve and enhance environmental quality will guide DWR's consideration of transfer proposals (Public Resources Code Section 21000). Identification of the appropriate lead agency will be based on CEQA, the CEQA Guidelines, and applicable caselaw, including *Planning and Conservation League vs. Department of Water Resources*, 83 Cal. App. 4th 892 (2000). CEQA requires the lead agency at a minimum to address the feasible alternatives to the proposed transfer and its potentially significant environmental impacts (1) in the selling contractor's service area; (2) in the buying contractor's service area; (3) on SWP facilities and operations; and (4) on the Delta and areas of origin and other regions as appropriate. Impacts that may occur outside of the transferring SWP Contractors' service areas and on fish and wildlife shall be included in the environmental analysis. DWR will not approve a transfer proposal until CEQA compliance is completed. The lead agency shall consult with responsible and trustee agencies and affected cities and counties; and when DWR is not the lead agency, shall provide an administrative draft of the draft EIR or Initial Study/Negative Declaration to DWR prior to the public review period. A descriptive narrative must accompany a checklist, if a checklist is used. The lead agency shall conduct a public hearing on the EIR during the public comment period and notify DWR's State Water Project Analysis Office of the time and place of such hearing in addition to other notice required by law.

10. Place of Use: The purchasing contractor must identify the place and purpose of use of the purchased water, including the reasonable and beneficial use of the water. Typically this information would be included in the environmental documentation. If a specific transfer proposal does not fit precisely into any of the alternatives listed below, DWR will use the principles described in these Guidelines to define the process to be followed. The information to be provided under this paragraph is in addition to the CEQA information described in paragraph 9 of these guidelines.

a) If the place of use is within the contractor's service area, the contractor should disclose the purpose of the transferred water, such as whether the water is being acquired for a specific development project, to enhance overall water supply reliability in the contractor's service area, or some other purpose. If the transferred water is for a municipal purpose, the contractor should state whether the transfer is consistent with its own Urban Water Management Plan or that of its member unit(s) receiving the water.

b) If the place of use is outside the contractor's service area, but within the SWP authorized place of use, and service is to be provided by an existing SWP Contractor: In addition to Paragraph 10(a) above, the contractor should provide DWR with copies of LAFCO approval and consent of the water agency with authority to serve that area, if any. In some instances, DWR's separate consent is required for annexations in addition to the approval for the transfer.

c) If the place of use is outside the SWP authorized place of use and service is to be provided by an existing SWP Contractor, the contractor should provide information in Paragraph 10(a) and 10(b). Prior to approving the transfer, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

d) If the place of use is outside the SWP authorized place of use and service is not to be provided by an existing SWP contractor, DWR will consider the transfer proposal as a proposal to become a new state water contractor. Prior to adding a new SWP Contractor, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. DWR will consult with existing SWP Contractors regarding their water supply needs and the proposed transfer. In addition to the information in Paragraph 10(a), 10(b), and 10(c), the new contractor should provide information similar to that provided by the original SWP contractors in the 1960's Bulletin 119 feasibility report addressing hydrology, demand for water supply, population growth, financial feasibility, etc. DWR will evaluate these issues independently and ordinarily will act as lead agency for CEQA purposes. In addition, issues such as area of origin claims, priorities, environmental impacts and use of water will be addressed. The selling contractor may not be released from financial obligations. The contract will be subject to a CCP 860 validation action initiated by the new contractor. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

11, DWR Discretion. Consistent with the long-term water supply contract provisions, CEQA, and other provisions of law, DWR has discretion to approve or deny transfers. DWR's exercise of discretion will incorporate the following principles:

(a) As required by CEQA, DWR as an agency with statewide authority will implement feasible mitigation measures for any significant environmental impacts resulting from a transfer, if such impacts and their mitigation are not addressed by other public agencies and are within DWR's jurisdiction.

(b) DWR will invoke "overriding considerations" in approving a transfer only as authorized by law, including but not limited to CEQA, and, to the extent applicable, the public trust doctrine and area of origin laws.

ATTACHMENT D

PRINCIPLES REGARDING PUBLIC PARTICIPATION PROCESS IN SWP CONTRACT NEGOTIATIONS

Note: These principles are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.

- 1. Policy:** Given the importance of the State Water Project to the State of California, and the key role that the long-term water supply contracts play in the administration of the State Water Project, DWR agrees that public review of significant changes to these contracts is beneficial and in the public interest.
- 2. Types of activities to be covered:** Project-wide contract amendments (i.e., contracts with substantially similar terms intended to be offered to all long-term SWP Contractors) and contract amendments to transfer entitlements between existing SWP Contractors will not be offered to the contractors for execution unless DWR has first complied with the public participation process as described in paragraphs (3), (4), (5) and (6).
- 3. The Public Participation Process.**
 - 1) Negotiations will be conducted in public;
 - 2) The public will be provided with advance notice of the time and place of the negotiations;
and
 - 3) The public will be provided the opportunity to observe negotiations and comment in each negotiating session
- 4. Timing of Public Participation:** Public participation ordinarily will precede the formulation of the project description in the CEQA process in order to assure that the public participation is meaningful. When DWR is a responsible agency, (e.g., when existing SWP Contractors agree to transfer entitlement between themselves), the public participation will be scheduled to facilitate coordination with the lead agency's CEQA process.
- 5. Activities that will not be subject to public participation:** Informal discussions prior to exchange of formal drafts and discussion of topics that are authorized to be kept confidential by law will not be subject to the public participation process.
- 6. Contract amendments resulting from litigation:** If litigation has been formally initiated, and settlement negotiations result in a proposal to adopt project-wide amendments to settle the litigation, all proposed contract amendments shall be subject to the public participation process before they are approved by DWR.

ATTACHMENT E

**FINAL PERMANENT TABLE A AMOUNT TRANSFERS FROM KERN COUNTY
WATER AGENCY SUBSEQUENT TO MONTEREY AMENDMENTS
(January 1, 2003)**

Note: This Exhibit is prepared in connection with the settlement agreement between PCL and DWR.

From (Kern County Water Agency Member Unit)	To	Amount (afy)	Year Effective
Berrenda Mesa Water District	Mojave Water Agency	25,000	1998
Belridge Water Storage District	Palmdale Water Agency	4,000	2000
Berrenda Mesa Water District	Alameda County Flood Control and Water Conservation District Zone 7	7,000	2000
Lost Hills Water District	Alameda County Flood Control and Water Conservation District Zone 7	15,000	2000
Belridge Water Storage District	Alameda County Flood Control and Water Conservation District Zone 7	10,000	2001
Belridge Water Storage District and Berrenda Mesa Water District	Solano County Water Agency	5,756	2001
Belridge Water Storage District and Berrenda Mesa Water District	Napa County Flood Control and Water Conservation District	4,025	2001

EXHIBIT 1

PLAINTIFFS' EXPENSES TRUST ACCOUNT AGREEMENT

This Agreement is entered into this fifteenth day of August 2002, by JAMS and DWR, for the purpose of transferring \$300,000 in trust to JAMS for use in accordance with Principles of Settlement in PCL vs. DWR.

WHEREAS, JAMS has acted as mediator between the Department and other parties to the litigation in PCL v. DWR (Superior Court No. 95CS03216).

WHEREAS, the Principles of Settlement as agreed to by the parties on July 22, 2002, provides for the placement of \$300,000 in trust with JAMS.

WHEREAS, the money placed in the trust is to be provided to plaintiffs for expenses actually incurred as needed to support plaintiffs' participation in developing the new EIR to be filed as a return to the writ.

WHEREAS, the Principles of Settlement also provides that the funds will be provided based on a budget and participation plan to be submitted by plaintiffs to the mediator specifying the purposes for which the funds will be expended.

The parties agree as follows:

1. JAMS agrees to accept \$300,000 in trust in accordance with the Principles of Settlement.
2. JAMS agrees to maintain the monies in trust, and following receipt of a budget and participation plan from plaintiffs, to disburse funds to plaintiffs for actual expenditures incurred for such purpose and pursuant to such schedule, budget, and participation plan, all in conformance with the Principles of Settlement. The funds will be disbursed to the plaintiffs' attorney, Antonio Rossmann, Law Offices of Antonio Rossmann.
3. Costs incurred by JAMS in providing this service will be paid as part of the mediator services as part of the existing contract between JAMS and the California Department of Justice, Office of the Attorney General.
4. This agreement may be amended in writing by agreement of both parties.
5. Funds not disbursed upon termination of the trust shall be returned to DWR.
6. The trust shall terminate upon notice to JAMS by DWR of termination based on the earlier of (a) failure of the parties to the mediation to execute a settlement agreement by January 1, 2003; (b) notice of termination given by the Director of DWR to JAMS and plaintiffs that this trust is terminated, which notice shall not be given without

defendants' consultation with plaintiffs and the mediator; or c) filing of the Notice of Determination on the new EIR.

7. JAMS will incur no liability to DWR arising from any disbursement made pursuant to this agreement.
8. This agreement is not intended to and shall not create any rights in any third party.

APPROVED:

/s/ Steve Macaulay for
Thomas M. Hannigan
Director

8/10/02
Date

/s/ Julie Sager
Vice President & CFO
JAMS

8/15/02
Date

EXHIBIT 1

AMENDMENT NO. 1

PLAINTIFFS' EXPENSES TRUST ACCOUNT AGREEMENT

Paragraph 6 of this Agreement is amended to read as follows:

6. The trust shall terminate upon notice to JAMS by DWR of termination based on the earlier of (a) failure of the parties to the mediation to execute a settlement agreement by May 1, 2003, (b) notice of termination given by the Director of DWR to JAMS and plaintiffs that this trust is terminated, which notice shall not be given without defendants' consultation with plaintiffs and the mediator; or (c) filing of the Notice of Determination on the new EIR.

