

### 3 LIST OF COMMENTERS AND MASTER RESPONSES

#### 3.1 LIST OF COMMENTERS

Table 3-1 provides a list of all agencies and persons who submitted comments on the July 2010 DEIR/DEIS and who commented on that document during the public hearing.

<b>Table 3-1</b> <b>List of Commenters on the DEIR/DEIS</b>		
Agencies / Individuals	Letter Date	Letter ID
<b>Federal</b>		
U.S. Bureau of Reclamation Michael R. Finnegan, Area Manager	September 8, 2010	USBR
U.S. Department of the Interior, Fish and Wildlife Service Sacramento Fish and Wildlife Office Kenneth Sanchez, Assistant Field Supervisor	September 8, 2010	USFWS
U.S. Environmental Protection Agency, Region 9 Enrique Manzanilla, Director, Communities and Ecosystems Div.	September 17, 2010	USEPA
<b>State</b>		
California Department of Public Health Bridget Binning, CDPH Environmental Review Unit	July 3, 2010	CADPH
California Regional Water Quality Control Board, Central Valley Region Stephen Louie, Environmental Scientist	August 16, 2010	CVRWQCB-1
California Regional Water Quality Control Board, Central Valley Region Dan Radulescu, P.E., Lead of the 401 WQC and Storm Water Unit and Kim A. Schwab, P.G., Engineering Geologist	September 2, 2010	CVRWQCB-2
California Public Utilities Commission Moses Stites, Rail Corridor Safety Specialist	September 8, 2010	CPUC
California Department of Conservation, Natural Resources Agency Dan Otis, Program Manager, Williamson Act Program	September 9, 2010	DOC DLRP
California Department of Transportation District 3 – Sacramento Area Office Alyssa Begley, Chief	September 30, 2010	Caltrans
<b>Local</b>		
Sacramento Municipal Utilities District Rachel V. Del Rio, Land Agent-Real Estate Services	July 13, 2009	SMUD-1
County of Sacramento, Municipal Services Agency Paul J. Hahn, Administrator	July 20, 2010	Sac Cnty-1
Sacramento Regional County Sanitation District Sarena Deeble, SRCSD/SASD Policy and Planning	July 20, 2010	SRCSD
David Pickett, Legislative Action Office, AMA District 36 – Motorcycle Sports Committee	August 4, 2010	Pickett
Sacramento Local Agency Formation Commission Peter Brundage, Executive Officer	August 25, 2009 (letter is dated as 2009 but sent in 2010)	LAFCO

**Table 3-1  
List of Commenters on the DEIR/DEIS**

Agencies / Individuals	Letter Date	Letter ID
Friends of the River Ronald Stork	September 2010	FOR
East Bay Municipal Utility District Michael T. Tognolini, Manager, Water Supply Improvements Division	September 3, 2010	EBMUD
Folsom, El Dorado, and Sacramento Historical Railroad Association Bill Anderson	September 3, 2010	HRA
Environmental Council of Sacramento Alex Kelter, President	September 8, 2010	ECOS
County of El Dorado, Department of Transportation Jim Ware, P.E., Director of Transportation	September 9, 2010	EDC DOT
County of Sacramento, Municipal Services Agency Paul Hahn, Agency Administrator	September 9, 2010	Sac Cnty-2
Sacramento County Water Agency Kerry Schmitz, Principal Civil Engineer	September 9, 2010	SCWA
City of Sacramento Dan Sherry, Supervising Engineer	September 10, 2010	Sac City
El Dorado Irrigation District Daniel Corcoran, Environmental Division Manager	September 10, 2010	EID
Folsom Cordova Unified School District Matt Washburn, Director of Facilities and Planning	September 10, 2010	FCUSD
Friends of Folsom Parkways Jim Kirstein, President	September 10, 2010	Friends
Heritage Preservation League of Folsom Loretta Hettinger, President	September 10, 2010	HPLF
Sacramento Area Bicycle Advocates Walt Seifert, Executive Director	September 10, 2010	SABA
Sacramento Metropolitan Air Quality Management District Joseph James Hurley, Assistant Air Quality Analyst	September 10, 2010	SMAQMD
Sacramento Municipal Utilities District Jose Bodipo-Memba, Environmental Specialist	September 10, 2010	SMUD-2
Save the American River Association Warren V. Truitt	September 10, 2010	SARA
Sacramento Area Creeks Council Alta Tura, President	September 13, 2010	SACC
<b>Individuals</b>		
Debbie Meier	No date	Meier-1
Teichert Aggregates, Inc. (John M. Taylor of Taylor & Wiley)	July 15, 2010	Teichert-1
Lynne Sperry	July 17, 2010	Sperry
Beverly Bagley	July 18, 2010	Bagley
Charlene Michelson	July 18, 2010	Michelson
Margaret Williams	July 19, 2010	Williams-1

**Table 3-1  
List of Commenters on the DEIR/DEIS**

Agencies / Individuals	Letter Date	Letter ID
Margaret Williams	July 21, 2010	Williams-2
Angelo G. Tsakopoulos (Kerry Shapiro of Jeffer, Mangels, Butler & Marmaro LLP)	July 27, 2010	Tsakopoulos-1
Keith Faust	July 28, 2010	Faust
Phillip Gardner	July 29, 2010	Gardner
Prowest Insurance Services, Inc. Guy Knapp, President	July 29, 2010	Knapp
Jim Watkins	July 29, 2010	Watkins
Karen Borrego	July 30, 2010	Borrego
John Gladding	July 30, 2010	Gladding-1
Connie Barreras	July 31, 2010	Barreras
Judy Clark	August 1, 2010	Clark
Evelyn M. Cooke	August 2, 2010	Cooke
Jason Dewall	August 2, 2010	Dewall
Leah Emery	August 2, 2010	Emery
John Gladding	August 2, 2010	Gladding-2
Paul Morissette	August 2, 2010	Morissette
Public Meeting/Hearing on the Folsom South of US 50 Specific Plan Project	August 2, 2010	Public Hearing 1
Gayle Tanner	August 2, 2010	Tanner
Raphael Hitzke	August 3, 2010	Hitzke
Debbie Meier	August 4, 2010	Meier-2
City of Folsom Joint Meeting of the Historic District and Planning Commissions Minutes	August 4, 2010	Public Hearing 2
Ed Santin	August 4, 2010	Santin
Mart Donahoo	August 8, 2010	Donahoo
Kim Squires	August 8, 2010	Squires
Eryn Stevens	August 9, 2010	Stevens
Kenneth and Joan Barnett	August 10, 2010	Barnett
Harvey Dean Brown	August 10, 2010	Brown, H
Rich Jackson	August 12, 2010	Jackson
Jackie Beckham	August 12, 2010	Beckham
Anitha Kumar	August 15, 2010	Kumar
Merwin M. Brown	August 16, 2010	Brown, M
Jennifer Brown	August 16, 2010	Brown, J
Conwy LLC (Michael Devereaux, Law Offices of Gregory D. Thatch)	August 16, 2010	Conwy
Paul Raveling	August 31, 2010	Raveling
Roberts	September 2010	Roberts

<b>Table 3-1 List of Commenters on the DEIR/DEIS</b>		
Agencies / Individuals	Letter Date	Letter ID
Terry Benedict	September 8, 2010	Benedict
Alice Fish	September 10, 2010	Fish
Folsom Plan Area Ownership Group (Sabrina V. Teller; Remy, Thomas, Moose, and Manley, LLP)	September 10, 2010	FSAG
Teichert Aggregates Inc. (John M. Taylor of Taylor & Wiley)	September 10, 2010	Teichert-2
Angelo G. Tsakopoulos (Kerry Shapiro of Jeffer, Mangels, Butler & Marmaro LLP)	September 10, 2010	Tsakopoulos-2

## 3.2 MASTER RESPONSES

### MASTER RESPONSE 1: GREENHOUSE GAS THRESHOLDS OF SIGNIFICANCE

*A number of comments question the derivation and use of greenhouse gas (GHG) emissions thresholds of significance in the DEIR/DEIS.*

GHG impacts associated with the Folsom South of U.S. 50 Specific Plan Project (project) would be significant and unavoidable relative to the chosen threshold, and using a more stringent threshold would not alter the determination of “significant and unavoidable” GHG emissions, as per the discussion on page 3A.4-30 of the DEIR/DEIS:

Although Mitigation Measure 3A.4-2 would require the implementation of all feasible GHG reduction measures known at this time, it is unknown at the time of writing this EIR/EIS whether the selected project-specific measures during each project phase, in combination with the GHG reductions realized from the regulatory environment that exists at that time, would result in attainment of the applicable CO<sub>2</sub>e/SP goal.

... the precise level of reductions is difficult to calculate for all phases of development, and therefore would be speculative at this time. As a precaution, this EIR/EIS concludes that the No USACE Permit, Proposed Project, Resource Impact Minimization, Centralized Development, and Reduced Hillside Development Alternatives’ incremental contribution to long-term operational GHG emissions is cumulatively considerable and significant and unavoidable.

Currently, neither the California Air Resources Board (ARB) nor the Sacramento Metropolitan Air Quality Management District (SMAQMD) has provided GHG significance thresholds.

GHG significance is discussed in Appendix G of the State CEQA Guidelines (as amended March 18, 2010):

Would a project:

- ▶ generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment; or
- ▶ conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of greenhouse gases.

By adopting AB 32, the California legislature has indicated that global climate change is a serious environmental issue and has identified a statewide GHG emissions target. ARB's 2008 Climate Change Scoping Plan (Scoping Plan) recognizes the importance of local government efforts in reaching the 2020 GHG reduction goal (page ES-5):

Local Government Targets: In recognition of the critical role local governments will play in the successful implementation of AB 32, ARB added a section describing this role. In addition, ARB recommended a greenhouse gas reduction goal for local governments of 15 percent below today's levels by 2020 to ensure that their municipal and community-wide emissions match the State's reduction target.

Also, regional transportation-related GHG targets are expected to generate a reduction of approximately 5 million metric tons carbon dioxide equivalent (MMT $\text{CO}_2\text{e}$ ), representing an estimate of what may be achieved from local land use changes (ARB 2008, Scoping Plan, page 17, Table 2).

