



January 27, 2020 Sent via email to ahansen@delpuertowd.org and contactus@sjrecwa.net

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**Re: Comments on the Del Puerto Canyon Reservoir
 Draft Environmental Impact Report**

Dear Ms. Hansen and Mr. White:

On behalf of the undersigned organizations, we are writing to provide comments on the Del Puerto Water District (DPWD) Del Puerto Canyon Reservoir Draft Environmental Impact Report (DEIR.) As discussed below, the DEIR fails to comply with the California Environmental Quality Act (CEQA.) Specifically, the DEIR:

- Fails to provide an accurate project description.
- Fails to analyze the entire project.
- Fails to provide adequate information to the public about the potential, significant environmental effects of the proposed project.
- Fails to adequately inform the public about potential, significant geological impacts of the project
- Fails to adequately consider and discuss the potential alternatives.
- Fails to identify and include findings of a responsible agency

The DPWD must revise the DEIR to comply with the California Environmental Quality Act (CEQA) and recirculate the revised DEIR for public comment. (Cal. Code Regs. tit. 14 §§ 15088(a)(1)-(3),15090.)

In addition, DPWD appears to have pre-judged the outcome, as they state “Comments received during the public review period will be addressed in a Response to Comments document which together with the DEIR, will constitute the Final EIR.” (Emphasis added.) This presumes the comments will not result in revision and recirculation of the DEIR. (p. 1-7, 1.6.3.)

Thank you for accepting these comments on the Draft Environmental Impact Statement for the Del Puerto Canyon Reservoir. Please feel free to contact us with any questions.

Sincerely,



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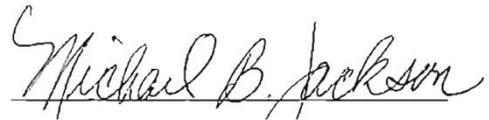
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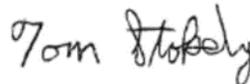
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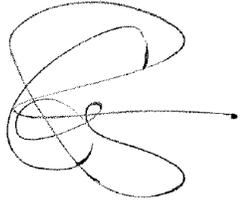
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I. The DEIR Violates CEQA Because It Fails To Provide An Accurate Project Description.

It is established law that “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v City of Los Angeles* 71 Cal. App. 3d 185, 193 (1977.) The preferred alternative must give a clear explanation of the nature and scope of the proposed project, otherwise it “is fundamentally inadequate and misleading.” See *Communities for a Better Environment v. City of Richmond*, 184 Cal.App.4th 70, 84-85 (2010.)

The DEIR describes the purpose of the proposed project, construction of a dam on Del Puerto Creek, (DPCD) as being to increase storage of water. (p. 2-1.) This is inconsistent with the Project Objectives which are a detailed description of the use of additional water. (p. ES-1.) In point of fact it appears the purpose of the proposed project is to create a storage facility which will allow the Project Partners to avoid reductions in water use under drought conditions by restoring water from other CVP reservoirs and potentially increasing Delta exports, as well as using a percentage of the flow from Del Puerto Creek.

The DEIR states that the Bureau of Reclamation “would have an opportunity to participate in the project for South of Delta benefits of up to 20,000 AF of storage,” which “could” be stored for wildlife refuges. (p. 1-3.) Yet this use is not included as one of the project objectives in the DEIR. Without a clear description of whether or not Reclamation will be participating in the project to store water for wildlife refuges, the project description is not stable or accurate.

Section 1.1 on “Need for water storage” references the Central Valley Project deliveries as a reason for the project, stating: “due to both hydrologic and regulatory restrictions at certain times on the operations of the CVP, DPWD may receive only a fraction of that allocation. In 2014 and 2015, DPWD received no CVP water at all, and it is expected that restrictions in CVP operations will result in the DPWD receiving no more than an average of 45 percent of its contract allocation on an annual basis under non-drought conditions.” (p. 1-2.) The DEIR has no indication of where the 45% number came from, and whether it is currently an accurate estimate of future deliveries. The operations section of the DEIR is similarly vague, only stating that:

Availability of water from the DMC would be dependent on U.S. Bureau of Reclamation deliveries under each existing surface water entitlement available to the Project partners consistent with the Coordinated Operation Agreement between the Bureau of Reclamation and DWR.

The analysis of operations of Del Puerto Reservoir was done using the 2017 State Water Project Delivery Capability Report CALSIM II model.¹ But the 2017 State Water Project Delivery Capability Report modeling predates the 2018 *Addendum to the Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project* (“2018 COA Addendum.”)² Therefore the 2017 CALSIM II model is not an accurate representation of conditions at the time of the 2019 scoping notice for Del Puerto Canyon reservoir.