APPROVED:

Thomas M. Hannigan
Director

Date

JAMS

Date

EXHIBIT 2

**KERN WATER BANK AUTHORITY
AGREEMENTS AND PERMITS
WHICH MAY HAVE RELIED ON THE KWBA ADDENDUM**

AGREEMENT/PERMIT	DATE	OTHER PARTIES
Incidental Take Permit - PRT-828086	2-Oct-97	Department of Interior, U.S. Fish & Wildlife Service
Approval/Management Authorization pursuant to California Endangered Species Act for Implementation of Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan	2-Oct-97	Calif. Department of Fish & Game
Natural Community Conservation Plan/Habitat Conservation Plan Implementation Agreement	2-Oct-97	U.S. Fish & Wildlife Service; Calif Dept of Fish & Game; Kern Water Bank Authority
Approval, Cultural Resources Assessment and Plan for the KWBA Project	January, 1997	N/A
Memorandum of Understanding Regarding Operation and Monitoring of the Kern Water Bank Groundwater Banking Program	26-Oct-95	Numerous
Approval of Kern Water Bank Authority Mosquito Abatement Program	26-Oct-95	Mosquito Abatement Districts
Service Contracts for Operations and Maintenance	1996 - current	Numerous Vendors
Grazing Leases (Sheep and Cattle)	1997- current	Various Stockmen
Minor Amendment No. 1 : Hunting/Research to the KWBA HCP/NCCP and Implementation Agreement	6/30/1998	California Department of Fish and Game and U.S. Fish and Wildlife Service
State of California Standard Agreement for "Improving Wildlife Habitat for Doves" (annual contract)	1998 - current	Calif. Department of Fish and Game
Conservation Credit Certificates	1998 - current	Conservation Credit Buyers
Construction and Service Contracts for Master Plan Construction Project - KWBA Canal, Head-works, Aqueduct Turnout, New Wells, Well Rehabilitation, Pipelines	7/1999 - 8/2002	Numerous Contractors and Vendors
KWBA Canal and Buena Vista Main Canal Joint Use Agreement	7/20/1999	Buena Vista Water Storage District

AGREEMENT/PERMIT	DATE	OTHER PARTIES
Business Loan Agreement (\$21,000,000)	7/23/1999	Bank of America, N.A.
Agreement for Grant of Easement	September 1999	State of California Acting Through the Department of Parks and Recreation
Agreement for Construction, Operation, and Maintenance of the Kern Water Bank Turnout, a Permanent Turnout Within the California Aqueduct Right of Way	11/9/1999	Department of Water Resources
License Agreement for Kern River Canal Crossing	11/17/1999	City of Bakersfield
Loan Contract No. E75002 Under the "Safe, Clean, Reliable Water Supply Act Water Conservation and Ground Water Recharge Sub account (\$5,000,000)	March 2000	State of California, Department of Water Resources, Division of Planning and Local Assistance
Reclamation Board Permit No. 17147-A GM Authorizing Construction of Pedestrian Bridge Across the Outlet Canal within the Kern River Designated Floodway	10/16/2000	State of California - The Resources Agency, Department of Water Resources
Reclamation Board Permit No. 16821 GM (Revised) Authorizing Construction of a 20-foot Wide Unlined Canal and Reinforced Concrete Gated Turnout Structure on the Right (North) Bank of the Designated Floodway and Install a 108-Inch Diameter, 700-foot long, Reinforced Concrete Pipe Across (Under the Kern River	2/26/2001	State of California - The Resources Agency, Department of Water Resources
Grant Awarded Under the "Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act (Proposition 13) - Groundwater Storage Program (\$3,375,000)	Jun-02	State of California, Department of Water Resources, Division of Planning and Local Assistance
Service Contracts for Well Testing and Rehabilitation Under the SB5X Program	2002	Various Vendors

EXHIBIT 3-A

PROPOSED 21168.9 ORDER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

PLANNING AND CONSERVATION LEAGUE,
a California not for profit corporation, PLUMAS
COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, a California
public agency; CITIZENS PLANNING
ASSOCIATION OF SANTA BARBARA
COUNTY, INC., a California not for profit
corporation,

Plaintiffs and Petitioners,

v.

DEPARTMENT OF WATER RESOURCES, a
California State Agency, et al.,

Defendants and Respondents,

Case No: 95CS03216

[PROPOSED] ORDER PURSUANT TO
PUBLIC RESOURCES CODE
SECTION 21168.9

On remand from the Third District Court of Appeal on January ___, 2003, in Department 53 of the Sacramento Superior Court, the Honorable Loren E. McMaster, presiding, this proceeding came on for a status report and joint motion. Petitioners and Plaintiffs, Planning and Conservation League, Plumas County Flood Control and Water Conservation District, and Citizens Planning Association of Santa Barbara County ("Petitioners"), appeared through Antonio Rossmann and Roger B. Moore. Respondent and Defendant, Central Coast Water Authority (CCWA), appeared through Susan F. Petrovich of the Law Firm of Hatch & Parent. Respondent and Defendant, Department of Water Resources (DWR), appeared through Deputy Attorney General Marian E. Moe. Robert S. Draper of O'Melveny and Myers, LLP and Clifford W. Schulz appeared, respectively, on behalf of the Metropolitan Water District of Southern California and Dudley Ridge Water District, entities that submitted answers to the First

Amended Complaint subsequent to the Court of Appeal's final determination in this action and prior to any further order of this Court on remand.

In light of the direction from the Third District Court of Appeal on remand in *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, this Court hereby makes the following findings:

1. The parties to this lawsuit and other public agencies have engaged in extensive settlement negotiations, mediated by retired Judge Daniel Weinstein of JAMS Dispute Resolution, with the intent to avoid further litigation and associated expenses, to provide for an effective way to cooperate in the preparation of a new environmental impact report (EIR), and to make other specified improvements in the administration and operation of the State Water Project.

2. The mediation has resulted in an executed Settlement Agreement for approval by this Court, attached to this Order as Exhibit A.

3. DWR as lead agency has commenced the preparation of the new EIR.

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

5. This Order is made pursuant to the provisions of Public Resources Code section 21168.9 and pursuant to this Court's equitable powers. This Court finds that the actions described in this Order, including actions taken in compliance with the Writ of Mandate, comprise the actions necessary to assure DWR's compliance with Division 13 of the Public Resources Code. This Court further finds that this Order includes only those mandates necessary to achieve compliance with Division 13.

THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Court's Final Judgment denying the petition for writ of mandate, entered August 15, 1996, is reversed in accordance with the directive of the Third District Court of Appeal's decision in *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892.

2. This Court's order granting the summary adjudication on the fifth cause of action, entered June 10, 1996, is vacated.

3. The Settlement Agreement attached as Exhibit A is hereby approved.

4. A Peremptory Writ of Mandate directed to Respondents Central Coast Water Authority and DWR shall issue under seal of this Court in the form attached hereto as Exhibit B.

5. In accordance with the Settlement Agreement and this Order, pending DWR's filing of the return in compliance with the Peremptory Writ of Mandate and this Court's Order discharging the Writ of Mandate, DWR and CCWA shall not approve any new project or activity (as defined section VII.A of the Settlement Agreement) in reliance on the 1995 EIR for the Implementation of the Monterey Agreement.

6. In the interim, until DWR files its return in compliance with the Peremptory Writ of Mandate and this Court orders discharge of the Writ of Mandate, the administration and operation of the State Water Project and Kern Water Bank Lands shall be conducted pursuant to the Monterey Amendments to the State Water Contracts, as supplemented by the Attachment A Amendments to the State Water Contracts (as defined in the Settlement Agreement) and the other terms and conditions of the Settlement Agreement.

7. Plaintiffs and petitioners shall recover such costs and attorney's fees as provided in prior court orders and in an amount as determined in the arbitration procedures agreed to in the Settlement Agreement, or as otherwise agreed to by the parties.

8. Except as provided, the Peremptory Writ of Mandate shall not limit or constrain the lawful jurisdiction and discretion of DWR. This Court retains jurisdiction until DWR files a

return that complies with the terms of the Writ of Mandate, and this Court issues an order discharging the Writ of Mandate.

IT IS SO ORDERED.

Dated: _____, 2003 _____

Judge of the Superior Court

EXHIBIT 3-B

PROPOSED WRIT OF MANDATE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PLANNING AND CONSERVATION LEAGUE, a
California not for profit corporation, PLUMAS
COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, a California public
agency; CITIZENS PLANNING ASSOCIATION
OF SANTA BARBARA COUNTY, INC., a
California not for profit corporation,

Petitioners,

v.

DEPARTMENT OF WATER RESOURCES, a
California State Agency, and CENTRAL COAST
WATER AUTHORITY, A Joint Powers Agency

Respondents.

Case No: 95CS03216

**PROPOSED PEREMPTORY
WRIT OF MANDATE**
(Public Resources Code
§ 21168.9)

TO: Respondents California Department of Water Resources and Central Coast
Water Authority:

The Third District Court of Appeal, in its decision in Planning and Conservation
League v. Department of Water Resources (2000) 83 Cal.App.4th 892, having directed this
Court to issue a Peremptory Writ of Mandate,

YOU ARE HEREBY COMMANDED to comply with the following:

1. Respondent Central Coast Water Authority shall set aside its October 26, 1995
certification that the Final Programmatic Environmental Impact Report for Implementation of

the Monterey Agreement (the 1995 Monterey Agreement EIR) was completed in compliance with the California Environmental Quality Act [AR 2183].

2. Respondent Department of Water Resources (DWR) shall:

(a) set aside its December 13, 1995 certification, as responsible agency, that the 1995 Monterey Amendment EIR is adequate under the California Environmental Quality Act [AR 1875]; and

(b) as lead agency, prepare and certify a new EIR. in compliance with the Court of Appeal's decision, the California Environmental Quality Act, and the Settlement Agreement.

3. Upon completion and certification of the new EIR, Respondent DWR shall make written findings and decisions and file a notice of determination identifying the components of the project analyzed in the new EIR, all in the manner prescribed by sections 15091 – 15094 of the CEQA Guidelines.

4. Respondent DWR shall, upon the filing of a Notice of Determination, submit the new EIR, the written findings, the Notice of Determination, and such additional documents as this Court may order by way of return to this writ of mandate.

5. This Court shall retain jurisdiction over this proceeding until DWR files a return that complies with this Writ of Mandate, and this Court issues an order discharging this Writ of Mandate. Except as provided, this Writ of Mandate shall not limit or constrain the lawful jurisdiction and discretion of the Department of Water Resources.

Dated: _____, 2003

Clerk of the Superior Court

Let the foregoing writ issue:

Judge of the Superior Court

EXHIBIT 4

SECTION VI TRUST ACCOUNT AGREEMENT

This Section VI Trust Account Agreement (this "Trust Agreement") is entered into this _____ day of _____ 2003, by JAMS and the State of California Department of Water Resources (the "Department"), for the purposes of establishing and describing the trust account in accordance with that certain Settlement Agreement entered into in *Planning & Conservation League v. Department of Water Resources* ("PCL v. DWR").

WHEREAS, Judge Daniel Weinstein (ret.) of JAMS has acted as mediator between the Department and other parties to the litigation in *PCL v. DWR* (Sacramento Superior Court No. 95CS03216).

WHEREAS, the Settlement Agreement provides for the placement over time of \$5,500,000 in trust with JAMS at the specific times and under the conditions in the Settlement Agreement.

The parties agree as follows:

1. JAMS will establish a trust account for receipt and disbursement of funds received from the Department for payment pursuant to the Settlement Agreement.
2. All funds deposited with JAMS pursuant to this agreement shall be placed into a trust account and shall be disbursed only in accordance with this Trust Agreement and the Settlement Agreement. Section VI of the Settlement Agreement provides that the funds shall be used to implement the Settlement Agreement, as determined by Plaintiffs in their reasonable judgment, including watershed restoration projects, follow-up actions arising from the Settlement Agreement, and technical studies.
3. JAMS agrees to maintain the monies in trust, and after receipt of a written statement executed by all Plaintiffs (as defined in the Settlement Agreement), to disburse funds to Plaintiffs in conformance with such statement. JAMS will provide a copy of the written statement to: Chief Counsel, The Office of the Chief Counsel, Department of Water Resources, P.O. Box 942836, Sacramento, CA 95814.
4. Costs incurred by JAMS in providing this service will be paid as part of the mediator services as part of the existing contract between JAMS and the California Department of Justice, Office of the Attorney General, or any successor contract.
5. This agreement may be amended only in writing by agreement of both parties.
6. Funds not disbursed before termination of this Trust Agreement shall be returned to DWR immediately upon termination of this Trust Agreement.