To meet the goals of AB 32, California would need to generate fewer GHGs than current levels. However, for most development projects, no simple metric is recognized or even available to determine whether the individual project would substantially increase or decrease overall emission levels of GHGs. The legislation dealing with climate change in California (as well as international treaties and agreements on the subject) identifies goals for the rate of GHG emissions relative to specific benchmark years. In the case of California, AB 32 requires 1990 GHG emission levels to be achieved by the year 2020.

With a statewide context for GHG emissions reductions established, GHG efficiency can be viewed independently from the jurisdiction in which the project or plan is located. To provide a meaningful basis to assess the GHG-related effects of a project or plan, the mass emission from land use-related sectors can be normalized. Dividing mass emissions by the population and/or amount of employment allows an assessment of GHG efficiency of a plan or project. Normalizing this projected mass of emissions from land use-related emissions sectors (i.e., transportation, electricity, natural gas, wastewater) by unit related to what the plan itself is accommodating (e.g., population and employment) allows decision makers to consider the GHG efficiency of a project and evaluate the project's consistency with AB 32. Limiting the analysis to land use-related sectors helps to maintain focus on what the lead agency is approving—in this case, long-range physical development of the Specific Plan Area (SPA), with an emphasis on management of land use change.

For the purposes of this analysis, the sum of the number of jobs and the number of residents at a point in time is termed the "service population" (SP). GHG efficiency metrics were developed for emissions rates at the state level to accommodate estimated population and employment growth, and the emission rates needed to accommodate growth while allowing for consistency with the goals of AB 32 (i.e., 1990 GHG emissions levels by 2020). These emission rates show how GHG-efficient new development and existing development must be to achieve AB 32 targets for land use-related sectors.

The Bay Area Air Quality Management District (BAAQMD) was the first air quality management district to establish quantified and substantiated GHG significance thresholds for development projects under CEQA. The GHG significance threshold derived for use in this DEIR/DEIS was based on performance standard methodology similar to that used by the BAAQMD and is more conservative (restrictive) than the performance standard adopted by BAAQMD. The DEIR/DEIS uses significance thresholds of 4.36 metric tons of carbon dioxide equivalent per year (MT  $\text{CO}_2\text{e}$ )/SP/year for 2020 and 3.68 MT  $\text{CO}_2\text{e}$ /SP/year for 2030, compared to the BAAQMD's significance threshold of 4.6 MT  $\text{CO}_2\text{e}$ /SP/year for 2020. The purpose of using a performance standard is so that large, energy efficient developments are not unduly penalized, relative to small, inefficient development projects whose emissions are below the BAAQMD "bright line" significance thresholds. Executive Order S-3-05 requires that GHG emission levels in 2020 be reduced to 1990 levels, and be reduced to 80% below 1990 levels by the year 2050.

<b>California GHG Emissions Inventory and Forecast for Emissions Sectors Applicable to Land Use Development Projects</b>		
Inventory Summary for Scoping Plan	Emissions (MMTCO <sub>2</sub> E)	
	1990 Levels	2050 (S-3-05)
<b>Transportation</b>	<b>137.992</b>	
Passenger Vehicles	108.945	
Heavy Duty Trucks	29.047	
<b>Electric Power</b>	<b>95.385</b>	
In-State Generation	33.808	
Imported Electricity	61.577	
<b>Commercial and Residential</b>	<b>44.220</b>	
Residential Fuel Use	29.657	
Commercial Fuel Use	13.462	
Combined Heat and Power	1.101	
<b>Recycling and Waste</b>	<b>2.833</b>	
Waste Water Treatment	2.833	
Domestic	2.833	
<b>Total Gross Emissions</b>	<b>280.430</b>	<b>56.086</b>
Notes: MMTCO <sub>2</sub> E = million metric tons of carbon dioxide equivalent. Sources: California Energy Commission 2007. Impact Analysis 2008 Update to the California Energy Efficiency Standards for Residential and Nonresidential Buildings <a href="http://www.arb.ca.gov/cc/inventory/data/tables/arb_ghg_inventory_forecast_2008_06_26.xls">http://www.arb.ca.gov/cc/inventory/data/tables/arb_ghg_inventory_forecast_2008_06_26.xls</a> (Forecast last updated: June 26, 2008)		

<b>California GHG-Efficiency Calculations per AB 32 and S-3-05</b>	
Demographic Data	2020
CA Population	44,135,923
CA Employment	20,194,661
CA Service Population <sup>1</sup>	64,330,584
<b>Business as Usual GHG/capita</b>	
GHG/Capita (sector-specific CA inventory)	8.35
GHG/SP (sector-specific CA inventory)	5.73
<b>AB 32 Goal GHG Efficiency</b>	
GHG/Capita (sector-specific CA inventory)	6.35
GHG/SP (sector-specific CA inventory)	4.36
Notes: AB = Assembly Bill; CA = California; GHG = greenhouse gas; SP = service population; <sup>1</sup> Service Population = Population + Employment Source: ARB 2007, 2010	

The first step to determine the efficiency metric is to determine GHG emissions sectors that are applicable to land use developments from ARB's 2008 Scoping Plan, and total emissions from pertinent sectors for 1990.

The second step is for 2020, divide total 1990 GHG emissions by service population projected for 2020. These are target 2020 GHG emissions (AB 32 goal) normalized by the service population on a statewide basis (without constraining population or economic growth).

The BAAQMD's performance standard is calculated in a similar way and is slightly less conservative (4.6 MT CO<sub>2</sub>e/SP/year) because the calculation includes additional sector emissions in the 1990 GHG emissions estimate (electric power co-generation).

In response to several comments regarding the amount of 28% below Business as Usual (BAU) in 2020 as inappropriate in terms of GHG reductions required to meet AB 32 goals, the BAAQMD states the following (BAAQMD Proposed Air Quality CEQA Thresholds of Significance, December 7, 2009, page 10 [emphasis added]):

*Project Level GHG Thresholds*

Staff proposes two quantitative thresholds for land use projects: a bright line threshold based on a "gap" analysis and an **efficiency threshold based on emission levels required to be met in order to achieve AB 32 goals**. Staff also proposes one qualitative threshold for land use projects: if a project complies with a Qualified Climate Action Plan that addresses the project it would be considered less than significant.

(BAAQMD Proposed Air Quality CEQA Thresholds of Significance, December 7, 2009, page 13 [emphasis added]):

*Derivation of GHG Reduction Goal*

To meet the target emissions limit established in AB 32 (equivalent to levels in 1990), total GHG emissions would need to be reduced by approximately **28** percent from projected 2020 forecasts... To meet the AB 32 reduction goals in the emissions sectors that are related to land use development (e.g., on-road passenger and heavy-duty motor vehicles, commercial and residential area sources [i.e., natural gas], electricity generation/consumption, wastewater treatment, and water distribution/consumption), staff determined that California would need to achieve an approximate **26** percent reduction in GHG emissions from these land use-driven sectors by 2020 to return to 1990 land use emission levels.

(BAAQMD Proposed Air Quality CEQA Thresholds of Significance, December 7, 2009, page 26 [emphasis added]):

*Qualified Climate Action Plans for CEQA Streamlining*

... Staff recommends that if a local jurisdiction can demonstrate that its collective set of climate action policies, ordinances and other programs is consistent with AB 32, includes requirements or feasible measures to reduce GHG emissions and achieves one of the following GHG emission reduction goals, the AB 32 consistency demonstration should be considered equivalent to a qualified climate action plan:

- ▶ 1990 GHG emission levels,
- ▶ 15 percent below 2008 emission levels, or
- ▶ **28 percent below BAU Forecasts for 2020 (if including non-land use sector emissions in the local inventory; otherwise can use 26.2 percent if only including land use sector emissions).**

The performance standard approach to setting a GHG significance threshold does not, as some commenters suggest, allow the threshold to be met with reasonably foreseeable regulation rather than adoption of feasible mitigation measures. No reductions were taken for Scoping Plan measures such as AB 1493 (Pavley), low carbon fuel standards (LCFS), renewable portfolio standard (RPS), California Green Building Code (GBC or CALGreen), etc., in the calculation of the GHG performance standard.

The BAAQMD's methodology has been confirmed as appropriate by the California Department of Justice, Office of the Attorney General (letter from Janill L. Richards, Deputy Attorney General to Greg Tholen, BAAQMD, dated December 2, 2009, available: [http://ag.ca.gov/globalwarming/pdf/comments\\_BAAQMD\\_Thresholds\\_of\\_Significance.pdf](http://ag.ca.gov/globalwarming/pdf/comments_BAAQMD_Thresholds_of_Significance.pdf)).

## **MASTER RESPONSE 2: POST-2020 GREENHOUSE GAS THRESHOLDS OF SIGNIFICANCE**

*For the purposes of development occurring in the SPA after 2020, a number of commenters remarked that long-term state GHG reduction goals were not considered in the DEIR/DEIS analysis (i.e., 80% below 1990 levels by 2050).*

According to the 2009 BAAQMD CEQA Proposed Threshold of Significance document (page 24 [emphasis added]):

When analyzing long-range plans, such as general plans, it is important to note that the planning horizon will often surpass the 2020 timeframe for implementation of AB 32. Executive Order S-3-05 establishes a more aggressive emissions reduction goal for the year 2050 of 80 percent below 1990 emissions levels. The year 2020 should be viewed as a milestone year, and the general plan should not preclude the community from a trajectory toward the 2050 goal. **However, the 2020 timeframe is examined in this threshold evaluation because doing so for the 2050 timeframe (with respect to population, employment, and GHG emissions projections) would be too speculative. Advances in technology and policy decisions at the state level will be needed to meet the aggressive 2050 goals. It is beyond the scope of the analysis tools available at this time to examine reasonable emissions reductions that can be achieved through CEQA analysis in the year 2050.** As the 2020 timeframe draws nearer, the BAAQMD will need to reevaluate the threshold to better represent progress toward 2050 goals.