Nor is the modeling an accurate representation of future operations. The DEIR fails to analyze the project in conjunction with the preferred alternative for Reclamation’s proposed Long Term Operations for the Central Valley Project and State Water Project, which would increase Reclamation’s diversions from the Delta by an average of almost 600,000 acre-feet a year, and 300,000 acre-feet in dry and critically dry years.³

The obsolete modeling assumptions could have a substantial effect on both the No Action Alternative and the Preferred Project. Article 6(c) in the 1986 Coordinated Operation Agreement between the United States and the Department of Water Resources⁴ provides:

(c) Sharing of Responsibility for Meeting Sacramento Valley Inbasin use With Storage Withdrawals During Balanced Water Conditions: Each party's responsibility for making available storage withdrawals to meet Sacramento Valley inbasin use of storage withdrawals shall be determined by multiplying the total Sacramento Valley inbasin use of storage withdrawals by the following percentages:

United States	State
75%	25%

The amendment of Article 6(c) in the 2018 COA Addendum significantly reduced the obligation of the Central Valley Water Project to provide water for meeting the Bay-Delta Water Quality

¹ Woodard and Curran, *Technical Memorandum, Del Puerto Canyon Reservoir Operations Analysis*, p.1 in *Del Puerto Canyon Reservoir Draft Environmental Impact Report Appendices*, pdf p. 518.

² US Bureau of Reclamation and California Department of Water Resources, *Addendum to the Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project*, December 12, 2018. Available at: <http://calsport.org/news/wp-content/uploads/Signed-COA-Addendum-121218.pdf>.

³ US Bureau of Reclamation, *Final EIS for Reinitiation of Consultation on the Coordinated Long Term Operations of the Central Valley Project and State Water Project, Appendix F, Modeling*, p. 2183. December 2019. https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=41744.

⁴ US Bureau of Reclamation and California Department of Water Resources, *Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project*, November 24, 1986. Available at https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibit/docs/petitioners_exhibit/glenn/gcid_1.pdf, pp. 9-10.

Control Plan requirements in dry and critically dry years. Amendment #1⁵ provided that “[e]ach party’s responsibility for making available storage withdrawals to meet Sacramento Valley inbasin use of storage withdrawals shall be determined by multiplying the total Sacramento Valley inbasin use of storage withdrawals by the following percentages:

	United States	State
Wet Years	80%	20%
Above Normal Years	80%	20%
Below Normal Years	75%	25%
Dry Years	65%	35%
Critical Years	60%	40%

Modeling for Reclamation’s Environmental Assessment for the 2018 COA Addendum showed that the Addendum was expected to provide an additional 122 TAF of exports in dry years, and an additional 106 TAF in critically dry years.⁶ This would provide an increase in drought supplies to the Project Partners.

The disparity between the project objectives, the project description in the DEIR, and actual current and future conditions results in an inaccurate and misleading document. The Project Partners must revise the DEIR and recirculate to address these fundamental flaws.

II. The DEIR Violates CEQA Because It Fails To Analyze The Entire Project.

Pursuant to CEQA Guidelines § 15378, the definition of “project” means “the whole of an action.” The definition of a project is broadly construed in order to maximize protection of the environment. *Nelson v County of Kern*, 190 Cal.App.4th 252, 271 (2010.) Additionally, the entire project being proposed must be described in the EIR, and the project description must not minimize project impacts. *City of Santee v County of San Diego* 214 CA3d 1438, 1450 (1989.) Finite project description is indispensable to an informative, legally adequate EIR. *County of Inyo v City of Los Angeles, supra*. In addition, the DEIR fails to analyze possible future expansion or other action related to the project that is a reasonably foreseeable consequence of the project, as required by *Laurel Heights Improvement Ass’n v Regents of Univ. of Cal.* 47 C3d 376, 396 (1988.)

Page 2-11 in Section 2.3.1, Operations states,

The proposed project operations would be consistent with the Coordinated Operation Agreement and would not affect existing CVP Delta pumping operations. However,

⁵ 2018 COA Addendum, p. 1.

⁶ US Bureau of Reclamation, *Environmental Assessment, Addendum to the Coordinated Operation Agreement Central Valley Project/State Water Project*, December 2018. Available at https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=36503.

certain federal benefits may be achieved should Reclamation choose to pump additional water that could be stored in capacity made available in the San Luis Reservoir by the Project Partners storing water in DPCR, or by shifting pumping to provide additional Delta pumping capacity during periods of peak delivery by pumping water for delivery to the Project Partners during non-peak delivery periods and delivering that water to the Project Partners for storage in DPCR. Any modification of Delta pumping by Reclamation would be evaluated by Reclamation in a separate NEPA document if such pumping is determined to be outside existing certified environmental documentation and/or operating agreements. (Emphasis added.)

In other words, this project could result in additional exports from the Delta, as a possible follow-up to the Del Puerto Canyon Reservoir project. The DEIR violates CEQA because it fails to include discussion of the impact of the proposed project on the Delta and thus fails to discuss the “whole of the action.”

The 2018 Addendum to the Coordinated Operations Agreement also increased the Central Valley Project’s share of export capacities. Amendment #2 of the 2018 Addendum to the Coordinated Operations Agreement allocates 65% of the SWP and CVP joint export capacity to the CVP during balanced water conditions, and 60% during excess water conditions.⁷ This 2018 change in operations is not included in the 2017 modeling for either the No Action Alternative or the Preferred Project. The Project Partners must revise the DEIR and recirculate to address these fundamental flaws.