7. This Trust Agreement shall terminate if and when DWR notifies JAMS that the agreement is terminated, which notice shall not be given without DWR's consultation with Plaintiffs and the mediator.

8. JAMS will incur no liability to DWR arising from any disbursement made pursuant to this agreement.

9. This Trust Agreement is intended solely for the purposes of establishing and describing the trust account at JAMS and is not intended to and shall not create any rights in any third party.

APPROVED:

<hr/> Thomas M. Hannigan Director	<hr/> Date	<hr/> JAMS	<hr/> Date
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ATTACHMENT A

AMENDMENT TO STATE WATER PROJECT CONTRACT

STATE OF CALIFORNIA
THE RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. ____ TO THE WATER SUPPLY CONTRACT
BETWEEN THE STATE OF CALIFORNIA DEPARTMENT
OF WATER RESOURCES AND _____

This amendment is made this ____ day of _____, 2003, pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, hereinafter referred to as the "State", and _____, hereinafter referred to as the "District" [or "Agency"].

RECITALS

WHEREAS, the State and the District entered into and subsequently amended a water supply contract (the "contract") providing that the State shall supply certain quantities of water to the District and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, on December 1, 1994, the State and representatives of certain State Water Project contractors executed a document entitled "Monterey Agreement – Statement of Principles – By The State Water Contractors And The State Of California Department Of Water Resources For Potential Amendments To The State Water Supply Contracts" (the "Monterey Agreement"); and

WHEREAS, the State, the Central Coast Water Authority ("CCWA") and those contractors intending to be subject to the Monterey Agreement subsequently negotiated an amendment to their contracts to implement provisions of the Monterey Agreement, and such amendment was named the "Monterey Amendment"; and

WHEREAS, in October 1995, an environmental impact report ("EIR") for the Monterey Amendment was completed and certified by CCWA as the lead agency, and thereafter the District and the State executed the Monterey Amendment; and

WHEREAS, the EIR certified by the CCWA was challenged by several parties (the "Plaintiffs") in the Sacramento County Superior Court and thereafter in the Third District Court of Appeal, resulting in a decision in *Planning and Conservation League, et al. v. Department of*

Water Resources, 83 Cal.App.4th 892 (2000), which case is hereinafter referred to as “PCL v. DWR”; and

WHEREAS, in its decision, the Court of Appeal held that (i) the Department of Water Resources (“DWR”), not CCWA, had the statutory duty to serve as lead agency, (ii) the trial court erred by finding CCWA’s EIR sufficient despite its failure to discuss implementation of Article 18, subdivision (b) of the State Water Project contracts, as a no-project alternative, (iii) said errors mandate preparation of a new EIR under the direction of DWR, and (iv) the trial court erroneously dismissed the challenge to DWR’s transfer of title to certain lands to Kern County Water Agency (the “Validation Cause of Action”) and execution of amended State Water Project contracts for failure to name and serve indispensable parties. The Court of Appeal remanded the case to the trial court, ordering it to take the following five actions: (1) vacate the trial court’s grant of the motion for summary adjudication of the Validation Cause of Action; (2) issue a writ of mandate vacating the certification of the EIR; (3) determine the amount of attorney fees to be awarded Plaintiffs; (4) consider such orders it deems appropriate under Public Resources Code Section 21168.9(a) consistent with the views expressed in the Appellate Court’s opinion; and (5) retain jurisdiction over the action until DWR, as lead agency, certifies an environmental impact report in accordance with CEQA standards and procedures, and the Superior Court determines that such environmental impact report meets the substantive requirements of CEQA; and

WHEREAS, the State, the contractors, and the Plaintiffs in *PCL v. DWR* reached an agreement to settle *PCL v. DWR*, as documented by that certain Settlement Agreement dated _____, 2003 (the “Settlement Agreement”), and in such Settlement Agreement have agreed that the contracts should be amended, for clarification purposes, to delete terms such as “annual entitlement” and “maximum annual entitlement” so that the public, and particularly land use planning agencies, will better understand the contracts; and

WHEREAS, pursuant to the Settlement Agreement, the State and the District desire to so amend the District’s contract, with the understanding and intent that the amendments herein with respect to subsections (m), (n), and (o) of Article 1, subsection (b) of Article 6, and subsection (a) of Article 16, and to Table A of the District’s contract are solely for clarification purposes and that such amendments are not intended to and do not in any way change the rights, obligations or limitations on liability of the State or the District established by or set forth in the contract; and

WHEREAS, pursuant to the Settlement Agreement, the State, the contractors and the Plaintiffs in *PCL v. DWR* also agreed that the contracts should be amended to include a new Article 58 addressing the determination of dependable annual supply of State Water Project water to be made available by existing Project facilities, and the State and District desire to so amend the District’s contract.

NOW THEREFORE, IT IS MUTUALLY AGREED, as follows:

1. Article 1(n) is amended to read:¹

(n) Annual Table A Amount

“Annual Table A Amount” shall mean the amount of project water set forth in Table A of this contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the District at the delivery structures provided for the District. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the District. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions the District will receive its full Annual Table A Amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the District. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term “annual entitlement” appears elsewhere in this contract, it shall mean “Annual Table A Amount.” The State agrees that in future amendments to this and other contractor’s contracts, in lieu of the term “annual entitlement,” the term “Annual Table A Amount” will be used and will have the same meaning as “annual entitlement” wherever that term is used.

2. Article 1(o) is amended to read:

(o) Maximum Annual Table A Amount

“Maximum annual entitlement” shall mean the maximum annual amounts set forth in Table A of this contract, and where the term “maximum annual entitlement” appears elsewhere in this contract it shall mean “Maximum Annual Table A Amounts.”

3. Article 1(m) is amended to read:

(m) Minimum Project Yield

“Minimum project yield” shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project’s capability of providing the minimum project yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors including but not limited to: (1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts

¹ The number of the articles is not the same for all the Water Supply Contractors. Article 1(n) is intended to be the article presently entitled “Annual Entitlement”, whatever its number may be in each District’s contract. The article numbers may have to be changed for each contractor to reflect the numbers in its contract.

for all contractors and the characteristic distributions of demands for these two uses throughout the year; and (2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

4. Article 6(b) is amended to read:

(b) District's Annual Table A Amounts

Commencing with the year of initial water delivery to the District, the State each year shall make available for delivery to the District the amounts of project water designated in Table A of this contract, which amounts shall be subject to change as provided for in Article 7(a) and are referred to in this contract as the District's Annual Table A Amounts.

5. Article 16(a) is amended to read:

(a) Limit on Total of all Maximum Annual Table A Amounts

The District's Maximum Annual Table A Amount hereunder, together with the maximum Table A amounts of all other contractors, shall aggregate no more than 4,185,000 acre-feet of project water.

6. Article 58 is added to read:

58. Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities.

In order to provide current information regarding the delivery capability of existing project conservation facilities, commencing in 2003 and every two years thereafter the State shall prepare and mail a report to all contractors, and all California city, county, and regional planning departments and agencies within the contractors' project service areas. This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor.

7. Add the following language at the bottom of Table A:

In any year, the amounts designated in this Table A shall not be interpreted to mean that the State is able to deliver those amounts in all years. Article 58 describes the State's process for providing current information for project delivery capability.

8. Except for Article 58, the changes made by this amendment are solely for clarification purposes, and are not intended to nor do they in any way change the rights, obligations or

limitations on liability of the State or the District established by or set forth in the contract, and this amendment shall be interpreted in accordance with this intent.

9. At the time of execution of this Agreement and thereafter, the effectiveness of this Amendment is dependent upon the effectiveness of the District's Monterey Amendment (all provisions therein) and the Kern Fan Element Transaction.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date first above written.

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
Name: _____
Title: Director

Approved as to legal form and sufficiency:

By: _____
Name: _____
Title: Chief Counsel

Attest:

_____ **DISTRICT**

By: _____
Name: _____
Title: _____

ATTACHMENT B

PRINCIPLES REGARDING STATE WATER PROJECT AVAILABILITY

Note: These principles are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.

1. Commencing in 2003, and every two years thereafter, the Department of Water Resources (DWR) shall prepare and deliver to all State Water Project (SWP) contractors, all city and county planning departments, and all regional and metropolitan planning departments within the project service area a report which accurately sets forth, under a range of hydrologic conditions, the then existing overall delivery capability of the project facilities and the allocation of that capacity to each contractor. The range of hydrologic conditions shall include the historic extended dry cycle and long-term average. The biennial report shall also disclose, for each of the ten years immediately preceding the report, the total amount of project water delivered and the amount of project water delivered to each contractor. The information presented in each report shall be presented in a manner readily understandable by the public.
2. DWR shall develop and, by January 1, 2004, publish guidelines to assist Municipal and Industrial Contractors in providing accurate information to land-use planning agencies with jurisdiction within the Contractors' respective service areas regarding local and regional programs to manage or supplement SWP supplies. DWR shall consult with the plaintiffs and contractors in developing the guidelines.
3. DWR shall provide assistance to enable all Municipal and Industrial Contractors to provide complete and accurate information to relevant land-use planning agencies to assure that local land-use decisions reflect accurate information on the availability of water from state, local, and other sources.

ATTACHMENT C

DWR GUIDELINES FOR REVIEW OF PROPOSED PERMANENT TRANSFERS OF STATE WATER PROJECT ANNUAL TABLE A AMOUNTS

Note: These guidelines are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.

1. **Purpose:** The purpose of these guidelines is to describe the process for DWR's review of proposed permanent transfers of SWP Annual Table A Amounts and by so doing, provide disclosure to SWP Contractors and to the public of DWR's process and policy on approving permanent transfer of SWP Annual Table A Amounts. Such disclosure should assist contractors in developing their transfer proposals and obtaining DWR review expeditiously, and assist the public in participating in that review.
2. **Coverage:** These guidelines will apply to DWR's approval of permanent transfers of water among existing SWP Contractors and, if and when appropriate, to permanent transfers of water from an existing SWP Contractor to a new SWP Contractor.
3. **Interpretation:** These guidelines are in furtherance of the state policy in favor of voluntary water transfers and shall be interpreted consistent with the law, including but not limited to Water Code Section 109, the Burns-Porter Act, the Central Valley Project Act, the California Environmental Quality Act, area of origin laws, the public trust doctrine, and with existing contracts and bond covenants. These guidelines are not intended to change or augment existing law.
4. **Format:** The guidelines shall be issued by DWR as a "Notice to State Water Contractors."
5. **Revisions:** Revisions may be made to these guidelines as necessary to meet changed circumstances, changes in the law or long-term water supply contracts, or to address conditions unanticipated when the guidelines are adopted. Revisions shall be in accordance with the settlement agreement reached in *Planning and Conservation League vs. Department of Water Resources*.
6. **Distribution:** The transfer guidelines shall be published by DWR in the next available edition of Bulletin 132, and also as part of the biennial disclosure of SWP reliability as described in the PCL v. DWR Settlement Agreement.
7. **Contract Amendment:** Permanent transfers of SWP water are accomplished by amendment of each participating contractor's long-term water supply contract. The amendment consists of amending the Table A upwards for a buying contractor and downwards for a selling contractor. The amendment shall be in conformity with all provisions of the long-term water supply contracts, applicable laws, and bond covenants. Other issues to be addressed in the contract amendment will be subject to negotiation among DWR and the two participating contractors. The negotiations will be conducted in public, pursuant to the settlement agreement in PCL vs. DWR.