A number of approaches could be used to obtain a performance metric for post-2020 GHG significance thresholds, including the one presented on page 3A.4-17 of the DEIR/DEIS, which was obtained by interpolating between 2020 BAU GHG emissions and the 2050 GHG emissions goal (80% below 1990 GHG emissions) and dividing this number by the estimated 2030 population. The 2030 population was used as a performance metric for the DEIR/DEIS analysis, because the year 2030 is the beginning of full operational emissions for the project (i.e., full project buildout).

## **MASTER RESPONSE 3: GREENHOUSE GAS MITIGATION MEASURES**

*Several commenters stated that the GHG mitigation measures included in the DEIR/DEIS are inadequate.*

This project began in 2007, at which time little GHG mitigation guidance was available. In 2009, construction-related GHG mitigation guidance from the SMAQMD was incorporated in the DEIR/DEIS. The SMAQMD also released draft operational GHG mitigation guidance in 2009; the mitigation measures proposed in the DEIR/DEIS and Air Quality Management Plan (AQMP) to reduce operational GHG emissions go above and beyond the draft measures suggested by the SMAQMD and were derived from multiple sources, including the Mitigation Measure Summary in Appendix B of the California Air Pollution Control Officers Association (CAPCOA) white paper, "CEQA & Climate Change" (2009); CAPCOA's "Model Policies for Greenhouse Gases in General Plans" (2009); and the California Attorney General's publication, "The California Environmental Quality Act: Addressing Global Warming Impacts at the Local Agency Level" (2008).



Furthermore, some commenters have stated that the DEIR/DEIS contains deferred mitigation related to GHGs. The DEIR/DEIS states that mitigation would be required to reduce GHG emissions to a level at or below the performance standard developed for this project. The specifics of precisely how and when mitigation would occur 20 years in the future are speculative at best, as it is not reasonable to specify fuel types, technologies, and designs that could be obsolete at the time of project buildout (2030). The GHG mitigation contained in the DEIR/DEIS includes a reasonable performance standard, a range of options to meet the standard has been provided, and the project applicants have committed to the mitigation for each increment of future development (with enforcement by the City of Folsom Community Development Department). As stated in Mitigation Measure 3A.4-2a on page 3A.4-26 of the DEIR/DEIS (as revised in Chapter 5, “Errata” of this FEIR/FEIS):

Each increment of new development within the project site requiring a discretionary approval (e.g., proposed tentative subdivision map, conditional use permit), shall be subject to a project-specific environmental review (which could support an applicable exemption, negative or mitigated negative declaration, or project-specific EIR) and will require that GHG emissions from operation of each phase of development, including supporting roadway and infrastructure improvements that are part of the selected action alternative, will be reduced by an amount sufficient to achieve the 2020-based threshold of significance of 4.36 CO<sub>2</sub>e/SP/year for development that would become operational on or before the year 2020, and the 2030-based threshold of significance of 2.86 CO<sub>2</sub>e/SP/year for development that would become operational on or before the year 2030.

The above-stated thresholds of significance may be subject to change if SMAQMD approves its own GHG significance thresholds, in which case, SMAQMD-adopted thresholds will be used. The amount of GHG reduction required to achieve the applicable significance thresholds will furthermore depend on existing and future regulatory measures (including those developed under AB 32).

For each increment of new development, the project applicant(s) shall submit to the City a list of feasible energy efficient design standards to be considered in the project-specific environmental review. These energy conservation measures which will be incorporated into the design, construction, and operational aspects of each increment of development, would result in a reduction in overall project energy consumption and GHGs. The project-specific environmental review shall further identify potentially feasible GHG reduction measures to reflect the current state of the regulatory environment, available incentives, and thresholds of significance that may be developed by SMAQMD, which will continuously evolve under the mandate of AB 32 and Executive Order S-3-05. If the project applicant(s) asserts it cannot meet the 2020-based goal, then the report shall also demonstrate why measures not selected are considered infeasible. The City shall review and ensure inclusion of the design features in the proposed project before the applicant(s) can receive the City’s discretionary approval for any increment of development.

In response to several comments regarding the lack of a Mitigation Monitoring and Reporting Program (MMRP), an MMRP is not required in either a Draft or Final EIR. California Public Resources Code Section 21081.6 states that when making Findings as required by Section 21081, “The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval adopted in order to mitigate or avoid significant effects on the environment.” An MMRP containing the final version of all mitigation measures will be prepared and submitted to the Folsom City Council for adoption, as required by CEQA, consistent with California Public Resources Code Section 21081.6, prior to certification of the EIR and adoption of the project. The adopted mitigation measures will be made Conditions of Approval. Under NEPA, the ROD must identify all practicable mitigation measures that have been adopted and must also adopt and summarize a monitoring and enforcement program where applicable (40 CFR Section 1505.2[c]). In *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989) the Supreme Court confirmed that NEPA does not require agencies to circulate a monitoring and enforcement program in the FEIS.

In response to comments that the project would be able to meet the GHG threshold largely through compliance with foreseeable regulations, the ARB acknowledges that local governments would help meet AB 32 targets

through SB 375 and, conversely, that statewide regulations would reduce emissions at the local government level. Furthermore, ARB developed a tool to use in conjunction with EMFAC 2007 to estimate reductions from Pavley I and LCFS regulations (ARB 2010, Pavley I + LCFS Postprocessor – Version 1.0 User’s Guide, page1).

Furthermore, the BAAQMD used Pavley reductions as well as other reductions in the calculations of the “fair share” GHG reductions needed to be consistent with AB 32 (2009 BAAQMD CEQA Proposed Threshold of Significance document, pages 11–12). The BAAQMD’s “gap-based” threshold for land use projects was calculated using the following “anticipated” local, state, and Federal GHG reductions: AB 1493 (Pavley), LCFS, Heavy/Medium Duty Efficiency, Passenger Vehicle Efficiency, Energy-Efficiency Measures, Renewable Portfolio Standard, and Solar Roofs.

Additionally, the BAAQMD provides the following project and plan level guidance to encourage accounting for local, state, and Federal regulations when calculating projected GHG emissions (BAAQMD CEQA Guidelines, pages 4-1 and 9-5):

Project-level guidance: When calculating project emissions to compare to the thresholds of significance, lead agencies should account for reductions that would result from state, regional, and local rules and regulations.

Plan-level guidance: Where possible, emission projections should account for inherent improvements in energy and fuel efficiency, population and employment growth rates published by ABAG, VMT growth rates available from MTC, energy consumption growth rates available from California Energy Commission (CEC) planned expansions of municipal infrastructure or services, and anticipated statewide legislative requirements or mandates (e.g., Renewable Energy Portfolio, Green Building Code Standards, on-road vehicle emission regulations).

Furthermore, the BAAQMD developed GHG emissions modeling software (BGM), which subtracts Pavley and LCFS reductions from mobile operational emissions at the project level.

However, to be conservative, even though the State of California and BAAQMD guidance allow the subtraction of anticipated scoping plan reductions (e.g., Pavley and low-carbon fuel standard) from calculated project emissions, the analysis contained in DEIR/DEIS Section 3A.4, “Climate Change” did not use this subtraction. Therefore, contrary to the assertions of various commenters, the GHG analysis in the DEIR/DEIS contains a business-as-usual, worst-case projection, which is appropriate under CEQA and NEPA.

#### **MASTER RESPONSE 4: GREENHOUSE GAS LIFECYCLE ANALYSIS**

*Several commenters stated that the DEIR/DEIS was inadequate because it failed to provide a “lifecycle” analysis related to GHG emissions.*

The amendments to the State CEQA Guidelines that were approved in December 2009 deleted the prior requirement that an energy lifecycle analysis be performed (California Natural Resources Agency, “Adopted Text of the CEQA Guidelines Amendments,” adopted December 30, 2009, effective March 18, 2010, Appendix F). As noted in California Natural Resources Agency’s Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97 (State CEQA Guidelines, CCR Section 15126.4[a][4]):

Even if a standard definition of the term “lifecycle” existed, requiring such an analysis may not be consistent with CEQA. As a general matter, the term could refer to emissions beyond those that could be considered “indirect effects” of a project as that term is defined in section 15358 of the State CEQA Guidelines. Depending on the circumstances of a particular project, an example of such emissions could be those resulting from the manufacture of building materials... [which] may be manufactured for many different projects as a result of general market demand, regardless of whether one particular project

proceeds... Similarly, in this scenario, a lead agency may not be able to require mitigation for emissions that result from the manufacturing process. Mitigation can only be required for emissions that are actually caused by the project.

Because direct GHG emissions from mobile and area source fuel combustion; electrical generation; and electricity consumption associated with water distribution, use, and treatment for any project are well defined and can be accurately quantified, they were not considered to be “lifecycle emissions” for the purposes of the DEIR/DEIS and were included in GHG quantification.

## **MASTER RESPONSE 5: CUMULATIVE GREENHOUSE GAS EMISSIONS**

*Several commenters noted that operational project-generated GHG emissions would continue over a long time period, and questioned the thresholds for such operational emissions.*

Although the SMAQMD does not yet have GHG thresholds, operational GHG significance thresholds based on performance metrics or bright line approaches are based on annual emissions. No adopted thresholds exist for construction or total lifetime emissions (i.e., more than 40 years) of projects. The reader is referred to Sections 3A.4, “Climate Change – Land” and 3B.4, “Climate Change – Water” of the DEIR/DEIS for a comprehensive discussion of GHG emissions and impacts. (See also, DEIR/DEIS at page 4-34 (referring the reader to Chapters 3A.4 and 3B.4 concerning Cumulative GHG Impacts).

## **MASTER RESPONSE 6: QUARRY TRUCKS AND TOXIC AIR CONTAMINANT EXPOSURE**

*Several commenters noted that the version of the SMAQMD Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways (March 2009, Version 2.2) used for the DEIR/DEIS is not the version that is current today, in 2011. Commenters also noted that the DEIR/DEIS adopted a significance threshold equal to the evaluation criterion used in the SMAQMD’s Protocol.*

The March 2009 Protocol was used because the DEIR/DEIS analysis was written before the current Protocol (which went into effect in summer 2010). The Notice of Preparation (NOP) for the project was circulated on September 12, 2008, and therefore the DEIR/DEIS properly used the methodology that was current at the time. The City and USACE also note that the two versions of the Protocol are very similar, but the evaluation criterion was changed in the more recent document to 281/million instead of 296/million used in the DEIR/DEIS. Even if the current protocol were used in the DEIR/DEIS analysis, it would have no effect on the impact conclusions.