The DEIR also states that “in coordination with Project Partners, Reclamation is proposing modification of its existing water rights to incorporate restorage of previously stored water in the Reservoir, i.e., water that has been previously stored in Shasta, Trinity, Folsom, and Friant Dams and which has been released for delivery to CVP contractors or for storage in San Luis Reservoir.” (2.3.1) The details of how CVP water would be “released” from storage in Shasta, Trinity, and Folsom for delivery to the Project Partners is not provided. Nor are impacts on Shasta, Trinity, and Folsom reservoirs analyzed. Without this information, the DEIR fails to discuss the “whole of the action.”

The DEIR also fails to clearly identify a preferred alternative for water supply to fill the reservoir. CEQA requires that a DEIR identify a preferred alternative. *Washoe Meadows Community v. Department of Parks and Recreation*, 17 Cal.App.5th 277, 285-87 (2017.)

The “Need for storage” section states that “DPWD has limited access to storage capacity in San Luis Reservoir associated with its contract with Reclamation primarily during what is called the Rescheduling Period and has a restricted ability to store “non-Project” water (i.e., non-CVP

⁷ 2018 COA Addendum, p. 2.

water) or other developed supplies in the reservoir.” Yet the Project Partners fail to analyze the project in coordination with the San Luis Low Point Improvement Project Preferred Alternative, under which the Santa Clara Valley Water District would expand Pacheco Reservoir.⁸

According to the Draft EIR for the San Luis Low Point Improvement Project, the proposed total storage for the new reservoir is 141,600 acre-feet (AF), with an active storage of 140,800 AF. (p. 2-17.) The Draft EIR for the San Luis Low Point Improvement Project states that Pacheco would free up space in San Luis Reservoir.

Unlike the San Luis Low Point Improvement Project DEIR, the Del Puerto DEIR does not mention Reclamation’s pending Safety of Dams (SOD) expansion and partial raise of the San Luis embankments, nor does it analyze Reclamation’s proposed project to further raise the San Luis Dam embankments, allowing increased storage, as a CEQA alternative. This is described as Alternative 4 in the San Luis Lowpoint Improvement Project DEIS/DEIR (p. 2-11.) Nor does the DEIR consider the cumulative impact if Del Puerto Canyon Dam, Pacheco Reservoir, and the San Luis reservoir expansion are all constructed and operated. The Project Partners must revise the DEIR and recirculate to address these fundamental flaws.

III. The DEIR Violates CEQA Because It Fails To Provide Adequate Information To The Public About The Potential, Significant Environmental Effects Of The Proposed Project.

Cal. Code Regs. tit. 14, § 15002, subd. (a)(1) intends that a DEIR contain adequate information to allow the public to reach an informed conclusion about a proposed project. “The ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide decision makers, and the public, with the information about the project that is required by CEQA.” *Santiago County Water District v County of Orange* 118 Cal. App. 3d 818, 829 (1981.) A finite project description is indispensable to an informative, legally adequate EIR *County of Inyo v City of Los Angeles, supra*. An adequate EIR must be “prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.” *Dry Creek Citizens Coalition v County of Tulare* 70 CA 4th 20, 26 (1999.)

Statements about aspects of the project are part of the project description. Vague and or confusing statements violate CEQA by preventing the public from understanding the full scope

⁸ US Bureau of Reclamation and Santa Clara Valley Water District, *San Luis Low Point Improvement Project, Draft Environmental Impact Statement and Environmental Impact Report*, July 2019. Available at <https://www.valleywater.org/sites/default/files/San%20Luis%20Low%20Point%20Improvement%20Project%20Draft%20Environmental%20Impact%20Statement%20-%20Environmental%20Impact%20Report.pdf>.

of the project. A DEIR's analysis of alternatives must be specific enough to allow informed decision making and public participation. *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal., supra*. The following areas of the DEIR lack adequate information for the public to reach an informed conclusion about the need for the proposed Project or to balance its environmental impact against the stated need for the Project.

A. Impact AES-1 Staging Areas

Construction of the project will require staging areas which will be visible from Interstate 5 and other areas. The DEIR does not specify how long such areas will be in use or whether they will be visible from other areas. Without this information the public cannot reach an informed conclusion about the choice of the Preferred Alternative. (p.3.1-8)

B. Impact AES-1 Reservoir

The DEIR states the proposed reservoir will be closed to the public. It does not state what actions will be taken to achieve this end or whether said actions will affect the environment. (p. 3.1-10)

C. Agriculture and Forestry Resources

The DEIR contains several pages discussing crops and farmlands in areas within which the Exchange Contractors will be making use of water from the proposed project and which "would be affected by the project". However, the DEIR does not provide sufficient information as to the amount of water which will be taken by the Exchange Contractors or where it will be used, how much will be available to the DPWD and where it will be used, whether water will be available to areas proximate to the project or for urban use. (pp. 3.2-1 through 3.2-13 and 3.2.14)

D. Local Policies and Regulations

The DEIR contains several references to the impacts of the project on riparian woodlands and wetlands. It describes the areas, but does not indicate the extent of the impacts or what will be done to mitigate the impacts. (pp. 3.4-2, 3.4-5, and 3.4-33.)