8. Financial issues: The purchasing contractor must demonstrate to the DWR's satisfaction that it has the financial ability to assume payments associated with the transferred water. If the purchasing entity was not a SWP Contractor as of 2001, special financial requirements pertain as described below, as well as additional qualifications.

9. Compliance with CEQA: Consistent with CEQA, the State's policy to preserve and enhance environmental quality will guide DWR's consideration of transfer proposals (Public Resources Code Section 21000). Identification of the appropriate lead agency will be based on CEQA, the CEQA Guidelines, and applicable caselaw, including *Planning and Conservation League vs. Department of Water Resources*, 83 Cal. App. 4th 892 (2000). CEQA requires the lead agency at a minimum to address the feasible alternatives to the proposed transfer and its potentially significant environmental impacts (1) in the selling contractor's service area; (2) in the buying contractor's service area; (3) on SWP facilities and operations; and (4) on the Delta and areas of origin and other regions as appropriate. Impacts that may occur outside of the transferring SWP Contractors' service areas and on fish and wildlife shall be included in the environmental analysis. DWR will not approve a transfer proposal until CEQA compliance is completed. The lead agency shall consult with responsible and trustee agencies and affected cities and counties; and when DWR is not the lead agency, shall provide an administrative draft of the draft EIR or Initial Study/Negative Declaration to DWR prior to the public review period. A descriptive narrative must accompany a checklist, if a checklist is used. The lead agency shall conduct a public hearing on the EIR during the public comment period and notify DWR's State Water Project Analysis Office of the time and place of such hearing in addition to other notice required by law.

10. Place of Use: The purchasing contractor must identify the place and purpose of use of the purchased water, including the reasonable and beneficial use of the water. Typically this information would be included in the environmental documentation. If a specific transfer proposal does not fit precisely into any of the alternatives listed below, DWR will use the principles described in these Guidelines to define the process to be followed. The information to be provided under this paragraph is in addition to the CEQA information described in paragraph 9 of these guidelines.

a) If the place of use is within the contractor's service area, the contractor should disclose the purpose of the transferred water, such as whether the water is being acquired for a specific development project, to enhance overall water supply reliability in the contractor's service area, or some other purpose. If the transferred water is for a municipal purpose, the contractor should state whether the transfer is consistent with its own Urban Water Management Plan or that of its member unit(s) receiving the water.

b) If the place of use is outside the contractor's service area, but within the SWP authorized place of use, and service is to be provided by an existing SWP Contractor: In addition to Paragraph 10(a) above, the contractor should provide DWR with copies of LAFCO approval and consent of the water agency with authority to serve that area, if any. In some instances, DWR's separate consent is required for annexations in addition to the approval for the transfer.

c) If the place of use is outside the SWP authorized place of use and service is to be provided by an existing SWP Contractor, the contractor should provide information in Paragraph 10(a) and 10(b). Prior to approving the transfer, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

d) If the place of use is outside the SWP authorized place of use and service is not to be provided by an existing SWP contractor, DWR will consider the transfer proposal as a proposal to become a new state water contractor. Prior to adding a new SWP Contractor, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. DWR will consult with existing SWP Contractors regarding their water supply needs and the proposed transfer. In addition to the information in Paragraph 10(a), 10(b), and 10(c), the new contractor should provide information similar to that provided by the original SWP contractors in the 1960's Bulletin 119 feasibility report addressing hydrology, demand for water supply, population growth, financial feasibility, etc. DWR will evaluate these issues independently and ordinarily will act as lead agency for CEQA purposes. In addition, issues such as area of origin claims, priorities, environmental impacts and use of water will be addressed. The selling contractor may not be released from financial obligations. The contract will be subject to a CCP 860 validation action initiated by the new contractor. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

11, DWR Discretion. Consistent with the long-term water supply contract provisions, CEQA, and other provisions of law, DWR has discretion to approve or deny transfers. DWR's exercise of discretion will incorporate the following principles:

(a) As required by CEQA, DWR as an agency with statewide authority will implement feasible mitigation measures for any significant environmental impacts resulting from a transfer, if such impacts and their mitigation are not addressed by other public agencies and are within DWR's jurisdiction.

(b) DWR will invoke "overriding considerations" in approving a transfer only as authorized by law, including but not limited to CEQA, and, to the extent applicable, the public trust doctrine and area of origin laws.

ATTACHMENT D

PRINCIPLES REGARDING PUBLIC PARTICIPATION PROCESS IN SWP CONTRACT NEGOTIATIONS

Note: These principles are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.

- 1. Policy:** Given the importance of the State Water Project to the State of California, and the key role that the long-term water supply contracts play in the administration of the State Water Project, DWR agrees that public review of significant changes to these contracts is beneficial and in the public interest.
- 2. Types of activities to be covered:** Project-wide contract amendments (i.e., contracts with substantially similar terms intended to be offered to all long-term SWP Contractors) and contract amendments to transfer entitlements between existing SWP Contractors will not be offered to the contractors for execution unless DWR has first complied with the public participation process as described in paragraphs (3), (4), (5) and (6).
- 3. The Public Participation Process.**
 - 1) Negotiations will be conducted in public;
 - 2) The public will be provided with advance notice of the time and place of the negotiations;
and
 - 3) The public will be provided the opportunity to observe negotiations and comment in each negotiating session
- 4. Timing of Public Participation:** Public participation ordinarily will precede the formulation of the project description in the CEQA process in order to assure that the public participation is meaningful. When DWR is a responsible agency, (e.g., when existing SWP Contractors agree to transfer entitlement between themselves), the public participation will be scheduled to facilitate coordination with the lead agency's CEQA process.
- 5. Activities that will not be subject to public participation:** Informal discussions prior to exchange of formal drafts and discussion of topics that are authorized to be kept confidential by law will not be subject to the public participation process.
- 6. Contract amendments resulting from litigation:** If litigation has been formally initiated, and settlement negotiations result in a proposal to adopt project-wide amendments to settle the litigation, all proposed contract amendments shall be subject to the public participation process before they are approved by DWR.

ATTACHMENT E

**FINAL PERMANENT TABLE A AMOUNT TRANSFERS FROM KERN COUNTY
WATER AGENCY SUBSEQUENT TO MONTEREY AMENDMENTS
(January 1, 2003)**

Note: This Exhibit is prepared in connection with the settlement agreement between PCL and DWR.

From (Kern County Water Agency Member Unit)	To	Amount (afy)	Year Effective
Berrenda Mesa Water District	Mojave Water Agency	25,000	1998
Belridge Water Storage District	Palmdale Water Agency	4,000	2000
Berrenda Mesa Water District	Alameda County Flood Control and Water Conservation District Zone 7	7,000	2000
Lost Hills Water District	Alameda County Flood Control and Water Conservation District Zone 7	15,000	2000
Belridge Water Storage District	Alameda County Flood Control and Water Conservation District Zone 7	10,000	2001
Belridge Water Storage District and Berrenda Mesa Water District	Solano County Water Agency	5,756	2001
Belridge Water Storage District and Berrenda Mesa Water District	Napa County Flood Control and Water Conservation District	4,025	2001

EXHIBIT 1

PLAINTIFFS' EXPENSES TRUST ACCOUNT AGREEMENT

This Agreement is entered into this fifteenth day of August 2002, by JAMS and DWR, for the purpose of transferring \$300,000 in trust to JAMS for use in accordance with Principles of Settlement in PCL vs. DWR.

WHEREAS, JAMS has acted as mediator between the Department and other parties to the litigation in PCL v. DWR (Superior Court No. 95CS03216).

WHEREAS, the Principles of Settlement as agreed to by the parties on July 22, 2002, provides for the placement of \$300,000 in trust with JAMS.

WHEREAS, the money placed in the trust is to be provided to plaintiffs for expenses actually incurred as needed to support plaintiffs' participation in developing the new EIR to be filed as a return to the writ.

WHEREAS, the Principles of Settlement also provides that the funds will be provided based on a budget and participation plan to be submitted by plaintiffs to the mediator specifying the purposes for which the funds will be expended.

The parties agree as follows:

1. JAMS agrees to accept \$300,000 in trust in accordance with the Principles of Settlement.
2. JAMS agrees to maintain the monies in trust, and following receipt of a budget and participation plan from plaintiffs, to disburse funds to plaintiffs for actual expenditures incurred for such purpose and pursuant to such schedule, budget, and participation plan, all in conformance with the Principles of Settlement. The funds will be disbursed to the plaintiffs' attorney, Antonio Rossmann, Law Offices of Antonio Rossmann.
3. Costs incurred by JAMS in providing this service will be paid as part of the mediator services as part of the existing contract between JAMS and the California Department of Justice, Office of the Attorney General.
4. This agreement may be amended in writing by agreement of both parties.
5. Funds not disbursed upon termination of the trust shall be returned to DWR.
6. The trust shall terminate upon notice to JAMS by DWR of termination based on the earlier of (a) failure of the parties to the mediation to execute a settlement agreement by January 1, 2003; (b) notice of termination given by the Director of DWR to JAMS and plaintiffs that this trust is terminated, which notice shall not be given without

defendants' consultation with plaintiffs and the mediator; or c) filing of the Notice of Determination on the new EIR.

7. JAMS will incur no liability to DWR arising from any disbursement made pursuant to this agreement.
8. This agreement is not intended to and shall not create any rights in any third party.

APPROVED:

/s/ Steve Macaulay for
Thomas M. Hannigan
Director

8/10/02
Date

/s/ Julie Sager
Vice President & CFO
JAMS

8/15/02
Date

EXHIBIT 1

AMENDMENT NO. 1

PLAINTIFFS' EXPENSES TRUST ACCOUNT AGREEMENT

Paragraph 6 of this Agreement is amended to read as follows:

6. The trust shall terminate upon notice to JAMS by DWR of termination based on the earlier of (a) failure of the parties to the mediation to execute a settlement agreement by May 1, 2003, (b) notice of termination given by the Director of DWR to JAMS and plaintiffs that this trust is terminated, which notice shall not be given without defendants' consultation with plaintiffs and the mediator; or (c) filing of the Notice of Determination on the new EIR.