As stated in the DEIR/DEIS, in the absence of a recommended threshold of significance from ARB or the SMAQMD, the City and USACE believe that the screening criterion contained in the SMAQMD Protocol is conservative as a program-level significance threshold and is appropriate, in part, because of expected future changes in the inventory of mobile-source toxic air contaminant (TAC) emissions in the Sacramento Valley Air Basin (see page 3A.2-26 of the DEIR/DEIS). This is based on the idea that as buildout occurs over the next 20 years, the heavy-duty diesel (HDD) fleet is expected to change because of more stringent diesel emissions standards applied at the Federal and state levels. Furthermore, the DEIR/DEIS states that if a threshold should be adopted in the future by ARB or the SMAQMD, that threshold would be used to determine significance of impacts for each increment of development (see pages 3A.2-26, 4-24, and 4-25 of the DEIR/DEIS).

The SMAQMD’s Protocol states that an acceptable diesel particulate matter (DPM) cancer risk level or a regulatory threshold is not provided in the document and that the Protocol does not establish which land use projects are acceptable and which are not (Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways, March 2009, Version 2.2, page 2): “Local land use jurisdictions retain all authority and decide after considering all relevant factors whether the land use project is appropriate.”

The Protocol also states that the evaluation criterion of 296 in a million contained therein does not represent a “safe” risk level or a regulatory threshold; it is simply the point at which a site-specific health risk assessment

(HRA) is recommended (Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways, March 2009, Version 2.2, page 8). To determine cancer health risks, an HRA would need to be performed with the following minimum inputs necessary to perform dispersion modeling: diesel vehicle volumes, wind direction, receptor location, daily and lifetime exposure duration, and activity level.

The necessary dispersion modeling inputs were not all known at the time of writing the DEIR/DEIS, which evaluates a 3,500-acre specific plan at a program level, but the DEIR/DEIS does recommend HRAs as mitigation in cases where quarry truck traffic could cause diesel particulate matter (DPM) exposures in excess of the evaluation criterion/significance threshold (see Cumulative Mitigation Measure AIR-1-Land on pages 4-24 and 4-25 of the DEIR/DEIS and changes thereto as shown in Chapter 5, "Errata" of this FEIR/FEIS). The DEIR/DEIS states that in the absence of designated truck routes that would limit exposure of sensitive receptors to quarry truck traffic, an HRA should be performed (see Cumulative Mitigation Measure AIR-1-Land: Implement Measures to Reduce Exposure of Sensitive Receptors to Operational Emissions of Toxic Air Contaminants from Quarry Truck Traffic on page 4-24 of the DEIR/DEIS). If the incremental increase in cancer risk determined in the HRA exceeds 296 in one million (or a different threshold of significance recommended by the SMAQMD or ARB at the time, if any), then project-specific design mitigation would be employed, including appropriate setback distances, high efficiency air filters, and other measures (see pages 4-24 through 4-26 of the DEIR/DEIS).

Several commenters remarked that the SMAQMD's Protocol was not followed (i.e., the SPA would not be developed within 500 feet of roadways with daily traffic volumes of 100,000 vehicles or more). However, the average fleet percentage of diesel trucks in Sacramento County in 2030 is estimated to be 2%, and quarry truck traffic could approach 25% (EMFAC 2007, and Fehr and Peers 2009, as referenced in the DEIR/DEIS). Multiplying 100,000 by 2% average daily traffic results in about 2,000 diesel trucks per day, which is approximately half of the number estimated for full development of the quarry and SPA (for example, the number of quarry trucks on Grant Line Road is estimated to be approximately 5,577 per day, representing about 14-27% of the daily traffic under buildout conditions in 2030).

According to the SMAQMD's Protocol (Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways, January 2010 Version 2.3, page 12): "The methodology developed in this effort assumes that the roadway is a single, limited-access freeway, with no interchanges, traffic signals, or associated traffic queues. Emissions and corresponding risk in certain situations may be higher than the screening tables indicate."

The increased percentages of diesel trucks near the SPA warranted further evaluation, rather than screening the project out because of traffic volumes that were lower than 100,000 vehicles per day. The DEIR/DEIS provided additional evaluation of the impacts of diesel trucks by comparing numbers of heavy duty diesel (HDD) trucks (with and without the additional quarry truck traffic, adjusted for speed) with the numbers used in the SMAQMD's screening level that could cause cancers in excess of 296 in a million. As stated on page 4-23 of the DEIR/DEIS, "According to SMAQMD staff, the proportion of diesel trucks on the roadways is important because the volume of diesel trucks is the key variable used to develop the screening levels in SMAQMD's Protocol (DuBose, pers. comm., 2009)."

Examination of diesel truck emission factors in both 2010 and 2030 is appropriate because, as stated on page 4-24 of the DEIR/DEIS, "It is important to consider the emission factors of both the existing and future vehicle fleets in order to understand what the risk levels would be during intermediate years because there is the potential that the daily traffic volumes on roadways would increase considerably before full build out while the emission rates of the vehicle fleet during a particular intermediate year are still relatively high." The DEIR/DEIS, by examining buildout traffic with the inclusion of quarry trucks, utilizing emissions factors representing both earlier and later years of development, provides a thorough and health-protective analysis of potential impacts of TACs (diesel PM) on sensitive members of the population.

## MASTER RESPONSE 7: QUARRY TRUCK CUMULATIVE IMPACT AND MITIGATION APPROACH

*A few commenters associated with the proposed quarries to the south of the SPA commented on the mitigation proposed to address the TAC and noise impacts that would result from the daily passage of a high volume of diesel-powered quarry trucks through the SPA. The commenters characterized the proposed mitigation (Cumulative Mitigation Measures AIR-1 and Noise-1-Land, DEIR/DEIS pp. 4-24, 4-51) as a ban on truck traffic and asserted that the analysis did not consider the effects of imposing such a ban on air quality, climate change, transportation and circulation, and the ability of the quarry applicants to mine aggregate in the manner they propose.*

These comments present an incomplete, and therefore misleading, characterization of the proposed mitigation. The mitigation at issue was, in fact, presented as a set of alternative actions – one being a suite of voluntary measures to be developed and implemented cooperatively between the quarry applicants and the City, and the other being an exercise of the City’s authority to designate truck routes along roads within its jurisdiction. Reference to the full text of the proposed measures reveals that the City did not propose to unilaterally ban the passage of quarry trucks through the SPA without consideration of less restrictive, but equally effective options. The measures were framed partly as proposals for voluntary action on the part of the quarries; however, in recognition of the fact that the City does not have legal jurisdiction over the operations of the quarries outside of the City’s boundaries. If the City adopted a restriction on truck traffic through the SPA, the selection of alternative routes outside the SPA would be under the control of the quarries and the County or other jurisdictions affected by truck traffic, not the City. Because it was not known at the time the DEIR/DEIS was prepared (and is still not known) what alternative routes these other parties might select or how much traffic they might send along one or more alternative routes, it would have been too speculative to try to predict any changes in vehicle miles traveled, air pollutant and greenhouse gas emissions, or other impacts resulting from a designation of truck routes.

Since the publication of the DEIR/DEIS in June 2010, further progress has been made in a series of meetings with the County of Sacramento, the City of Rancho Cordova, representatives of Teichert and other quarry applicants with mining proposals before the County, and other participants toward the resolution of concerns about the routes and amounts of truck traffic that would be generated by the quarries. That process came to be known as the East Sacramento Regional Aggregate Mining Truck Management Plan (TMP). At the time the DEIR/DEIS was published, the participants in the TMP meetings had not yet reached consensus regarding truck routes through the SPA and adjoining areas, analysis methodology, or other important issues necessary to develop a definite, final TMP.

In November 2010, the Sacramento County Board of Supervisors approved various entitlements for the proposed Teichert quarry project in the south-eastern portion of Sacramento County, including a development agreement. The development agreement notes the ongoing participation of the Cities of Folsom and Rancho Cordova, the County and other interested parties in the development of the TMP and acknowledges that the Board will first have to comply with CEQA before adopting a TMP. The development agreement also commits Teichert to complying with any truck routing redistribution measures contained within any adopted TMP and requires Teichert to contribute its fair share toward the funding of such a program, including measures pertaining to air quality and noise. (Teichert Quarry Development Agreement, Section 2.4.5.A, p. 14.)

The components of the TMP must include, at a minimum, the following:

- ▶ traffic solutions associated with routing quarry trucks so as maintain the “quality of life” in Folsom and Rancho Cordova;
- ▶ identification of truck haul routes within the SPA;
- ▶ phasing of improvements for the proposed haul routes;
- ▶ phasing of use of haul routes as development in the SPA proceeds; and

- ▶ a financing program for implementation of the TMP.

The TMP may also include, without limitation, one or more of the following components, which may be phased:

- ▶ diversion of U.S. 50-bound trucks to dedicated, grade-separated truck lanes on Prairie City Road;
- ▶ construction of westerly vehicle lane(s) on Prairie City Road;
- ▶ construction of truck lane(s) and/or easterly vehicle lane(s) on Prairie City Road; and
- ▶ diversion of other truck traffic and/or other transportation improvements within the SPA.

The Teichert development agreement provides that Teichert shall not sell or transport by truck material obtained directly from its proposed Teichert Quarry facility, except by conveyer belt to its Grant Line facility, until the TMP is adopted. The development agreement also limits Teichert's annual sales of aggregate from its Grant Line facility until the TMP is adopted. The sales limitation is conditioned upon the City of Folsom's intent to include those portions of the TMP relating to the Folsom South of U.S. 50 Specific Plan in any associated development agreement and environmental documentation. (Development Agreement, Section 2.4.5.B, pp. 14-15.)