E. Impact BIO-TERR -1a

The DEIR does not provide information regarding how Mitigation Measure BIO-TERR-1a and 1d will be enforced. A description of how the project will achieve enforcement of a Mitigation Measure is necessary to assess its effectiveness. (pp.3.4-37, 3.4-38 and 3.4-41.)

F. Mitigation Measure BIO-TERR-1e

The DEIR refers to avoidance and minimization measures of ground disturbance as regards special status amphibians and states an approved biologist will be present during all ground disturbing activities. It does not define “an approved biologist” nor does it describe the authority of this individual. It refers to “limited use of rodenticides ,” but does not identify what will be used, what is meant by “limited use” or who will monitor the use. (p.3.4-43.)

G. Biological Resources Fish/Environmental Setting/Study Area

The DEIR discusses the need of white sturgeon for gravel substrates for spawning in the Lower San Joaquin River, and states a primary source of gravel comes from Del Puerto Creek. The DEIR does not specify the extent of the impact the project on this substrate, how it will affect spawning reaches or whether a take will result from disturbance of the spawning grounds. (p.3.5-4.)

H. Impacts and Mitigation Measures/BIO-Fish-1

The DEIR states Del Puerto Creek fish will be protected while diversion of Del Puerto Creek is occurring by connecting Del Puerto Creek to the temporary stream diversion structures (e.g., bypass pipes) during the dry season. This suggests there is a season when Del Puerto Creek is dry. Del Puerto Creek can have flows at any time of year; therefore the description of this mitigation measure does not provide sufficient information to the public. (p.3.5-8.)

The DEIR refers to a plan which “shall be developed.” This plan is in reference to determining the flow releases for gravel transport. Changes in Del Puerto Creek flow below the dam impact Del Puerto Creek fish as well as the sturgeon that depend on the gravel for spawning. This does not provide adequate information to the public, because the plan is not attached to the DEIR, (p.3.5-15.)

The DEIR refers to environmental releases. It does not identify the circumstances or criteria as to when such releases will occur. (p.3.5-16.) In this same vein, because environmental releases are not part of the project description, illustrating flow from Del Puerto Creek without additional information as shown in Figure 2-8, is misleading. (p.2-1.2)

Although the modeling for the project analyzes “recession flows” in Del Puerto Creek⁹ as a criterion for reservoir releases, it does not tie the proposed recession flows to the needs of the fish that are present in Del Puerto Creek, or other stream-dependent species. For observed fish in the creek, the DEIR states

⁹ Woodard and Curran, *Technical Memorandum, Del Puerto Canyon Reservoir Operations Analysis*, p.14-15 in Del Puerto Canyon Reservoir Draft Environmental Impact Report Appendices, pdf p. 531-532.

In July 2019, underwater video observations within one of these pools revealed the presence of large concentrations of juvenile pikeminnow (*Ptychocheilus grandis*) and smaller numbers of juvenile and adult suckers (*Catostomus occidentalis*.) Based on general species distributions and associations, other native species that may co-occur with Sacramento pikeminnow and Sacramento suckers include hardhead (*Mylopharodon conocephalus*), California roach (*Lavinia symmetricus*), riffle sculpin (*Cottus gulosus*), and rainbow trout (*Oncorhynchus mykiss*) (Moyle 2002, p. 27.) The presence or absence of these species could not be confirmed.

The UC Davis California Fish Website states that the following species have been recorded in the Pisces database¹⁰ as currently or historically present in Upper Del Puerto Creek¹¹:

- Sacramento Perch
- Sacramento Pikeminnow
- Sacramento Sucker

The UC Davis California Fish Website states that the following species have been recorded in the Pisces database as currently or historically present in Lower Del Puerto Creek¹²:

- Central California Roach
- Coastal Rainbow Trout
- Sacramento Perch
- Sacramento Pikeminnow
- Sacramento Splittail
- Sacramento Sucker
- Southern Green Sturgeon
- Southern White Sturgeon

The EIR also states that “ impacts include the loss of isolated stream segments and pools in Del Puerto Creek that potentially support native fish through the summer based on the presence of juvenile suckers and pikeminnows in July 2019.” (p. 3.5-10.) But the EIR does not explicitly consider reservoir releases necessary to maintain equivalent stream

¹⁰ According to the Pisces Database website, “PISCES is software and data describing the best-known ranges for California's 133 native fish and numerous non-native fish. [...] PISCES was developed with initial funding from the USDA Forest Service Region 5 and additional funding from California Department of Fish and Wildlife: Biogeographic Data Branch, in collaboration with numerous experts in fish biology and distribution in California.”

<https://pisces.ucdavis.edu/>.

¹¹ UC Davis, California Fish Website, Fish Species by Watershed, Upper Del Puerto Creek. Available at <http://calfish.ucdavis.edu/location/?ds=698&reportnumber=1293&catcol=4712&categorysearch=%27Upper%20Del%20Puerto%20Creek%2D180400020301%27>.