APPROVED:

Thomas M. Hannigan
Director

Date

JAMS

Date

EXHIBIT 2

**KERN WATER BANK AUTHORITY
AGREEMENTS AND PERMITS
WHICH MAY HAVE RELIED ON THE KWBA ADDENDUM**

AGREEMENT/PERMIT	DATE	OTHER PARTIES
Incidental Take Permit - PRT-828086	2-Oct-97	Department of Interior, U.S. Fish & Wildlife Service
Approval/Management Authorization pursuant to California Endangered Species Act for Implementation of Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan	2-Oct-97	Calif. Department of Fish & Game
Natural Community Conservation Plan/Habitat Conservation Plan Implementation Agreement	2-Oct-97	U.S. Fish & Wildlife Service; Calif Dept of Fish & Game; Kern Water Bank Authority
Approval, Cultural Resources Assessment and Plan for the KWBA Project	January, 1997	N/A
Memorandum of Understanding Regarding Operation and Monitoring of the Kern Water Bank Groundwater Banking Program	26-Oct-95	Numerous
Approval of Kern Water Bank Authority Mosquito Abatement Program	26-Oct-95	Mosquito Abatement Districts
Service Contracts for Operations and Maintenance	1996 - current	Numerous Vendors
Grazing Leases (Sheep and Cattle)	1997- current	Various Stockmen
Minor Amendment No. 1: Hunting/Research to the KWBA HCP/NCCP and Implementation Agreement	6/30/1998	California Department of Fish and Game and U.S. Fish and Wildlife Service
State of California Standard Agreement for "Improving Wildlife Habitat for Doves" (annual contract)	1998 - current	Calif. Department of Fish and Game
Conservation Credit Certificates	1998 - current	Conservation Credit Buyers
Construction and Service Contracts for Master Plan Construction Project - KWB Canal, Head-works, Aqueduct Turnout, New Wells, Well Rehabilitation, Pipelines	7/1999 - 8/2002	Numerous Contractors and Vendors
KWBA Canal and Buena Vista Main Canal Joint Use Agreement	7/20/1999	Buena Vista Water Storage District

AGREEMENT/PERMIT	DATE	OTHER PARTIES
Business Loan Agreement (\$21,000,000)	7/23/1999	Bank of America, N.A.
Agreement for Grant of Easement	September 1999	State of California Acting Through the Department of Parks and Recreation
Agreement for Construction, Operation, and Maintenance of the Kern Water Bank Turnout, a Permanent Turnout Within the California Aqueduct Right of Way	11/9/1999	Department of Water Resources
License Agreement for Kern River Canal Crossing	11/17/1999	City of Bakersfield
Loan Contract No. E75002 Under the "Safe, Clean, Reliable Water Supply Act Water Conservation and Ground Water Recharge Sub account (\$5,000,000)	March 2000	State of California, Department of Water Resources, Division of Planning and Local Assistance
Reclamation Board Permit No. 17147-A GM Authorizing Construction of Pedestrian Bridge Across the Outlet Canal within the Kern River Designated Floodway	10/16/2000	State of California - The Resources Agency, Department of Water Resources
Reclamation Board Permit No. 16821 GM (Revised) Authorizing Construction of a 20-foot Wide Unlined Canal and Reinforced Concrete Gated Turnout Structure on the Right (North) Bank of the Designated Floodway and Install a 108-inch Diameter, 700-foot long, Reinforced Concrete Pipe Across (Under the Kern River	2/26/2001	State of California - The Resources Agency, Department of Water Resources
Grant Awarded Under the "Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act (Proposition 13) - Groundwater Storage Program (\$3,375,000)	Jun-02	State of California, Department of Water Resources, Division of Planning and Local Assistance
Service Contracts for Well Testing and Rehabilitation Under the SB5X Program	2002	Various Vendors

EXHIBIT 3-A

PROPOSED 21168.9 ORDER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

PLANNING AND CONSERVATION LEAGUE,
a California not for profit corporation, PLUMAS
COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, a California
public agency; CITIZENS PLANNING
ASSOCIATION OF SANTA BARBARA
COUNTY, INC., a California not for profit
corporation,

Plaintiffs and Petitioners,

v.

DEPARTMENT OF WATER RESOURCES, a
California State Agency, et al.,

Defendants and Respondents,

Case No: 95CS03216

[PROPOSED] ORDER PURSUANT TO
PUBLIC RESOURCES CODE
SECTION 21168.9

On remand from the Third District Court of Appeal on January ___, 2003, in Department 53 of the Sacramento Superior Court, the Honorable Loren E. McMaster, presiding, this proceeding came on for a status report and joint motion. Petitioners and Plaintiffs, Planning and Conservation League, Plumas County Flood Control and Water Conservation District, and Citizens Planning Association of Santa Barbara County (“Petitioners”), appeared through Antonio Rossmann and Roger B. Moore. Respondent and Defendant, Central Coast Water Authority (CCWA), appeared through Susan F. Petrovich of the Law Firm of Hatch & Parent. Respondent and Defendant, Department of Water Resources (DWR), appeared through Deputy Attorney General Marian E. Moe. Robert S. Draper of O’Melveny and Myers, LLP and Clifford W. Schulz appeared, respectively, on behalf of the Metropolitan Water District of Southern California and Dudley Ridge Water District, entities that submitted answers to the First

Amended Complaint subsequent to the Court of Appeal's final determination in this action and prior to any further order of this Court on remand.

In light of the direction from the Third District Court of Appeal on remand in *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, this Court hereby makes the following findings:

1. The parties to this lawsuit and other public agencies have engaged in extensive settlement negotiations, mediated by retired Judge Daniel Weinstein of JAMS Dispute Resolution, with the intent to avoid further litigation and associated expenses, to provide for an effective way to cooperate in the preparation of a new environmental impact report (EIR), and to make other specified improvements in the administration and operation of the State Water Project.

2. The mediation has resulted in an executed Settlement Agreement for approval by this Court, attached to this Order as Exhibit A.

3. DWR as lead agency has commenced the preparation of the new EIR.

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

5. This Order is made pursuant to the provisions of Public Resources Code section 21168.9 and pursuant to this Court's equitable powers. This Court finds that the actions described in this Order, including actions taken in compliance with the Writ of Mandate, comprise the actions necessary to assure DWR's compliance with Division 13 of the Public Resources Code. This Court further finds that this Order includes only those mandates necessary to achieve compliance with Division 13.

THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Court's Final Judgment denying the petition for writ of mandate, entered August 15, 1996, is reversed in accordance with the directive of the Third District Court of Appeal's decision in *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892.

2. This Court's order granting the summary adjudication on the fifth cause of action, entered June 10, 1996, is vacated.

3. The Settlement Agreement attached as Exhibit A is hereby approved.

4. A Peremptory Writ of Mandate directed to Respondents Central Coast Water Authority and DWR shall issue under seal of this Court in the form attached hereto as Exhibit B.

5. In accordance with the Settlement Agreement and this Order, pending DWR's filing of the return in compliance with the Peremptory Writ of Mandate and this Court's Order discharging the Writ of Mandate, DWR and CCWA shall not approve any new project or activity (as defined section VII.A of the Settlement Agreement) in reliance on the 1995 EIR for the Implementation of the Monterey Agreement.

6. In the interim, until DWR files its return in compliance with the Peremptory Writ of Mandate and this Court orders discharge of the Writ of Mandate, the administration and operation of the State Water Project and Kern Water Bank Lands shall be conducted pursuant to the Monterey Amendments to the State Water Contracts, as supplemented by the Attachment A Amendments to the State Water Contracts (as defined in the Settlement Agreement) and the other terms and conditions of the Settlement Agreement.

7. Plaintiffs and petitioners shall recover such costs and attorney's fees as provided in prior court orders and in an amount as determined in the arbitration procedures agreed to in the Settlement Agreement, or as otherwise agreed to by the parties.

8. Except as provided, the Peremptory Writ of Mandate shall not limit or constrain the lawful jurisdiction and discretion of DWR. This Court retains jurisdiction until DWR files a

return that complies with the terms of the Writ of Mandate, and this Court issues an order discharging the Writ of Mandate.

IT IS SO ORDERED.

Dated: _____, 2003 _____

Judge of the Superior Court

EXHIBIT 3-B

PROPOSED WRIT OF MANDATE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

PLANNING AND CONSERVATION LEAGUE, a
California not for profit corporation, PLUMAS
COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT, a California public
agency; CITIZENS PLANNING ASSOCIATION
OF SANTA BARBARA COUNTY, INC., a
California not for profit corporation,

Petitioners,

v.

DEPARTMENT OF WATER RESOURCES, a
California State Agency, and CENTRAL COAST
WATER AUTHORITY, A Joint Powers Agency

Respondents.

Case No: 95CS03216

PROPOSED PEREMPTORY
WRIT OF MANDATE
(Public Resources Code
§ 21168.9)

TO: Respondents California Department of Water Resources and Central Coast
Water Authority:

The Third District Court of Appeal, in its decision in Planning and Conservation
League v. Department of Water Resources (2000) 83 Cal.App.4th 892, having directed this
Court to issue a Peremptory Writ of Mandate,

YOU ARE HEREBY COMMANDED to comply with the following:

1. Respondent Central Coast Water Authority shall set aside its October 26, 1995
certification that the Final Programmatic Environmental Impact Report for Implementation of

the Monterey Agreement (the 1995 Monterey Agreement EIR) was completed in compliance with the California Environmental Quality Act [AR 2183].

2. Respondent Department of Water Resources (DWR) shall:

(a) set aside its December 13, 1995 certification, as responsible agency, that the 1995 Monterey Amendment EIR is adequate under the California Environmental Quality Act [AR 1875]; and

(b) as lead agency, prepare and certify a new EIR. in compliance with the Court of Appeal's decision, the California Environmental Quality Act, and the Settlement Agreement.

3. Upon completion and certification of the new EIR, Respondent DWR shall make written findings and decisions and file a notice of determination identifying the components of the project analyzed in the new EIR, all in the manner prescribed by sections 15091 – 15094 of the CEQA Guidelines.

4. Respondent DWR shall, upon the filing of a Notice of Determination, submit the new EIR, the written findings, the Notice of Determination, and such additional documents as this Court may order by way of return to this writ of mandate.

5. This Court shall retain jurisdiction over this proceeding until DWR files a return that complies with this Writ of Mandate, and this Court issues an order discharging this Writ of Mandate. Except as provided, this Writ of Mandate shall not limit or constrain the lawful jurisdiction and discretion of the Department of Water Resources.

Dated: _____, 2003

Clerk of the Superior Court

Let the foregoing writ issue:

Judge of the Superior Court

EXHIBIT 4

SECTION VI TRUST ACCOUNT AGREEMENT

This Section VI Trust Account Agreement (this "Trust Agreement") is entered into this _____ day of _____ 2003, by JAMS and the State of California Department of Water Resources (the "Department"), for the purposes of establishing and describing the trust account in accordance with that certain Settlement Agreement entered into in *Planning & Conservation League v. Department of Water Resources* ("PCL v. DWR").

WHEREAS, Judge Daniel Weinstein (ret.) of JAMS has acted as mediator between the Department and other parties to the litigation in *PCL v. DWR* (Sacramento Superior Court No. 95CS03216).

WHEREAS, the Settlement Agreement provides for the placement over time of \$5,500,000 in trust with JAMS at the specific times and under the conditions in the Settlement Agreement.