The Teichert development agreement and the statements of County staff and Board of Supervisors indicate that the County intends, as the lead agency for the TMP, to prepare an environmental analysis pursuant to CEQA once a sufficient project description has been developed for the TMP, so that any potential impacts of implementing the plan can be fully and publicly considered and disclosed before the plan is adopted. The development agreement sets April 12, 2011, as a target date for the completion of an agreed project description for the TMP. Once the project description is finalized, the County may begin preparation of its environmental analysis of the TMP.

As of the time of the completion of this FEIR/FEIS, the details and description of the TMP have not yet been completed. The City is not the lead agency for the purpose of implementing the majority of the components of a TMP. Furthermore, because the TMP's description at this point is abstract, and not yet stable and finite, it is not possible at this point to include a meaningful analysis of the effects of implementation of the TMP in this FEIR/FEIS because any such analysis would be too speculative. The TMP's project description is subject to change and additional important details of the plan still remain to be developed. For instance, while Prairie City Road is the preferred truck haul route, the exact location of the truck haul routes and timing of implementation of the routes, which will be fixed based on the results of future study of the TMP components, have not yet been developed. In consideration of the City's good faith commitment to cooperate in the development and implementation of the TMP, the proposed mitigation measures previously identified in the DEIR/DEIS to address the cumulative air quality and noise impacts associated with development of the SPA along with future quarry truck traffic through the SPA have been revised to rely upon the TMP as the first resort for mitigation and ensure that when a TMP is adopted, those portions of the TMP subject to City control will, in fact, be implemented. Accordingly, Cumulative Mitigation Measures AIR-1-Land and NOISE-1-Land have been revised and are presented in Chapter 5, "Errata" of this FEIR/FEIS.

Although the City intends, for its part in participating in the TMP, to continue to advocate for a solution that resolves the concerns about toxic air contaminant and noise impacts attributable to the addition of quarry truck traffic to the project's roadways and achieves a mutually satisfactory approach to this regional problem, and that reduces TAC emissions and noise levels to a less-than-significant level, as identified in the revised mitigation measures, as a second resort, the City encourages the quarries to participate in the voluntary development of further mitigation described in the revised measures.

While the cumulative mitigation measures proposed for adoption defer to some extent the development of further details to the future, the measures nonetheless comply with CEQA's restrictions and guidance in case law regarding the way that such measures must be structured in order to comply with CEQA. (*Sacramento Old City Assn. v. City of Sacramento* [1991] 229 Cal.App.3d 1011-229 Cal.App.3d 1011; see also *California Native Plant Society v. City of Rancho Cordova* [2009] 172 Cal.App.4th 603, 619-623; *Defend the Bay v. City of Irvine* [2004] 119 Cal.App.4th 1261, 1273-1278.) Specifically, the revised measures contain performance standards against which the further details of the future mitigation will be measured to determine

whether they achieve the necessary reduction of the impacts to a less-than-significant level. (State CEQA Guidelines, CCR Section 15126.4, subd. [a][1][B].)

*A few of the quarry applicant commenters asserted that the proposed mitigation for cumulative impacts caused by the quarry trucks would somehow impede the quarries' ability to operate, thereby conflicting with the designation of the quarry area as a valuable mineral resource zone.*

This assertion is incorrect, because, as noted above, the City did not unilaterally propose a ban on truck traffic as the only solution to the problems caused by the large volume of truck traffic through the plan area. Moreover, as asserted by the quarry commenters themselves, they would simply find other routes to deliver their product to consumers. Thus, the City's previously proposed measure would not have prevented the quarries from operating, as their facilities and the alternate routes they assert they would have to use lie outside the City's jurisdiction to regulate.

*Some of the quarry commenters suggested that the DEIR/DEIS failed to follow CEQA's requirements regarding the use of a baseline against which project impacts are to be compared; specifically, they allege that the impact analysis should have assumed the presence or operations of the quarries in assessing traffic, air, or noise impacts of the project because of the pending applications by the quarries for permits to construct and operate their facilities south of the SPA.*

The environmental analysis sets the baseline at the time the NOP for the DEIR/DEIS which was published on September 12, 2008 (see page 3-6 of the DEIR/DEIS). This baseline is consistent with the guidance set forth in State CEQA Guidelines CCR Section 15125, which provides that the environmental baseline is normally the conditions as they exist at the time of publication of the NOP. The City decided, based on the fact that the quarries were only proposed, but not yet approved, at the time the NOP was published, as well as at the time the DEIR/DEIS was published, that the baseline properly should *not* assume the quarries were actually operating. A California Court of Appeal recently affirmed the principle that "an agency enjoys the discretion to decide, in the first instance, exactly how the *existing* physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence." (*Sunnyvale West Neighbors Assn. v. City of Sunnyvale* [2010] 190 Cal.App.4th 1351, 1375 emphasis in original.)

The DEIR/DEIS properly identifies the quarry projects in the cumulative analysis as past, present, or probable future projects, which are analyzed in conjunction with the Proposed Project and other project alternatives (see pages 4-7 through 4-10 and 4-15 through 4-16 of the DEIR/DEIS). Mitigation measures were determined by taking into account the potential cumulative impacts of these and other projects. See Cumulative Mitigation Measure Air-1-Land on pages 4-24 through 4-26, and Cumulative Mitigation Measure Noise-1-Land on pages 4-51 through 4-53 of the DEIR/DEIS; see also response to comment Tsakopoulos-2-7. Thus, the quarries were properly accounted for as part of the cumulative conditions.

*Some of the quarry commenters objected to the fact that the DEIR/DEIS also included a separate analysis in the traffic section disclosing the unique effects associated with adding quarry truck traffic to SPA roadways. (See pages 3A.15-135 through 138 of the DEIR/DEIS.)*

The commenters appear to have mistakenly concluded that this analysis takes the place of the more comprehensive cumulative impact analysis presented in Chapter 4 of the DEIR/DEIS. As the disputed section discloses, however, "this analysis is presented to inform the public and decision makers regarding the potential range of effects of quarry truck trips on the roadway network in the project vicinity." (DEIR/DEIS, p. 3A.15-135.) As explained previously, this section does not take the place of the standard cumulative impact analysis presented in Chapter 4 of the DEIR/DEIS, which did include the quarries as part of the "cumulative baseline" consisting of past, present, and proposed future projects within the geographic areas that could be affected by the project.

## **MASTER RESPONSE 8: LAND USE INCOMPATIBILITY**

*Several comments on the DEIR/DEIS suggested that the document should have analyzed impacts related to land use conflicts with neighboring land uses, or with land use designations (such as Sacramento County's Resource Conservation Area designation), and planning priorities of surrounding jurisdictions.*

Land use compatibility *per se* is not a required analysis topic under CEQA or NEPA (see Appendix G of the State CEQA Guidelines and DEIR/DEIS Chapter 3 for a list of thresholds that were used in the analysis of the Folsom South of U.S. 50 Specific Plan project under both CEQA and NEPA). However, CEQA does require an analysis of the project's potential to "conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect" (State CEQA Guidelines, Appendix G, Land Use). NEPA contains a similar requirement that for any potential inconsistencies with such policies, the extent to which the agency would reconcile its proposed action with the plan or law should be included in the EIS (40 CFR Sections 1502.16[d] and 1506.2[d]). Any such potential conflict is addressed in the DEIR/DEIS as a separate impact in the relevant topic area (for example, see Section 3A.11, "Noise" for an evaluation of the project's potential to exceed City/County noise standards adopted as part of each respective general plan; see Section 3A.3 "Biological Resources" for an evaluation of the project's consistency with adopted tree preservation ordinances).

The DEIR/DEIS also appropriately addresses specific direct and indirect physical impacts of the project on the environment, as required by the State CEQA Guidelines CCR Section 15126.2(a) and NEPA implementing regulations promulgated by the Council on Environmental Quality (CEQ Regulations). For instance, as discussed in "Existing Noise Sources," starting on page 3A.11-5 in Section 3A.11, "Noise – Land," of the DEIR/DEIS, nearby existing noise sources, including Prairie City Road SVRA, Aerojet General Corporation, and Mather Airport were considered in the analysis. As described therein, noise monitoring was conducted at the nearest portion of the SPA to the Prairie City State Vehicular Recreation Area to evaluate the potential for noise generated by the Prairie City SVRA to affect proposed residential uses (noise generated by the Prairie City SVRA was not distinguishable from background traffic noise along White Rock and Prairie City Roads, and therefore the impact was determined to be less than significant [page 3A.11-51]). Also, odor impacts related to adjacent cattle operations south of White Rock Road were evaluated in Impact 3A.2-6, beginning on page 3A.2-59.

## **MASTER RESPONSE 9: DEFERRED AND/OR HORTATORY MITIGATION**

*Several comments raised concerns that some of the mitigation measures included in the Draft EIR/EIS impermissibly deferred mitigation. In particular, some commenters expressed the belief that the Folsom Plan Area Specific Plan's policies and some of the more broadly worded mitigation measures designed to reduce the project's impacts on biological resources and climate change, among other areas, improperly deferred the formulation of precise mitigation.*

The commenters are correct that, as a general matter, a lead agency must not defer the formulation of mitigation until after project approval. (State CEQA Guidelines, CCR Section 15126.4 subd. [a][1][B].) The California State courts, however, have developed legal principles regarding the extent to which an agency can rely on a mitigation measure that defers some amount of environmental problem-solving until after project approval. In particular, deferral is permissible where the adopted mitigation measure commits the agency to a realistic performance standard or criterion that will ensure the mitigation of the significant effect or lists alternative means of mitigating an impact that must be considered, analyzed, and possibly adopted in the future. (See *ibid* ["measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way"]; *Endangered Habitats League v. County of Orange* [2005] 131 Cal.App.4th 777, 793-794 [deferral is permissible where the agency commits itself to mitigation and either (1) adopts a performance standard and makes further approvals contingent on finding a way to meet the standard or (2) lists alternative means of mitigating the impact which must be considered, analyzed, and possibly adopted in the future]; *Riverwatch v. County of San Diego* [1999] 76 Cal.App.4th 1428, 1448–1450 [a deferred approach may be



appropriate where it is not reasonably practical or feasible to provide a more complete analysis before approval and the EIR otherwise provides adequate information of the project's impacts]; *Sacramento Old City Assn. v. City Council* [1991] 229 Cal.App.3d 1011, 1029-1029 [SOCA]; *Defend the Bay v. City of Irvine* [2004] 119 Cal.App.4th 1261, 1275.)