¹² UC Davis, California Fish Website, Fish Species by Watershed, Lower Del Puerto Creek. Available at <http://calfish.ucdavis.edu/location/?ds=698&reportnumber=1293&catcol=4712&categorysearch=%27Lower%20Del%20Puerto%20Creek%2D180400020302%27>.

segments and pools downstream of Del Puerto reservoir, for both aquatic and stream-dependent species.

I. Cultural Resources/Native American Consultation

The DEIR refers to “communications” with two tribes, Katherine Erolinda Perez, Chairperson, North Valley Yokuts Tribe and William Leonard, Chairperson, Southern Sierra Miwuk Nation 1, and that both had expressed an interest in learning more about the project. There is no indication there was any follow-up. The DEIR is inadequate and incomplete because it fails to provide information as to whether there was follow-up and, if so, the outcome of these communications. (p.3.6-3.)

IV. The DEIR Violates CEQA Because it Fails to Adequately Inform the Public about Potential, Significant Geological Impacts of the Project

The DEIR Appendices, page 502, states:

A significant number of landslides are found within and in the immediate vicinity of the reservoir inundation area, the majority of these landslides are located within units of the Cretaceous Moreno formation, upstream from the proposed main dam. At least seven landslides are mapped within the inundation area of the proposed reservoir. It is expected that additional small landslides and movement of existing landslides would occur as a result of reservoir infilling and operations. These landslides would be expected to experience continuous deformation without some form of stabilization mitigation. The rate of movement of the landslides would likely be slow. Stability of the reservoir rim, including the potential for seismically triggered landslides would be required for the design of the Project.

Furthermore, pages 15 and 16 of the DEIR Appendices state:

The proposed reservoir would inundate areas underlain by the Cretaceous Moreno and Panoche Formations. Landslides are found within and in the immediate vicinity of the Project Area, the majority of which are located within units of the Moreno formation, upstream from the proposed main dam. Movement of these landslides is expected as a result of infilling and seasonal operations of the reservoir. It is expected that additional landslides would form as well. Movement of existing and any newly developed landslides resulting from reservoir operation is expected, any deformation of the landslide would be relatively slow and at a scale that would not form seiche waves of significant magnitude that would overtop the proposed dam. An assessment of landslide potential and impacts to the Project would be needed for final design of the reservoir and dam.

The DEIR states mitigation will be achieved by Mitigation Measure GEO-1, preparing a “design level Geotechnical Investigation and Report” and by following the report. The DEIR provides no geotechnical analysis supporting the conclusion that any landslides would be at a scale that would not form a lake tsunami or seiche wave of significant magnitude. Landslides are a known risk for dam failure, A large slope failure into the Vajont reservoir in Italy caused a large

tsunami which overtopped the dam.¹³ Consequently, the analysis on p. 15 and 16 does not provide a “sufficient degree of analysis to provide decision makes with information which enables them to make a decision which intelligently takes account of environmental consequences” as required by *Dry Creek Citizens Coalition v County of Tulare, supra*. The analysis on p. 15 and 16 also does not inform the public that there are active slides within the footprint of the Project. There is no discussion of the possibility of a geological event known as a “mass wasting.” This term refers to the downhill movement of rock and debris under the influence of gravity, which may occur when a slide is inundated by water. Slides will be inundated due to the very nature of the Project, creating a reservoir over active landslides. The DEIR does not evaluate the possibility that, in the event of mass wasting, debris may fall into the reservoir which would result in a lake tsunami, which could exceed the dam height, resulting in overtopping of the dam.¹⁴

The DEIR also does not describe the large slump/earth flow complex, which to the uninformed eye simply looks like a hill, visible to the north from the site of the proposed reservoir, which forms a hummocky topography in the small side canyon. The toe of the slump is eroded by Del Puerto Creek, which has led to continuing reactivation of the slide. The public is not informed that standing at the entry into the canyon one is standing on another large active slump which originated at the south side of the canyon. That it is still active, i.e. moving, is evidenced by repeated road repairs at either end of the slump. (*Id.* at pp.129-131.)

The DEIR does not meet the requirements of Cal. Code Regs. tit. 14, § 15002 (a) (1) in that it fails to provide the public with adequate information to reach an informed conclusion about the potential, significant environmental effects of the Project. The DEIR must be revised and recirculated to address these fundamental flaws.

V. The DEIR Fails to Adequately Consider and Discuss the Potential Alternatives

Mitigation and alternatives are the core of an EIR. (*Citizens of Goleta Valley v Board of Supervisors* 52 C3d 553, 564 (1990.)) CEQA requires that the EIR identify both feasible mitigation measures and feasible alternative that could avoid or substantially lessen the project’s significant environmental effects. (Pub. Resources Code §§ 21001, 21001.1(a), 21100(b) (4) and 21150.) An EIR must discuss alternatives even if all the project’s significant environmental impacts will be avoided or reduced by mitigation measures. (*Laurel Heights Improvement Ass’n v Regents of Univ. of Cal., supra.*) The DEIR must make a good faith effort to compare the project with the alternatives. Cal. Code Regs. tit.14, § 15126.6(a) The discussion in the EIR of the alternatives should include sufficient information about each alternative to allow evaluation, analysis, and comparison with the proposed project. Cal. Code Regs. tit.14 § 15126.6(d.)