The parties agree as follows:

1. JAMS will establish a trust account for receipt and disbursement of funds received from the Department for payment pursuant to the Settlement Agreement.
2. All funds deposited with JAMS pursuant to this agreement shall be placed into a trust account and shall be disbursed only in accordance with this Trust Agreement and the Settlement Agreement. Section VI of the Settlement Agreement provides that the funds shall be used to implement the Settlement Agreement, as determined by Plaintiffs in their reasonable judgment, including watershed restoration projects, follow-up actions arising from the Settlement Agreement, and technical studies.
3. JAMS agrees to maintain the monies in trust, and after receipt of a written statement executed by all Plaintiffs (as defined in the Settlement Agreement), to disburse funds to Plaintiffs in conformance with such statement. JAMS will provide a copy of the written statement to: Chief Counsel, The Office of the Chief Counsel, Department of Water Resources, P.O. Box 942836, Sacramento, CA 95814.
4. Costs incurred by JAMS in providing this service will be paid as part of the mediator services as part of the existing contract between JAMS and the California Department of Justice, Office of the Attorney General, or any successor contract.
5. This agreement may be amended only in writing by agreement of both parties.
6. Funds not disbursed before termination of this Trust Agreement shall be returned to DWR immediately upon termination of this Trust Agreement.

7. This Trust Agreement shall terminate if and when DWR notifies JAMS that the agreement is terminated, which notice shall not be given without DWR's consultation with Plaintiffs and the mediator.

8. JAMS will incur no liability to DWR arising from any disbursement made pursuant to this agreement.

9. This Trust Agreement is intended solely for the purposes of establishing and describing the trust account at JAMS and is not intended to and shall not create any rights in any third party.

APPROVED:

Thomas M. Hannigan
Director

Date

JAMS

Date

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
HON. OLIVER W. WANGER, JUDGE

NATURAL RESOURCES DEFENSE
COUNCIL, et al.,

Plaintiffs,

vs.

DIRK KEMPTHORNE, Secretary,
U.S. Department of the Interior,
et al.

Defendants.

No. 05-CV-1207-OWW

HEARING RE INTERIM REMEDIES
RULING

Fresno, California

Friday, August 31, 2007

REPORTER'S PARTIAL TRANSCRIPT OF PROCEEDINGS

Reported by: KAREN LOPEZ, Official Court Reporter

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Defendants:

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Somach, Simmons & Dunn
BY: JACQUELINE L. McDONALD
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Third Floor
Sacramento, CA 95814-2403

1 Friday, August 31, 2007

Fresno, California

2 5:14 p.m.

3 THE COURT: All right. I'm going to start by
4 reviewing the law that applies in this proceeding. And as I
5 have said, based on the recent amendment by way of supplement
6 to the complaint, we have action that is alleged to be
7 unlawful or omission by an agency of the United States, the
8 DWR. I'm sorry, the Bureau of Reclamation as well as the
9 Department of the Interior. That the way in which the Central
10 Valley Project is being operated is both presenting present
11 jeopardy to the survival and recovery of the species and that
12 it is also impairing the critical habitat of the species.

13 And the ESA prohibits agency action that is likely to
14 jeopardize a continued existence of any listed species, and in
15 this case, the Delta smelt is listed as a threatened species.
16 And the regulations, that's 16 United States Code, Section
17 1536(a)(2) referred to as Section 7 of the ESA, 7(a)(2)
18 violation.

19 And the regulations that are at 50 CFR, Section
20 402.02 provide that this law prohibits any agency action that
21 reasonably would be expected, directly or indirectly, to
22 reduce appreciably the likelihood of both the survival and
23 recovery of a listed species in the wild.

24 The word "jeopardize" or "jeopardy" as it is used in
25 the act means to engage in an action that reasonably would be

1 expected, directly or indirectly, to reduce appreciably the
2 likelihood of both the survival and recovery of a listed
3 species in the wild by reducing the reproduction numbers or
4 distribution of that species.

5 The complaint also sought and a summary judgment in
6 the case has been entered that essentially found the 2004/2005
7 biological opinion that covered the operation of the OCAP for
8 the, if you will, day-to-day running of these coordinated
9 projects and operations of the State Water Project and the
10 Central Valley Project. That finding was that the biological
11 opinion was unlawful, arbitrary and capricious for the reasons
12 that are stated and they don't need to be stated now because
13 that has already been decided.

14 The further finding was that the decision of, in
15 addition to the biological opinion, that the remedial action
16 measures that had been adopted as part of that decision and
17 belated actions and also a take limit that has been
18 established as required by the Endangered Species Act was also
19 invalid.

20 After those findings, the Court set, in consultation
21 with the parties, this evidentiary hearing, which has now
22 consumed eight full court days, to determine what remedies, if
23 any, should be imposed by the Court to address the unlawful
24 actions by the Department of the Interior and the Bureau of
25 Reclamation, the latter is the action agency.

1 The State Department of Water Resources, which is a
2 coordinated operator of the State Water Project, which is
3 operated in tandem and cooperatively with the federal project
4 and, as the parties all know, the federal project has state
5 permits for its water entitlements that are used to perform
6 its operations both of water service, that is performed under
7 contract to water districts, who in turn have members who
8 contract for water.

9 And we have constituencies here, not only San Luis
10 and Delta-Mendota Water Authority, Westlands Water District,
11 Del Puerto Water District, Glenn-Colusa Irrigation District.

12 We have the State Water Contractors, who include not
13 only contracting districts, but also municipal and industrial
14 agencies who provide water service that isn't for agricultural
15 purposes, it is for municipal purposes.

16 And additional to those parties are the Farm Bureau,
17 who we have just heard from.

18 In addressing the remedial approach to the case, the
19 plaintiffs have sought initially for the invalidation of the
20 biological opinion and a vacatur of the take standards and all
21 aspects of the biological opinion. Today in argument, they
22 offered that if -- and I interpret the offer as a conditional
23 offer, the condition being that if the Court were to pronounce
24 and apply the remedies that are in the revised recommended
25 interim protection actions for Delta smelt that Dr. Swanson

1 has authored, if all of those are adopted as a remedy in the
2 case pending the reconsultation, remand and, if you will, the
3 correction and/or repromulgation of a lawful biological
4 opinion, that that would be acceptable to the plaintiffs.

5 The federal defendants have, after taking the initial
6 position that there was no entitlement to relief because there
7 were no violations of law, they haven't waived those
8 positions, say that if there are remedies to be imposed, that
9 for all the reasons that have been stated by their witnesses,
10 primarily Cay Goude, that the five featured action matrix
11 should be pronounced by the Court to be a remedy that is to be
12 operative in the interim period between today and the time
13 that a lawful biological opinion is issued concerning the OCAP
14 for the Central Valley Project and the State Water Project.

15 The Department of Water Resources, as intervenor,
16 essentially for the reasons stated by Mr. Lee, agrees with the
17 proposed action matrix of the Fish & Wildlife Service and
18 would modify to make, if you will, less stringent the flow or
19 water consumption requirements.

20 The State Water Contractors, without waiving their
21 position that the original BiOp was lawful and that no
22 remedies are needed, have proposed an alternative three-tiered
23 remedial approach. And they do not agree with the Fish &
24 Wildlife Service, I'm just going to call it the federal
25 defendants' proposed remedy and/or the modification to that

1 remedy proposed by the Department of Water Resources.

2 The Delta-Mendota Water Authority and Westlands Water
3 District intervenors, one, do not believe the BiOp is
4 unlawful, have not waived that position. They, joined by the
5 Farm Bureau, take the essential position that the evidence in
6 this proceeding, through Dr. Miller's testimony, has
7 established that there are a number of causes for the decline
8 of the Delta smelt, including but not limited to toxicity,
9 predation, the disappearance or reduction of the food supply
10 caused in material part by the invasion of alien species,
11 primarily two types of clam that filter the planktonic
12 organisms that are the food supply to the smelt, among others.

13 They also believe that In-Delta actions by other
14 diverters, who are not under the direct control or operation
15 of either the state agencies and meteorological conditions,
16 such as storms, winds, temperature changes and the like, all
17 have effects on the movement, the existence, the location and
18 the health of the species.

19 And so the San Luis and Westlands defendants agree to
20 nothing and essentially do not support any remedy. They say
21 there should be no remedy because the projects have no causal
22 relation that is significant to any of the problems the smelt
23 is now encountering or has encountered.

24 The Farm Bureau takes the same position, but
25 arguendo, if a remedy is going to be imposed, support the

1 federal defendants' five point action matrix as modified by
2 the Department of Water Resource proposals.

3 This case is also brought under Title 5 United States
4 Code, Section 702, et seq. United States Administrative
5 Procedure Act and it addresses action by an agency of the
6 United States that is arbitrary, capricious or unlawful, which
7 requires the intervention of Court to make such a finding.

8 And Mr. Wall was very accurate in his recitation of
9 the law. It is not the function nor necessarily the
10 jurisdictional authority. It might be the prerogative, but in
11 the eyes of this Court, deference is required by law to an
12 agency that has the expertise, the competence and the legal
13 charge that is essentially invested by the elected
14 representatives of the people who make the laws and then
15 charge experts in the executive branch to carry out the
16 functions of the agency, here the operation of the projects.

17 And so a judge, who is neither a scientist, a
18 biologist, an administrator or elected by the people,
19 ordinarily is confined to determining the legality of actions
20 and, if necessary, and appropriate -- and here, I take it that
21 because of the alternative positions that are taken by the
22 governments, and I'm more concerned with that of the federal
23 defendants because by their consent and waiver of any Eleventh
24 Amendment immunity, the state is here, they have acquiesced to
25 the jurisdiction and authority of the Court, there by removing

1 the jurisdictional objection.

2 My understanding is that by the position that the
3 United States has taken, they are in effect impliedly, if not
4 expressly consenting to the imposition of a remedy,
5 particularly one without waiving their legal position as to
6 the propriety and legality of their actions as to the BiOp.

7 And also with respect to any finding on the issues of
8 remand, vacatur and the status of the take limits, as I
9 understand the government position, their preference is to
10 consent to a remedy rather than face a remand with vacatur
11 where there will be no effective biological opinion or take
12 limits.

13 And we have looked for some time now at the law and
14 we have asked the parties to provide the law, and no party has
15 provided the law that says that the 1995 biological opinion,
16 which has obviously been superseded by the government's
17 2004/2005 BiOp. The Court has no understanding that it would
18 have the authority to, if you will, resurrect what is a
19 superseded and obviously outdated, and, if the current one is
20 unlawful, it has to be more unlawful than the current BiOp,
21 recognizing that the take limits in the '95 BiOp were 55,227
22 up to 224,409 Delta smelt per year in a dry year.

23 The current incidental take limit was 70,500 and, as
24 the parties all know, nobody knows what the population of the
25 species is, but the '05 BiOp could approach it and the '95

1 take limit very well could exceed it.

2 We have uncontradicted testimony of some experts on
3 the plaintiff side, Dr. Swanson, Ms. Goude, Dr. Hanson, even
4 Dr. Miller told us that the species is in a critical state.
5 It could become extinct within a year and it could become
6 extinct if everything that anybody's asked for here was
7 implemented, it could still become extinct if we put all these
8 measures into effect.

9 It appears to the Court, based on the facts most of
10 which have been discussed by counsel, that the most
11 responsible and the most prudent decision is -- and there's no
12 question that the BiOp has to be remanded and consultation has
13 been reinitiated for repromulgation in lawful form. And so
14 that is one of the remedies that the Court is going to order.