The use of performance standards is particularly appropriate in connection with "program EIRs," such as the Folsom South of U.S. 50 Specific Plan EIR/EIS, for which later project-level environmental review will be conducted. "[F]or kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezone stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." (*SOCA, supra*, 229 Cal.App.3d at pp. 1028-1029; see also *Rio Vista Farm Bureau Center v. County of Solano* [1992] 5 Cal.App.4th 351.)

Consistent with the CEQA requirements set forth above, the mitigation set forth in the Draft EIR/EIS, and the policies and programs included in the Folsom South of U.S. 50 Specific Plan, the City proposes to adopt performance standards to ensure the efficacy of the mitigation measures, policies and programs. (*Endangered Habitat League, supra*, 131 Cal.App.4th at pp. 793-794.) For instance, Mitigation Measure 3A.9-1 (pages 3A.9-25 and -26 of the DEIR/DEIS) requires the project applicant(s) to prepare a Storm Water Pollution and Prevention Plan (SWPPP) and implement Best Management Practices (BMPs). The mitigation measure includes nine different bullet points that specify the contents of the SWPPP and list examples of the types of BMPs that may be used.

The fact that certain policies and programs do not include detailed site-specific information on how the policy or program will be implemented is attributable to the programmatic and necessarily broad nature of the Specific Plan. (See also Master Response 10.) State CEQA Guidelines, CCR Section 15152, which sets forth principles governing tiering, recognize that "[w]here a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval...site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale." CCR Section 15152 also acknowledges that "not all effects can be mitigated at each step of the process. There will be some effects for which mitigation will not be feasible at an early step of approving a particular development project." NEPA also provides guidance on tiering (see 40 CFR Section 1508.28). Second- or even third-tier CEQA review would then be required to develop the detailed mitigation.

The extent to which some of the proposed mitigation measures are general in nature is simply a reflection of the fact that the project is a specific plan covering over 3,500 acres of land, with a build-out timeline of 20 or more years. The specificity of a DEIR's discussion of mitigation measures should be proportionate to the specificity underlying the project. (*Rio Vista Farm Bureau Center, supra*, 5 Cal.App.4th at p. 376.) If the proposed Folsom Plan Area Specific Plan is adopted, the City would have successive opportunities in the future, in processing future tentative subdivision maps, use permit applications, and similarly specific entitlement requests, to translate some of the broadly framed, specific plan-level mitigation measures into more detailed, site-specific measures. For example, the City would have the opportunity, as the years pass, to keep abreast of the latest science on climate change as it considers future site-specific approvals, which is a form of adaptive management. In addition, as the statewide implementation of AB 32 progresses, it is very likely that development within the City, like development elsewhere in California, will be subject to new regulatory requirements and mandates developed by ARB.

Some commenters quote various sections of CEQA relating to the requirement to mitigate significant environmental impacts and then conclude that the goals and policies cited by the DEIR/DEIS are not enforceable, mandatory, or effective. These comments apparently mix considerations that may be germane to the Specific Plan (i.e., goals and policies) with those that may be relevant to the DEIR/DEIS (i.e. proposed mitigation measures),

making it difficult to discern which topics presented by the commenters are CEQA-related and which ones are not. With respect to the goals and policies cited by the DEIR/DEIS, these goals and policies were listed in the DEIR/DEIS as evidence of components of the proposed Specific Plan that would tend to reduce or avoid impacts, and not as mitigation measures as required by CEQA.

## **MASTER RESPONSE 10: PROGRAMMATIC NATURE OF EIR/EIS ANALYSIS**

*Several comments on the DEIR/DEIS requested additional impact analysis of specific developments within the SPA that may occur over time with implementation of the Folsom Plan Area Specific Plan and/or criticized the Specific Plan or DEIR/DEIS for not providing further detail about the development that would occur under the Specific Plan if it is approved by the City.*

These comments are misplaced. CEQA and NEPA not only allow, but actively encourage, the use of “tiering” for major land use approvals such as the adoption of a specific plan covering a substantial land area. In addition, the complex division of labor between various governmental agencies involved in approving the provision of, and providing, services to specific development within the SPA also makes impossible the kind of all-encompassing project-level EIR/EIS advocated by some commenters. Here, in preparing a program-level EIR/EIS for the Folsom Plan Area Specific Plan, the City and USACE have completed all of the environmental analysis that was reasonably feasible under the circumstances. (See State CEQA Guidelines, CCR Section 15151; NEPA regulations, 40 CFR Sections 1502.20 and 1508.28.)

The general order and hierarchy of plans and other entitlements under California law, from broad and general to narrow and site-specific, is as follows: General Plans, Specific Plans, Zoning, Subdivision Maps, Use Permits, and Building Permits. Each type of plan or entitlement following a general plan must be consistent with the general plan and other plans and entitlements preceding it in this hierarchy. Thus, the Folsom Plan Area Specific Plan must be consistent with the City’s General Plan, and subsequent zoning ordinances, subdivision map approvals, and permits approved for development within the boundaries of the Specific Plan must be consistent with the Specific Plan’s policies and guidelines. Because no general plan can perfectly predict the types of development or uses that may be determined later to be appropriate for a particular area, the State Planning and Zoning Law allows for general plans to be amended from time to time, frequently in conjunction with the proposal for a specific plan, or other specific development, in order to achieve the “vertical consistency” required by State law. Thus, the proponents of the Folsom Plan Area Specific Plan submitted applications for certain amendments to the City General Plan to maintain the required consistency between the documents. (See, e.g., Draft EIR/EIS, pages 2-10 and 2-11.) The legislative decision whether to approve those amendments and the determination whether the proposed Specific Plan and other related approvals are in fact consistent ultimately lies with the Folsom City Council.

According to the State CEQA Guidelines (CCR Section 15168[a]) and NEPA regulations (40 CFR Sections 1502.20 and 1508.28), an agency may prepare a program-level EIR/EIS to address a series of actions that can be characterized as one large project and are related either geographically; as logical parts of a chain of contemplated events; through rules, regulations, or plans that govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority, and that have generally similar environmental effects that can be mitigated in similar ways. As noted above, this EIR/EIS was prepared as a program-level EIR/EIS. (See Draft EIR/EIS, pages 1-9 and 1-10.) As a program-level EIR/EIS, this document serves as a “first-tier” document that assesses and documents the broad environmental impacts of a program with the understanding that a more detailed site-specific environmental review will be required to assess future projects implemented under the program. As individual projects with specific site plans and facilities are planned, the City and USACE would evaluate each project to determine the extent to which this EIR/EIS adequately addresses the potential impact of the project and to what extent additional environmental analyses might be required for each specific future project. (See Public Resources Code [PRC] Sections 21083.3, 21093, and 21094; and State CEQA Guidelines, CCR Sections 15152, 15168, and 15183.) The fact that the City and the project applicants had the *option* of trying to prepare project-level analysis for the residential components of the Specific Plan does not

mean that the City had the *duty* to take such an approach. (See Government Code, Section 65457; State CEQA Guidelines, CCR Section 15182.) Such an approach may be feasible for specific plans covering relatively confined geographic areas but has proven to be infeasible with respect to the over 3,500-acre Folsom Plan Area Specific Plan.

Because of the efficiencies allowed by tiering, the Legislature has declared that “*environmental impact reports shall be tiered whenever feasible, as determined by the lead agency.*” (PRC, Section 21093, subd. (b) (emphasis added).) The use of tiering is intended to allow agencies to avoid repetitiveness, wasted time, and unnecessary premature speculation by preparing a series of EIRs/EIS’ (or an EIR and later EIRs and/or negative declarations) on related projects. (Pub. Resources Code, Sections 21068.5, 21093, subd. [a]; State CEQA Guidelines, CCR Section 15152; 40 CFR Sections 1502.20 and 1508.28.)

According to the Court of Appeal for the Third Appellate District, ““tiering is a process by which agencies can adopt programs, plans, policies, or ordinances with EIRs focusing on “the big picture,” and can then use streamlined CEQA review for individual projects that are consistent with such. . . [first tier decisions] and are. . . consistent with local agencies’ governing general plans and zoning.”” (*Koster v. County of San Joaquin* [1996] 47 Cal.App.4th 29, 36.) Public Resources Code Section 21068.5 defines “tiering” as:

[T]he coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.

Notably, the California Supreme Court upheld a program EIR in *Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143 (*Bay-Delta*) and in doing so provided a useful explanation of the purposes and benefits of such EIRs. In that case, a consortium of Federal and state agencies created a long-term comprehensive plan, known as “the CALFED Program” (“CALFED”) to address pollution problems and other environmental issues associated with the Bay-Delta region. Because of the plan’s comprehensive and long-term nature, the proponents of CALFED opted to proceed in stages and to prepare a program environmental impact statement/environmental impact report (PEIS/R) for the project. Among other things, project opponents claimed the PEIS/R lacked sufficient detail regarding the sources of water that would be used to implement the CALFED Program because the PEIS/R merely listed potential sources of water, indicating that the ultimate source determination would be made later. The Court of Appeal agreed, holding that the PEIS/R needed to more specifically identify potential water sources and needed to include additional analysis of the impacts of supplying water from each identified potential source. The California Supreme Court reversed, however, holding that the PEIS/R fully complied with CEQA in identifying potential sources of water and analyzing the associated environmental effects in general terms. As explained by the Court:

The purpose of tiering is to allow a lead agency to focus on decisions ripe for review. (Pub. Resources Code, Section 21093, subd. (a); [State CEQA Guidelines], CCR Section 15385, subd. (b).) An agency that chooses to tier may provide analysis of general matters in a broader EIR, then focus on narrower project-specific issues in later EIR's. ([State CEQA Guidelines], CCR Section 15152, subd. (a).) Future environmental documents may incorporate by reference general discussions from the broader EIR, but a separate EIR is required for later projects that may cause significant environmental effects inadequately addressed in the earlier report. (*Id.*, Section 15152, subds. (a), (f).)