¹³ Lee Mauney, P.E., CFM., Association of Dam Safety Officials, Lessons Learned from Dam Incidents and Failures, Case Study: Vajont Dam (Italy, 1963.) <https://damfailures.org/case-study/vajont-dam-italy-1963/>.

¹⁴ “Geology of Del Puerto Canyon, Central Diablo Range, California ,” Hayes, Garry, (co-authored), as well as *Geology and Cultural History of the Western Colorado Plateau, with Road Guides for Exploring Grand Canyon, Zion and Bryce Canyon National Parks; From the Foothills to the Sky: A Teacher’s Guide to the Geology of the Tuolumne Meadows Region of Yosemite National Park*, 2013.

(Emphasis added.) Alternatives must be able to implement most project objectives but they need not be able to implement all of them. *Mira Mar Mobile Community v City of Oceanside* 119 CA4th 477 (2004.) (Emphasis added.) An alternative that would substantially reduce the project's environmental impacts should not be excluded from the analysis simply because it would not fully achieve the project's objectives. *Habitat & Watershed Caretakers v City of Santa Cruz*, 213 CA4th 1277,1304 (2013.) The EIR's analysis should focus on alternatives that can eliminate or reduce significant environmental impacts even if they would impede attainment of project objectives to some degree or be more costly.

The alternatives are given short shrift. Of the 410 pages of the DEIR, 20 pages are allotted to discussion of the alternatives. It is impossible to provide sufficient information for meaningful evaluation, analysis and comparison of each alternative with the preferred alternative within a mere 20 pages in a DEIR of this size. This does not meet the intended purpose of section 15126.6(a) (1) of Title 14 of the California Code of Regulations.

In Section 4.5.1, "Additional Conservation," the DEIR states that additional conservation is not a feasible alternative "without access to dispatchable storage." (p. 4-3.) But the DEIR fails to provide any substantiating information from the Project Partners' Water Management Plans for this statement. The San Luis and Delta Mendota Water Authority updated their West San Joaquin Integrated Regional Water Management Plan in 2019.^{15,16} Objective F of the 2019 Update to the West San Joaquin Integrated Regional Water Management Plan is to "[p]romote and enhance water conservation, water use efficiency, and sustainable water use." (p. 3-2.) Objective F appears to be inconsistent with the Project Partner's assertion that additional conservation is not feasible.

The DEIR also fails to consider additional conservation in conjunction with alternative water supplies currently available to Del Puerto Water District. These water supplies would supplement additional drought year supplies available because of the 2018 COA Addendum, which is also not analyzed in the DEIR. The West San Joaquin Integrated Regional Water Management Plan states:

In particular, the NVRWP [North Valley Regional Recycled Water Program], being implemented by Del Puerto WD and the Cities of Modesto and Turlock (located in the East Stanislaus IRWM Region), will deliver up to 26,000 AFY of recycled water to Del Puerto WD agricultural users by early 2019, when the second component of the project is completed. The Modesto portion of the project was completed in July 2018, and the Turlock portion began construction in late 2018. The project began delivering recycled

¹⁵ San Luis & Delta-Mendota Water Authority, Westside-San Joaquin Integrated Regional Water Management Plan, January 2019. Available at http://sldmwa.org/OHTDocs/pdf_documents/Groundwater/WSJ_IRWMP_2019_Final_w_appendices.pdf

¹⁶ The San Luis and Delta Mendota Water Authority includes Del Puerto Water District and the San Joaquin River Exchange Contractor Water Districts. *Id* at p. 1-1.

water to Del Puerto WD agricultural customers in 2018. Additionally, both Patterson ID and San Luis WD have put forth projects to capture and recirculate agricultural tail water back into the irrigation systems, and the City of Patterson expanded its non-potable water irrigation system, matching water quality to water demand needs and reducing demands on potable supplies. The recycled and reclaimed water produced by these projects has augmented the currently unreliable CVP supplies in the area. (p. 2-25.)

Section 4.5.3 on groundwater storage only briefly mentions Del Puerto Water District's Orestimba Creek Recharge and Recovery Project. (p. 4-3.) The West San Joaquin Integrated Regional Water Management Plan states¹⁷:

The project would receive flood flows from both the San Joaquin and Kings Rivers together with surface water from Orestimba Creek CCID and/or Del Puerto Water District (DP WD).

The DEIR provides no estimates of the groundwater storage capacity of the Orestimba Creek project. Similarly, section 4.5.3 only briefly mentions the Los Banos Creek Recharge and Recovery Project. (p. 4-3.) The West San Joaquin Integrated Regional Water Management Plan states¹⁸:

Project flood and surplus irrigation supply would be perked and temporarily stored in the pits/ basin for beneficial use and flood mitigation purposes.