15 The next issue is whether the BiOp is remanded with
16 or without vacatur. And that then presents the Court with the
17 question do we leave the status quo, because the temporary
18 restraining order in this case was not granted and the
19 voluntary pumping cessation, or reduction would be the better
20 description, ended in June.

21 Do we leave the status quo where the agency is left
22 to manage the projects without any intervention by the Court
23 or does the Court impose, with the express or implied consent
24 of the action agencies, remedies that will address the Section
25 7(a) issues of the jeopardy to the species, its survival and

1 recovery, and the impairment or alteration of its critical
2 habitat.

3 And in looking at this question, I asked the parties
4 to consult among themselves and to determine if there was a
5 result they could reach that we could all be proud of. And
6 that effort apparently has not been one that has come to
7 fruition.

8 And so it devolves to the Court to determine what the
9 result should be now with regard to the issue of vacatur or
10 non-vacatur. And in the final analysis, the Court is
11 persuaded by science, which it must be, because the law
12 requires that the best available science be brought to bear on
13 the issues that are presented.

14 As the Court noted and the plaintiffs in their brief
15 on remedies repeated, the law doesn't give the Court a choice.
16 If the Court sees that agency action or inaction not only
17 threatens, but doesn't have to bring it to extinction, but has
18 that potential, then the law requires intervention. There
19 must be action taken by the Court.

20 In this case, given the history, which I have alluded
21 to earlier, that the approach the agencies were taking and
22 here the Court believes that the evidence shows that the
23 Department of Water Resources of the state essentially
24 deferred to the Bureau of Reclamation and Department of the
25 Interior for it to implement the Delta Smelt Recovery Action

1 Plan and the Delta Smelt Working Group, Water Operations
2 Management Team and the agency heads have certainly addressed,
3 they have spent time on and they have endeavored to remediate
4 the present jeopardy which has been defined as critical.

5 And that was agreed to by the operator, Mr. Milligan,
6 as well as the scientists. And that effort, all those
7 efforts, have been unsuccessful because we see continuing
8 declines and every survey that comes in that we have been
9 furnished in the last two years so shows that the condition of
10 the species is worsening.

11 And so contrary to -- and I do think it is a
12 selective study that was done by Dr. Miller. I'm not
13 criticizing his competence, his ability or the application of
14 his science as an engineer or water engineer, or Dr. Manly's
15 competence or renown as an ecological statistician. But as
16 has been indicated, the correlative studies that were
17 undertaken by those experts certainly provide a major issue
18 about cause. But I think that the answer I got from Mr.
19 Buckley is telling. The law recognizes concurrent causes,
20 even though it's a doctrine that has its origins in the law of
21 torts.

22 But here the Court can't find that the sole cause is
23 the food supply and that the absence of a statistical
24 correlation in the studies that Dr. Miller performed explains
25 the jeopardy of the species when there is indisputable

1 evidence of entrainment, of salvage, the pumps grind these
2 fish up. That's caused by, in some cases, the natural
3 migration of the fishes, it's caused by flow conditions in the
4 central Delta at the confluence of the Sacramento and San
5 Joaquin Rivers, it's caused going east from there, going north
6 from there, going south from there, and those are to the south
7 and into the Clifton Court Forebay areas of hazard.

8 And the evidence is uncontradicted. There isn't any
9 question about it, that these project operations move the
10 fish. Of course we don't know how many. But the fact is it
11 happens. And the law says that something has to be done about
12 it by the action agency.

13 Now, the Court from that concludes that it is under a
14 legal duty to provide a remedy. And if it is in the form of
15 an injunction, there would be two standards, the traditional
16 injunctive relief standard and the ESA standard.

17 The traditional standard looks at the likelihood of
18 success on the merits, it balances hardships, it looks at the
19 public interest; and the ESA standard essentially evaluates
20 the threat of harm to the species and discounts hardships of
21 an economic or other nature, except for human health and
22 safety.

23 And the Court recognizes that, as I said earlier
24 today, that that isn't just emergency water supplies for
25 schools, for hospitals, for fire departments. That can

1 include the absence of water if the supplies to contractors
2 are zero and land is fallowed, subsidence from groundwater
3 pumping which contributes to the fallowing or the absence of
4 water creates air pollution conditions. Those are threats to
5 human health and the environment, just as the absence of
6 emergency water service is.

7 How this is going to be accomplished is something
8 that the Court cannot prescribe. Because the law doesn't
9 permit it. I'm not going to tell the Bureau of Reclamation
10 how to run its agency, how its scientists should think, what
11 conclusions they should reach, what recommendations they
12 should make or how they should be implemented. But I do have
13 proposals that the parties are offering, and I'm going to use
14 those proposals they are offering to do the best in what the
15 Court views as an impossible situation.

16 In one of these water cases that have been going on
17 for over 30 years in the Eastern District of California
18 involving water supplies to the Central San Joaquin Valley and
19 the Sacramento and central Delta areas, and most of the
20 agencies that are involved in this litigation, Judge Trottin,
21 in one of the decisions said -- this was in the drainage
22 case -- that sometimes problems are so intractable, they're so
23 difficult that they're beyond the competence of the judiciary,
24 they are matters that need to be left to the legislative
25 branch for the legislature to address.

1 Well, it would be very nice if I could do that. But
2 I can't. Because the law requires otherwise. And I am going
3 to formulate an order and I am going to need the assistance of
4 the parties with this -- to not vacate the 2005 biological
5 opinion, but I am going to put into effect a preliminary
6 injunction.

7 And I recognize the difference between a mandatory
8 injunction and the law's preference for a prohibitory
9 injunction. And therefore I'm going it to phrase my
10 injunctive relief in prohibitory terms. I'm not playing a
11 game here in trying to exalt form over substance, but rather
12 I'm trying to comply with the law.

13 And the Court is going to order that Bureau of
14 Reclamation and the State Department of Water Resources take
15 no actions that are inconsistent with or that violate the
16 following remedial prescriptives.

17 First, there will be year round monitoring actions
18 that fully implement all current surveys that are being
19 conducted for the Delta smelt, which will include but not be
20 limited to the Spring Kodiak survey, the 20 millimeter survey,
21 the summer townet survey and the fall MWT.

22 There was a proposal in what is the second remedial
23 action which would increase the frequency of sampling for
24 entrained fish at the CVP protective facilities to a minimum
25 of 25 percent of the time, which is a minimum of a 15-minute

1 count per hour.

2 I'm going to also include within that, the measure
3 that was proposed by Dr. Swanson that steps be taken to
4 evaluate presence and condition of larval or juvenile Delta
5 smelt that are in the sub-20 millimeter size range,
6 recognizing that there are difficulties in doing that. But as
7 the Court understood it, it's entirely feasible based upon the
8 type of seine or net the interval that would be within the
9 physical test device itself.

10 I do recognize that at least two of the experts said
11 that any sampling could be further jeopardizing to the
12 species. But it appears that all parties, with the exception
13 of the San Luis and Delta-Mendota parties, agree that sampling
14 needs to continue and that it is feasible.

15 The trigger for this that was proposed by the Fish &
16 Wildlife Service was an increase in Delta outflow where the
17 Sacramento River flow at Freeport reached 25,000 cfs or in the
18 San Joaquin River more than 10 percent over a three-day
19 average. And in the fall midwater trawl and/or Kodiak survey
20 data on Delta smelt, where fish are moving upstream of the
21 confluence and into the Delta or by January 15th of the water
22 year, whichever comes first.

23 The next remedial action that will be implemented
24 is -- and I think that I have already in effect adopted action
25 number three of the Fish & Wildlife Service, which was to

1 implement a monitoring program for the protection of larval
2 Delta smelt with the trigger that is prescribed. I don't see
3 any reason to modify or to, if you will, change that. And I
4 should correct myself. I'm actually using, at this point, the
5 plaintiffs' remedial actions.

6 As to the remedial action number three that is
7 submitted by the Fish & Wildlife Service as proposed to be
8 modified by the DWR, the parties can correct me if I'm wrong,
9 but an area of -- and Dr. Hanson spent a lot of time on this.
10 For determining the upstream Old and Middle River flows,
11 rather than adopting a zero cfs as the lower range of that, I
12 remember a lot of discussion about a negative 750 to a
13 negative 2250 range. I recognize that this was not
14 necessarily addressing only larval and juvenile smelt, but the
15 Court is going to adopt the low end of that low range
16 at -- for the third proposed action by the Fish & Wildlife
17 Service at negative 750 to a negative 5,000 cubic feet per
18 second. And the Court thinks that 6,000 is an acknowledged
19 and undisputed area of jeopardy and recognizing that it's
20 easier to -- less consumptive to achieve, the Court is
21 concerned by what it believes are the legitimate reasons given
22 by Dr. Swanson. And in the interest of time, I'm going to let
23 the parties submit findings, which will document the reasons
24 for these choices of remedies.

25 Now, the fifth action is the same as the plaintiffs'

1 actions, which were, if I have them correctly, and the parties
2 can help me here, was it six and seven where we have the head
3 gates at the --

4 MR. ORR: Eight and nine, Your Honor.

5 MR. WALL: Plaintiffs' eight and nine.

6 THE COURT: Eight and nine. All right. Eight and
7 nine are the same, I think, all the parties have acknowledged
8 as Fish & Wildlife Service measure number five. So that would
9 be the next remedial.

10 If you want to do them as two, because I'm going to
11 ask for the parties to prepare an order that is faithful to
12 the decision that I am now announcing. So those remedies are
13 going to be also prescribed.

14 Now, in turning to the plaintiffs' action number four
15 and the triggers, the Court has determined that -- let me have
16 one -- Mr. Maysonett, if you would repeat, please, the
17 objection to plaintiffs' four so I have the basis for it. Or
18 Mr. Lee, either one of you can do that. Mr. Lee was most
19 specific about it. Do you want to address that right now, Mr.
20 Lee?

21 MR. LEE: Number four, as I understand it, is
22 designed to protect pre-spawning adults. I'm talking about
23 revised number four set forth in plaintiffs' proposal
24 contained in the August 13th, 2007.

25 THE COURT: That is correct.

1 MR. LEE: And that proposal would start out -- is
2 multi-part, as I understand it. They would have a zero cfs
3 requirement for a minimum ten days and then -- and then
4 following that, there would be a requirement that would have
5 Old and Middle River flows between 2750 and 4250 cfs.

6 We had objected to the zero flow because we did not
7 believe there was any science in the record to support it.
8 The zero flow, as I understand this requirement, is roughly of
9 the same nature as in action number one in US Fish & Wildlife
10 Service measure. And that had a negative 2,000 cfs, which we
11 believed science fully supported.

12 So we would have recommended that the Court adopt
13 action number one for that time period for -- under the US
14 Fish & Wildlife proposal.

15 As to the follow-on proposals, we submitted that,
16 first of all, the five-day running average was inappropriate,
17 it should be a 14-day running average or seven-day running
18 average subject to some bans and constraints.

19 But most importantly, we were of the view that the
20 range of flows was too narrow, that the flows should be,
21 according to our view, not in excess of -- sorry, make sure I
22 got right -- negative 5500 for a 14-day running average or
23 negative 6,000 for a seven-day running average. As you can
24 see, as the running average days get shorter, the band gets
25 larger. As the running average days get longer, the band, the

1 level of authorized exports, gets lower. So that was our
2 proposal for the protection of pre-spawning adults.