...

Although later project-level EIR's may not simply tier from the PEIS/R analysis and will require an independent determination and disclosure of significant environmental impacts (see [State CEQA Guidelines], CCR Section 15152, subd. (f)), this stage of program development did not require a more detailed analysis of the Program's future water sources, nor did it appear practicable. By compelling

CALFED at the first-tier stage to provide greater detail about potential sources of water for second-tier projects, the Court of Appeal's decision undermined the purpose of tiering and burdened the program EIR with detail that would be more feasibly given and more useful at the second-tier stage. Such details were properly deferred to the second-tier of the CALFED Program, when specific projects can be more fully described and are ready for detailed consideration.

(*Bay-Delta, supra*, 43 Cal.App.4th at pp. 57-59.)

Here too, future CEQA and NEPA review of site-specific projects would require detailed analysis of potential impacts where, given the broad, programmatic nature of the analysis in this EIR/EIS, those impacts have not yet been addressed in detail. However, consistent with the long-term and comprehensive nature of the Folsom Plan Area Specific Plan, a program-level analysis is appropriate in this circumstance. (See *ibid.*, see also Public Resources Code Sections 21083.3, 21093, and 21094; and State CEQA Guidelines, CCR Sections 15152, 15168, and 15183.)

The City's approach here is not only consistent with the Legislature's directive that EIRs "shall be tiered whenever feasible," but also recognizes the complex division of labor amongst California public agencies involved in process of approving development and providing services thereto. Although the City's DEIR/DEIS provides program-level analysis of the impacts of actions needed by other public agencies to facilitate development in the project area, a greater level of specificity is not reasonably feasible at this time, and any attempt to provide full CEQA analysis now for future actions of such other agencies would tend to usurp the prerogatives for those agencies and prevent them from accounting for future environmental conditions as they unfold. For example, the annexation of the project area into the City's boundaries would require approval by the Sacramento Local Agency Formation Commission (LAFCo) of Sacramento County. LAFCo would make its own, independent determination of whether this EIR/EIS is adequate and sufficient for its purposes when the application for annexation is submitted.

## **MASTER RESPONSE 11: DISAGREEMENT REGARDING THE CONCLUSIONS OF THE DEIR/DEIS**

*Several commenters expressed their disagreement with the analysis methodology and/or impact conclusions in the DEIR/DEIS related to various topic areas such as aesthetics, air quality, greenhouse gases, air quality, and noise.*

The State CEQA Guidelines require that decisions regarding the significance of environmental effects addressed in an EIR be based on substantial evidence and recognize that other evidence suggesting a different conclusion may exist. "Substantial evidence" means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (State CEQA Guidelines, CCR Section 15384.) Under NEPA, 40 CFR Section 1502.24 requires that "Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements."

The DEIR/DEIS provides a comprehensive evaluation of the project's environmental impacts in compliance with CEQA and the State CEQA Guidelines, in accordance with NEPA and the CEQ Regulations, and in accordance with professionally accepted methodology for the evaluation of environmental resources. The DEIR/DEIS and this FEIR/FEIS present substantial evidence to support the conclusions drawn within these documents regarding the significance of the project's environmental effects. When commenters disagree about environmental conclusions, the EIR need only summarize the main points of disagreement and explain the lead agency's reasons for accepting one set of judgments instead of another. Section 15151 of the State CEQA Guidelines states that "Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points

of disagreement among the experts.” (See also *Greenbaum v. City of Los Angeles* [1984] 153 Cal.App.3d 391, 413 and *Browning-Ferris Industries v. City Council* [1986] 181 Cal.App.3d 852, 862-863.) The lead agencies will ultimately determine which conclusion is appropriate, based on the substantial evidence presented in the EIR/EIS and other documents in the whole of the record. Similarly, under NEPA, 40 CFR Section 1502.9(b) states: “...(b) Final environmental impact statements shall respond to comments as required in part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.”

The comment letters and responses to them present summaries of the areas of disagreement. In some cases, there is no substantial evidence offered by commenters to support that a different conclusion should be drawn. As such, no further response to disagreements presented in the comment letters is necessary. If evidence is provided by the commenter to support the disagreement with the DEIR/DEIS’ conclusion, the evidence is summarized and considered in making the EIR/EIS’ conclusion and response to the individual comment. The City and USACE have reviewed and considered all the substantial evidence in the whole of the record in making their decisions about the project and its environmental effects.

## **MASTER RESPONSE 12: DEIR/DEIS RECIRCULATION IS NOT REQUIRED**

*A number of comments suggested that the DEIR/DEIS should be recirculated for various reasons, including purported improper deferral of mitigation (addressed in Master Response 9), or alleging that new mitigation measures or alternatives that would substantially reduce the level of impact are required, or that information “critical” to an understanding of the analysis methodology was not included in the DEIR/DEIS.*

State CEQA Guidelines, CCR Section 15088.5 describes the circumstances in which a lead agency is required to recirculate an EIR, as follows:

- ▶ A lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under Section 15087 but before certification. .... New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect....that the project’s proponents have declined to implement. “Significant new information” requiring recirculation includes, for example, a disclosure showing that:
  - A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
  - A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
  - A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
  - The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

The CEQ Regulations require a supplemental environmental impact statement (EIS) when:

- ▶ The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or,

- ▶ There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, or,
- ▶ When the agency determines that the purposes of NEPA will be furthered by doing so (40 Code of Federal Regulations [CFR] Section 1502.9[c]).

The regulations governing preparation of a supplemental EIS function to maintain a transparent record of the information supporting a lead agency’s decision. The CEQ regulations defining NEPA’s purpose state that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken” (40 CFR Section 1500.1[b]). This public and agency review of NEPA defines the purposes of the statute for application of 40 CFR Section 1502.9(c).

The specific issues that commenters believe should result in recirculation are addressed within the body of each response to comment, and none rise to the level of any of the above-listed criteria. For example, comments from Bollard and Associates (attached to the Teichert-2 letter) allege that the DEIR/DEIS should be recirculated because traffic noise in the SPA should have been modeled using “soft” rather than “hard” site characteristics, and because the incorrect methodology was used, the impact conclusions are also incorrect. As explained in responses to comments Teichert-2-108 and Teichert-2-109, when analyzing cumulative noise impacts, it was assumed that the project would be fully built out, thus effectively changing the intervening ground type characteristics from “soft” (e.g., grasses) to “hard” (e.g., concrete and structures). AECOM performed modeling during preparation of this FEIR/FEIS to determine whether there would be any difference in the significance conclusion using the commenter’s suggested methodology. Appendix U attached to this FEIR/FEIS shows the results of the noise modeling suggested by the commenter using the “soft” site assumption when modeling the traffic noise levels. The analysis shows that there is no statistically significant difference in the amount of traffic noise level change on road segments analyzed using “hard” vs. “soft” assumptions. The change in traffic noise levels used to determine if the project would result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project is not affected when assuming “soft” or “hard” intervening ground characteristics. Rather, the change is driven by the increase in daily traffic volumes with implementation of the project compared to the traffic volumes without implementation of the project. Therefore, use of the analysis methodology suggested by the commenter does not change the significance conclusions in the DEIR/DEIS, or result in the need for new mitigation measures. The analysis merely proves that the assumptions used in the DEIR/DEIS are appropriate and that there are no statistically significant differences in the amount of traffic noise level changes. As another example, comments from Rimpo and Associates (attached to the Teichert-2 letter) allege that information “critical” to an understanding of the air quality methodology was left out of the DEIR/DEIS, thus rendering the significance conclusions unclear and unverifiable. As explained in response to comment Teichert-2-36, Air Quality Appendix (C1) circulated with the DEIR/DEIS contains 84 files comprising nearly 100 pages of detailed air quality modeling spreadsheets. No information that would normally be provided to the public has been omitted from the DEIR/DEIS. The Rimpo and Associates comments actually refer to secondary internal notes placed by the AECOM modeler at the bottom of several of the spreadsheets; these are internal AECOM “notes to file” that do not constitute “critical information” in any way, nor are they essential to an understanding of how the analysis was performed or to reaching CEQA/NEPA significance conclusions. Furthermore, the corrections to the DEIR/DEIS that are shown in Chapter 5, “Errata” of this FEIR/FEIS are minor in nature and do not rise to a level that would require recirculation based on the criteria listed above. Therefore, the DEIR/DEIS does not need to be recirculated. As stated above, where a request for recirculation has been made by the commenter, a specific response by the City and/or USACE has been provided within the body of each response in Chapter 4, “Comments and Responses,” of this FEIR/FEIS.

**MASTER RESPONSE 13: RELATIONSHIP OF THE “WATER” COMPONENT OF THE PROJECT TO THE NATOMAS CENTRAL MUTUAL WATER COMPANY AND THE U.S. BUREAU OF RECLAMATION**

*Several comment letters inquired as to the relationship of the “Water” component of the project to Natomas Central Mutual Water Company (NCMWC) and the U.S. Bureau of Reclamation (Reclamation) as a cooperating agency under NEPA.*

As discussed on page 2-81 of the DEIR/DEIS, NCMWC and Reclamation executed settlement contract No. 14-06-200-885A-R-1 (settlement contract) to address the Central Valley Project's (CVP) effect on NCMWC's appropriative water right licenses and permit for diversions on the Sacramento River that were in existence before the construction of Shasta Dam. Under the settlement contract, NCMWC diverts "Base Supply" and "Project" water from the Sacramento River (see Articles 1[a], 1[m], and 3 [NCMWC settlement contract] in Appendix G to Appendix M1 of the DEIR/DEIS).