The DEIR provides no estimates of the groundwater storage capacity of the Los Banos Creek project. Without estimates of storage capacity of these projects, the assertion that the projects "would not replace the need for surface water storage" is unsubstantiated. In addition, since these groundwater storage projects are being implemented, and will store some of the same water supplies as Del Puerto Reservoir, the DEIR needs to analyze storage "puts" for both Del Puerto Canyon Reservoir and the groundwater storage projects. "Puts" into the groundwater storage projects will result in less water stored in Del Puerto.

A. *The DEIR Fails to Disclose Significant Environmental Impacts from the Project's Preferred Alternative*

Del Puerto refers to "the gate," a water gap cut through resistant sandstone at the mouth of a canyon. Del Puerto Creek runs through just such a gate. It is here the Partners have chosen as the preferred alternative for a dam. CEQA requires that the DEIR accurately assess potential environmental impacts of the proposed project. The DEIR fails this essential function by failing to discuss and evaluate the unique qualities of the canyon beyond "the gate." The project description must not minimize project impacts. (*City of Santee v County of San Diego* 214 Al. App. 3d 1438, 1450.)

¹⁷ San Luis & Delta-Mendota Water Authority, Westside-San Joaquin Integrated Regional Water Management Plan, January 2019, Appendix D, p. D-2. Op. cit.

¹⁸ *Id* at p. D-4.

Del Puerto is not a typical canyon. Due to the manner of its formation, as one enters the canyon, one is on the ocean floor, atop 25,000 feet of marine sediment, which at one time was the surface of the earth. Proceeding through the canyon, one moves “deeper” into the earth, passing through what was the ocean crust and into rocks, now exposed, formed miles and miles below the surface of the earth, which were part of the earth’s mantle, that part of the planet which surrounds the earth’s core of molten lava. It is the only place in this region where one can study the biology, botany and archeology which results from this unique geology. (Garry Hayes, personal communication.)¹⁹

It is noteworthy that the upper part of Del Puerto Creek, where the inundation from the proposed dam will end, bears no resemblance to the rock formations encountered during the first few miles from the gate. In addition, the area of the creek which flows through the gate provides a rare riparian habitat. There are no means of mitigation as it is the one of the very few permanent creeks within an otherwise arid mountain range. Numerous flower species flourish in spring. In addition to the geological conditions, the canyon contains more than 160 bird species, making Del Puerto the third most diverse bird habitat in the entire county. Hundreds of students have been taken to the canyon by local geology teachers. It has been visited by the National Association of Geoscience Teachers, the Geological Society of America and other national organizations. Many geologists have used this location for research. (*Id.*)

Among numerous archeological sites is a slope just above the proposed inundation zone where the first dinosaur bones were found in California. There are also areas once occupied by the Yokut native tribe and other earlier cultures which have barely begun to be understood or explored. (*Id.*)

The Project Partners must revise the DEIR and recirculate to address these fundamental flaws.

B. The DEIR Violates CEQA by Failing to Thoroughly Evaluate the Ingram Canyon Alternative

In setting aside the Ingram Creek alternative, the DEIR contains several errors.

1. Rejecting the alternative due to size:

The Ingram Canyon alternative may have been rejected based on the claim it would consist of a dam 13 TAF (thousand acre feet) less than sought by the partners. (67 TAF rather than 80 TAF, p.4-16) *Mira Mar Mobile Community v City of Oceanside, supra*, requires the DEIR to thoroughly evaluate this alternative even if it would not achieve all project objectives. In addition, thorough evaluation of the Ingram Canyon alternative shows that while it may not achieve all of the projects objectives, it would eliminate the project’s environmental impact on the irreplaceable geology of Del Puerto Creek. *Habitat & Watershed Caretakers v City of Santa Cruz, supra*. A three page discussion does not constitute a colorable evaluation, much less a thorough evaluation. (p. 4-17&18.)

¹⁹ Hayes, Garry, MS. Geology, Professor of Geology at Modesto Junior College.

2. Rejecting the alternative due to cost:

The DEIR states the Ingram Canyon alternative is more costly than the Del Puerto Creek alternative. Even if this is accurate, it is not a basis for rejecting Ingram Canyon as an alternative. Cal. Code Regs, tit. 14 § 15126(a) requires a thorough evaluation even if the possible alternative would be more costly. (p.4-16.)

3. Failing to adequately analyze the alternative.

Furthermore, the DEIR states “Chapter 3 of this EIR identifies potential impacts associated with the proposed Project for each environmental issue area.” The DEIR briefly lists potential impacts of Ingram Creek, but does not evaluate them with the detail found in the assessment of the preferred alternative. Also, the DEIR does not contain mitigation measures for what is asserts are the potential impacts of the Ingram Creek alternative.

The DEIR refers to “Biological Resources - Fish and states “Because the impacts associated with dam operation would be similar, this alternative [Ingram Canyon] would have similar impacts as compared to the proposed project.” This is impossible. Ingram Canyon does not dam Del Puerto Creek; therefore it poses none of impacts on fish resulting from the preferred alternative. The DEIR also does not list impacts from the Ingram Canyon alternative on terrestrial resources. Given that the latter would inundate a significantly smaller area, the impacts cannot help but be less than those of the preferred alternative.