3 And our objection to action number four is we did not
4 believe it was supported by the regression analysis submitted
5 to the Court which we discussed in closing argument. Is that
6 clear?

7 THE COURT: That is clear. But you did have a
8 proposal that covered in part this time period?

9 MR. LEE: Yes, we did, Your Honor. The two -- the
10 two-part proposal, one would be action one in the US Fish &
11 Wildlife Service proposal. The other would be a modification
12 of action two of the US Fish & Wildlife proposal. And that
13 modification would read -- and I would just look at action two
14 and put in the State's modifications -- the daily net upstream
15 Old and Middle River flow not to exceed 5500 cfs. The low
16 will be a 14-day running average simultaneously, the seven-day
17 running average will not exceed 6,000 cfs. That would be the
18 proposal for this life stage of the smelt, which is the
19 pre-spawning adult smelt.

20 THE COURT: And the State Water Contractors have
21 proposed that this start December 1st. I'm going to leave it
22 at December 25th. I'm going to essentially reduce those flows
23 from 6,000 on the seven-day running average to 5,000 cubic
24 feet per second. And there was objection to the 14-day
25 running average -- well, you had proposed a 14-day running

1 average. Leave it at the seven-day running average and don't
2 do a 14-day running average.

3 MR. LEE: So, in effect, Your Honor, you're adopting
4 one-half of action two of the US Fish & Wildlife proposal?
5 They have a 4500 cfs average for a 14-day running average and
6 a 5,000 cfs for a 7-day running average. Are we abandoning
7 the 4500 cfs.

8 THE COURT: What does it add?

9 MR. LEE: I'm sorry?

10 THE COURT: What does it add?

11 MR. LEE: I would probably defer to the US
12 biologists. They are --

13 THE COURT: Do you know, Mr. Maysonett?

14 MR. MAYSONETT: Your Honor, my understanding is that
15 the targets of 4500, negative 4500 negative flow in the Old
16 and Middle River is 14-day average and that by -- the 14-day
17 average, of course, allows certain ebbs and flows of the tides
18 and the other influences that is hard for the projects to
19 operate to eliminate entirely.

20 The seven-day average at negative 5,000 would help to
21 limit the highs and lows a bit. So my understanding is that
22 the two work in tandem to ensure that flow levels remain in
23 certain -- within a certain range.

24 THE COURT: All right. Well, I'm going to order the
25 prescription that I've just described. And if we have to

1 adjust the language, we will.

2 As to action measure number ten. The Court is not
3 persuaded that the evidence preponderates here to support this
4 action. It was very well explained by Dr. Swanson. The
5 justifications were very articulately presented. It does not
6 appear to me that there is support necessarily in peer
7 reviewed or analysis by others who are studying this issue.

8 The Court certainly recognizes that water quality and
9 the improvement of habitat has the potential to increase
10 benefit to the species. But I am very impressed by the fact
11 that the Delta Smelt Working Group, one or two of whom
12 essentially were presented with this proposal in a different
13 form, in a different context, but didn't support it.

14 And because of the material uncertainty that is
15 described by reviewing scientists about the benefit at a very,
16 very large commitment and a -- resource commitment, the Court
17 does not believe that the evidence preponderates to justify
18 this measure and therefore it will not be included in the
19 remedies.

20 And so if I have it, then, we have those that I've
21 just gone over. And I'll now invite the parties to -- action
22 nine is the same as, I believe, five of the Government's Fish
23 & Wildlife Services, that is to prohibit installation at the
24 head of Old River barrier in connection with the triggers and
25 the end of the actions. Those are agreed on. And the other

1 management of the gates, which was, I'm going to
2 indicate -- well, I don't see it.

3 I don't see, Mr. Orr, number six, that's implementing
4 the Vernalis Adaptive Management Plan river flow and
5 enhancement, I am going to order that as a prescriptive
6 remedy.

7 And so I believe I have addressed the remedies that I
8 intend be prescribed as part of the injunctive relief. If
9 anybody wants to address anything now that you believe has
10 either been overlooked or not addressed, now is the time to do
11 it.

12 MR. WALL: Your Honor, I have a couple of clarifying
13 questions.

14 THE COURT: Yes.

15 MR. WALL: If I might. The first half of plaintiffs'
16 four parallels the Fish & Wildlife Service one and I didn't
17 hear if the Court was doing anything with that.

18 THE COURT: I'm adopting it.

19 MR. WALL: Fish & Wildlife Service one?

20 THE COURT: Yes.

21 MR. WALL: Okay. And the -- you were also adopting
22 the plaintiffs' eight and nine, which are the same as
23 plaintiffs' Fish & Wildlife Service five?

24 THE COURT: Yes. And six, that were agreed to by all
25 the parties except Mr. O'Hanlon's clients.

1 MR. LEE: Your Honor, just for the clarity of the
2 record, we did not agree to action six. The reason why
3 we -- oh, let's see. The reason why we did not agree to it is
4 because action six is basically the implementation of the
5 Vernalis Adaptive Management Plan. And that is mandated
6 already on the projects by water right decisions. We had
7 noted in our, I believe it was cross examination, that this
8 was unnecessary.

9 THE COURT: Well, it might be redundant, but out of
10 an abundance of caution, we have it. Let's include it in the
11 order.

12 MR. WALL: Your Honor, if I could, one other
13 clarifying matter. The Fish & Wildlife Service had action
14 four, which is post VAMP, and we had an action seven, which is
15 post VAMP. Did the Court intend anything for the post VAMP
16 period?

17 THE COURT: I thought that there was a -- let me have
18 what the Fish & Wildlife Service's proposal was on post VAMP.
19 It is number --

20 MR. WALL: Number -- Fish & Wildlife Service action
21 four.

22 THE COURT: Four. I had ordered that. And I had
23 not -- I modified it to take the low flow from zero to minus
24 750. Negative 750.

25 MR. LEE: Your Honor, it is my understanding that

1 action four, in its original format with the US Fish &
2 Wildlife Service, was intended to have flows similar to those
3 in action three. And we've mentioned that in, I believe,
4 footnote I, was that not the case? Of attachment B. If the
5 Court's view is that action four should simulate action three,
6 then --

7 THE COURT: The flow levels would be the same.

8 MR. LEE: The flow levels would be the same. Is that
9 your desire?

10 THE COURT: That is what I was attempting to
11 describe.

12 MR. WALL: So action three would be extended to last
13 until the end of -- the end date for action four? Basically
14 action three would continue on?

15 THE COURT: That is correct.

16 MR. WILKINSON: And Your Honor, those flows again
17 were a range of negative 750 to negative 5,000; is that
18 correct?

19 THE COURT: That is correct.

20 MR. LEE: Your Honor, mixing the two charts a little
21 bit sometimes leaves me a little lost. We have certain end of
22 action timings that are in the US Fish & Wildlife Service
23 proposal, and they are clearly not identical to those that are
24 in --

25 THE COURT: That is correct. And what I'm going to

1 suggest that you do is that you now reduce to writing the
2 orders that I have pronounced. The court reporter will
3 provide you the transcript. I'd prefer for there to be a
4 joint submission, but if you can't agree on it, then you can
5 submit competing proposed orders. And I'll resolve any
6 differences.

7 MR. LEE: All right.

8 THE COURT: All right? I intend for this injunctive
9 relief to be binding upon the United States Department of the
10 Interior, its Bureau of Reclamation, the State Department of
11 Water Resources, their agents, officers and employees and
12 those acting for, under and in concert with them and anybody
13 in those agencies who has actual notice of this order.

14 The order is to remain in effect pending entry of
15 final judgment in this case or further order of the Court.

16 Is there anything further?

17 MR. LEE: Your Honor, I think we'd like to look at
18 the transcripts and work on them.

19 THE COURT: You may. And the one other thing I'm
20 going to do is I'm going to ask for the parties to submit
21 proposed findings of fact and conclusions of law that support
22 this judgment that I have pronounced.

23 MR. LEE: What time frame, sir, are you talking
24 about?

25 THE COURT: It would be my preference that they

1 obviously be joint. You give me a reasonable time frame. I
2 think that there is concern that the order go into place. But
3 because we will not be starting any of the remedies September
4 1st, we don't have that level of urgency.

5 MR. LEE: Okay.

6 THE COURT: So what is reasonable?

7 MR. LEE: May we consult just for a moment on the
8 timing?

9 (Discussion among counsel, not reported.)

10 MR. LEE: Your Honor, I've had a chance to consult
11 with the United States, with San Luis and Delta-Mendota, with
12 the Farm Bureau and State Water Contractors, and given our
13 delayed vacations, Your Honor, we would like 60 days to get
14 the order -- get the findings of fact and conclusions of law
15 and the orders to you. That should give us time to consult
16 and see whether we can do something joint. If we can't, to
17 prepare alternate orders and findings of facts.

18 THE COURT: What's the plaintiffs' timetable?

19 MS. POOLE: Your Honor, we would propose something
20 much shorter than that. We were thinking more in the order of
21 two weeks.

22 THE COURT: Well, the court reporter is going to need
23 time to produce the transcript. And so she can give us her
24 transcript estimate now, as to what time.

25 THE REPORTER: I'd need 30 days.

1 THE COURT: She needs 30 days to produce the
2 transcript.

3 MS. POOLE: And Your Honor's order regarding the
4 rough transcripts, you'd like us to rely on the finals.

5 THE COURT: I will if -- I think we should have a
6 final official transcript for the preparation of the judgment.
7 At least the remedial aspect of the judgment that has been
8 announced today. And so, yes, let's do that. And my estimate
9 is that you at least need 20 days after you have the
10 transcripts in hand. And so that would be 50 days.

11 For findings and fact and conclusions of law, there's
12 going to have to be an official transcript. So let's make the
13 period 50 days. When is that? October 22nd, 2007.

14 Is there anything further?

15 MR. LEE: That's fine with the date, Your Honor.

16 MS. POOLE: We very much appreciate --

17 MR. WILKINSON: Thank you, Your Honor.

18 MS. POOLE: -- the time and effort you've devoted to
19 this, Your Honor.

20 THE COURT: Thank you very much. Thank the Court
21 staff, please, they're the ones who have had to stay way, way
22 past their hours of operation.

23 MR. LEE: Thank you.

24 THE COURT: Everybody have a good weekend. We will
25 stand in recess.

1 MR. MAYSONETT: Thank you, Your Honor.

2 MR. WALL: Thank you, Your Honor.

3 MR. O'HANLON: Thank you, Your Honor.

4 MR. BUCKLEY: Thank you, Your Honor.

5 (Off the record.)

6 THE COURT: I'd should add that the Department of
7 Water of Resources, the Bureau of Reclamation and the
8 Department of the Interior shall be reserved the right on
9 reasonable notice to deviate from the prescriptive remedies,
10 if necessary to protect public health, safety and the human
11 environment.

12 (The proceedings were concluded at 6:11 p.m.)

13
14 I, KAREN L. LOPEZ, Official Reporter, do hereby
15 certify that the foregoing transcript as true and correct.

16
17 DATED: _____
18 _____
19 KAREN L. LOPEZ
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25