As related to the Ingram Canyon alternative, the DEIR contains a sole sentence regarding geology: “4.9.8 Geology and Soils Geotechnical constraints associated with construction of the Ingram Canyon alternative are expected to be similar to those for the proposed project.” (p. 4-14.) However, neither the DEIR nor the Appendices mention earthquake faults in the footprint of the Ingram Canyon alternative such as are found within the footprint of the proposed Del Puerto location. Neither is there is a comparison of whether the geology in the Ingram Canyon area is subject to further slides, and if so, the likelihood of overtopping.

The Project Partners must revise the DEIR and recirculate to address these fundamental flaws.

VI. The DEIR Fails To Identify and Include Findings of a Responsible Agency

Responsible agencies are agencies, other than the lead agency, that have some discretionary authority for carrying out or approving a project. (Cal. Code Regs. tit. 14, § 15381.) An example of discretionary authority would be issuance of a permit by a city or county planning department. “Although a lead agency is responsible for considering the effects of all activities involved in a project and, if required by CEQA, preparing the draft and final EIR's and certifying the final EIR for a project, a responsible agency typically has permitting authority or approval power over some aspect of the overall project for which a lead agency is conducting CEQA review. “*Riverwatch v Olivehain Municipal Water District* 170 Cal.App.4th 1186, 1201 (2009)

The DEIR fails to identify the City of Patterson as a responsible agency by not ascribing to the City the discretionary authority contemplated by *Riverwatch v Olivehain, supra*. The water

conveyance system, electrical substation and actual pumping station are all integral and necessary for the operation of the project and would be inside the City limits. (p. 3.12-2) Activity within City limits will involve the discretion and approval of the City, making the City a responsible agency. The DEIR does not include the City in the list of responsible agencies. (p.1-5.)

The City of Patterson's General Plan includes a sphere of influence of 650 acres of mixed use, residential and commercially zoned land. The inlet/outlet structure, main dam, spillway, and the primary saddle dam would be located within the sphere of influence of the General Plan. (p. 3.12-3) 75 acres within the sphere of influence are designated as important farmland. Of these, 73 acres would be affected by the reservoir and dams. (p.3.12-14) The DEIR states "Beginning during construction the land would be converted from agricultural use." This request for conversion is obviously essential to the project, putting it squarely within the discretionary authority of the City. The Project Partners must revise the DEIR and recirculate to address this fundamental flaw.

Finally, the DEIR indicates impacts to the City of Patterson's water supply:

The City of Patterson's Water Master Plan includes a proposed project to capture additional stormwater from Del Puerto Creek for groundwater recharge. This project, as described in the City's Water Master Plan, would produce a yield of up to 1,700 AFY from pumping recharged water under wet, above normal and below normal water year conditions. The yield would be up to 1,275 AFY in dry and critically dry water year conditions and would be assumed to be zero in a dry or critically dry year if the previous year was also dry or critically dry. Implementation of the proposed reservoir would reduce flows in Del Puerto Creek and thus result in a reduction of flows available for the City of Patterson storm water capture and recharge project. (p. 3-11, Emphasis added.)

The DEIR defers consideration of mitigation of this impact to the future, stating:

The Project Partners shall develop an operations manual that describes water delivery to the lower reach of Del Puerto Creek below the proposed dam to make up for lost natural seepage due to the proposed project. The manual shall provide releases, for the City of Patterson's benefit depending on water year type and Del Puerto Creek inflows, of up to 1,700 AFY. Such releases will augment existing/no-project in-stream recharge conditions. (p. 3-11-21.)

This mitigation measure constitutes impermissible deferral under CEQA, because it fails to specify meaningful standards for the minimum flows released under the operations plan. Furthermore, the modeled operations will not provide sufficient releases for Patterson for 27/82 modeled years (33% of the time)²⁰:

In years in which the DPC inflow is not sufficient to supply both environmental releases and Patterson releases as mitigation, environmental releases take priority. There are

²⁰ Woodard and Curran, *Technical Memorandum, Del Puerto Canyon Reservoir Operations Analysis*, p. 21 in *Del Puerto Canyon Reservoir Draft Environmental Impact Report Appendices*, pdf p. 538.

approximately 27 of the 82 modeled years in which there is not sufficient natural DPC flow to meet both environmental and Patterson release requirements. Based on the availability of natural DPC flows, Patterson releases as mitigation average approximately 1,470 AFY in wet, above normal, and below normal years, and 1,070AFY with all year types considered.

We note that use of stored water to provide environmental flows in dry and critically dry years would allow the project to meet both environmental flow needs and the needs of the City of Patterson. The DEIR fails to even consider such an alternative for operations of the Proposed Project. The Project Partners should revise and recirculate the Draft EIR to address these shortcomings.

VII. CONCLUSION

As explained above, the DEIR has substantial flaws, fails to disclose significant impacts, and fails to consider reasonable mitigation measures. The DEIR must be revised to address these issues and recirculated for public comment.