NCMWC's settlement contract obligates Reclamation to make available to NCMWC a Base Supply of 98,200 acre-feet per year (AFY) and "Project" water of 22,000 acre-feet per year (AFY), for a combined total of 120,200 AFY, with these supplies stored in Shasta Reservoir. Reclamation and NCMWC executed a renewed settlement contract in 2005, which was the subject of an EIS for NEPA compliance in 2004, and the Record of Decision (ROD) subsequently was approved in 2005. Reclamation's execution of the NCMWC settlement contract was upheld by the U.S. District Court for the Eastern District of California over legal challenge in *Natural Resources Defense Council v. Kempthorne*, Case No. 05-CV-01207. The settlement contract's term extends to March 31, 2045, and can be extended further (see Article 2[a] [NCMWC settlement contract] in Appendix G to Appendix M1 of the DEIR/DEIS). NCMWC's settlement contract supplies of 120,200 AFY and associated diversions on the Sacramento River are incorporated into Reclamation's Operating Criteria and Plan (OCAP) (2004).

South Folsom Properties LLC (SFP) and NCMWC executed a "Terms and Conditions of Purchase and Sale of Water Entitlements" agreement on December 17, 2007, under which NCMWC can assign "Project" water available under NCMWC's settlement contract to SFP for further possible assignment to the City (see Appendix E to Appendix M1 of the DEIR/DEIS). Under the SFP-NCMWC agreement, 8,000 AFY of "Project" water available under NCMWC's settlement contract can be assigned to the City, subject to a 25% reduction in critically dry years, as defined under NCMWC's settlement contract (Articles 1[e], 5[a] [settlement contract] in Appendix G to Appendix M1 of the DEIR/DEIS). The NCMWC-SFP agreement identifies the conditions that are required by both parties to finalize the sale, which will ultimately lead to a permanent assignment of CVP "Project" water to the City. None of these conditions stipulates any rescheduling of NCMWC's base supply to facilitate the assignment beyond what is currently allowed under NCMWC's settlement contract.

Under the NCMWC-SFP agreement, SFP has an initial period of 5 years to close its acquisition of 8,000 AFY from NCMWC, and that 5-year period can be extended in 1-year increments. The SFP-NCMWC agreement is effective until April 1, 2012, unless extended by SFP. As described on page 2-81 in the DEIR/DEIS, NCMWC's assignment to the City would be permanent and subject to the provisions under NCMWC's settlement contract. Reclamation's approval is required for the proposed assignment, the addition of the Freeport Project as the point of diversion under NCMWC's settlement contract, and the change in the current agricultural delivery schedule (July and August) of the 8,000 AFY of "Project" water, subject to the proposed assignment to an municipal and industrial (M&I) delivery schedule (year-round). Under that settlement contract, Reclamation may not unreasonably withhold its consent to the proposed assignment (Article 3[e] in Appendix G to Appendix M1 of the DEIR/DEIS).

## **MASTER RESPONSE 14: RELATIONSHIP OF THE "WATER" COMPONENT OF THE PROJECT TO THE FREEPORT REGIONAL WATER PROJECT**

*A common theme in several of the comment letters was the "Water" component of the project's relationship to the Freeport Regional Water Project (Freeport Project).*

One of the common components of the Off-site Water Facility Alternatives is the integration of new water infrastructure with the Freeport Project to enable raw water conveyance to the SPA (see pages 2-80 through 2-83 of the DEIR/DEIS). As described on page 2-82, the off-site water facilities would operate within Sacramento County Water Agency's (SCWA) permitted diversion and conveyance capacity and would not require any net increase in the Freeport Project's currently permitted diversion capacity. For this reason, no physical changes to the Freeport Project's diversion, pumping facilities, or conveyance pipeline would be part of the "Water" portion

of the project. For this reason and as described in Section 1.9 of the Freeport Project EIR/EIS, the Freeport Project EIR/EIS is incorporated by reference into the DEIR/DEIS.

The DEIR/DEIS expressly relies on the Freeport EIR/EIS to document the physical environmental impacts associated with the construction and operation of the Sacramento River diversion/intake structure and conveyance pipelines, and the effects of diverting of up to 185 million gallons per day (mgd) of surface water during all river hydraulic conditions. This approach is encouraged by both CEQA and NEPA and is considered appropriate for the analysis of the Off-site Water Facility Alternatives because they would operate within the capacity previously analyzed in the Freeport Project EIS/EIR. This context is important in that, by proposing no increase in the Freeport Project's current permitted diversion capacity, the project's diversion is already considered in Reclamation's 2004 OCAP for the Long-Term Operation of the CVP/State Water Project (SWP).

To facilitate the City's use of the Freeport Project and as described in the DEIR/DEIS, the City has executed a memorandum of understanding (MOU) with SCWA. Appendix M3 of the DEIR/DEIS contained an unexecuted version of the MOU. The final, executed MOU is contained in FEIR/FEIS Appendix T. The final MOU is consistent with the assumptions on which the City and USACE based their analysis of the Off-site Water Facility Alternatives' impacts, particularly in relation to the capacity that the City would use in the Freeport Project under a Delivery Agreement negotiated and executed pursuant to the MOU. Both the DEIR/DEIS and the final MOU describe the capacity that the City would purchase as 6.5 mgd with consideration of additional limited capacity for peaking periods. The MOU is intended to frame this environmental review and future negotiations between SCWA. As stated in Sections 2, 11, and 12 in both the draft MOU and the final executed MOU, the MOU does not represent a binding commitment by the City or SCWA. A firm commitment by the City or SCWA cannot be obtained until after completion of the environmental review processes.

## **MASTER RESPONSE 15: FORMULATION OF ASSUMPTIONS FOR BASELINE CONDITIONS FOR THE SACRAMENTO RIVER, CENTRAL VALLEY PROJECT-STATE WATER PROJECT OPERATIONS, AND THE DELTA**

*A common topic of interest in several of the comment letters was the formulation of assumptions for the baseline conditions for the Sacramento River, CVP operations, and the Sacramento-San Joaquin Delta (Delta).*

In preparing the DEIR/DEIS' analysis of the Off-site Water Facility Alternatives' potential impacts, the City made several assumptions in relation to existing water use and CVP operations. As noted on pages 1-12 and 1-13 of the DEIR/DEIS, under NCMWC's settlement contract, Reclamation's approval would be necessary to implement the proposed assignment of 8,000 AFY of "Project" water available under that contract to the City. The analysis of impacts in Chapter 3, "Affected Environment, Environmental Consequences, and Mitigation Measures," and Chapter 4, "Other Statutory Requirements" of the DEIR/DEIS assumes that the assignment would occur, with Reclamation's approval, under the following conditions:

- ▶ NCMWC might divert its full contract supplies of 120,200 AFY in any given year, consistent with Reclamation's long-term renewal of NCMWC's settlement contract (2005), for the duration of its 40-year contract;
- ▶ diversion of the assigned "Project" water would be shifted from the months of July and August to a year-round M&I schedule, with these supplies stored in Shasta Reservoir;
- ▶ the 25% diversion reduction in certain critically dry years (stated in Article 5(a) of the Natomas-CVP settlement contract), would govern the City's diversions of the assigned "Project" water following the assignment; and
- ▶ diversion of the assigned "Project" water would occur at the Freeport Regional Water Authority's facility and within that facility's existing capacity.



These assumptions are critical to understanding how the City defined the environmental baseline for the assessment of impacts within Zones 1, 2, and 3 of the “Water” Study Area. As an example, the 2007 Wagner and Bonsignore evaluation provided in Appendix M2 of the DEIR/DEIS indicates that NCMWC did not use its full contract entitlement in either 2004 or 2007. NCMWC’s actual water use does not negate the fact that NCMWC could have used its entire contract supply in either year or in future years, subject to the contractual 25% shortage provision. The full use of NCMWC’s Base Supply and “Project” water supplies was considered appropriate for the analysis presented in the DEIR/DEIS for three important reasons, discussed below.

First and as described in Master Response 13, in 2005, NCMWC and Reclamation executed a renewed settlement contract at an amount of 120,200 AFY. A portion of the “Project” water available under that contract is the source water supply for the Off-site Water Facility Alternatives. This supply was covered under an EIS for NEPA compliance, and the Record of Decision (ROD) subsequently was approved in 2005. In addition, this diversion is considered in Reclamation’s OCAP (2004 and 2008) and is factored into the baseline for the California Simulation Model II (CalSim II) modeling, in which the effects to the Sacramento River and CVP-SWP were evaluated. This is consistent with the approach Reclamation used in its EIS and ROD for the long-term renewal of the Sacramento River settlement contracts (SRSC). Since the public circulation of the DEIR/DEIS, the California Court of Appeal also has issued a decision that supports the DEIR/DEIS’s approach in using the full amount of NCMWC’s settlement contract. Specifically, in *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, the Court of Appeal upheld an EIR for a proposed development that used (as the EIR’s baseline for water supply impact analysis) the full amount of a groundwater right associated with the relevant property under a stipulated groundwater adjudication where water use on the property had declined between the time that the adjudication occurred and the time that the EIR was prepared (*Cherry Valley, supra*, 190 Cal.App.4th on pages 335-346). The City’s reliance on the full amount of NCMWC’s settlement contract would be similar because that contract states the continuing terms under which Reclamation and NCMWC have agreed to resolve their dispute concerning the CVP’s impacts on NCMWC’s pre-CVP water rights. That settlement contract, therefore, has the same function as the stipulated groundwater adjudication in *Cherry Valley* and provides an appropriate basis for the analysis in the DEIR/DEIS.

Second, the City cannot speculate as to what other beneficial uses Reclamation could supply with NCMWC’s unused CVP “Project” water supplies. NCMWC’s unused water could remain in storage in Shasta Reservoir, be delivered to another CVP contractor either north or south of the Delta, or be used to support Delta outflows either through inflow-bypass or storage releases. In addition, under the Central Valley Project Improvement Act (CVPIA), NCMWC could transfer that unused supply annually in the area of origin (CVPIA Sections 3405[a][1][A], 3405[a][1][M]). In the absence of speculation by the City and in considering Reclamation’s recent renewal of NCMWC’s settlement contract (i.e., the full contract amount, subject to contract shortage provisions), the full contract amount is adequate for the purposes of characterizing existing conditions and analyzing potential effects.

Third, the City would be diverting water only within the Freeport Project’s existing and permitted capacity. The Freeport EIS/EIR provides the supporting NEPA coverage for these operations. Reclamation already has accounted for and has the Freeport Project’s operations incorporated into its OCAP (2004 and 2008). Accordingly, Reclamation’s operations already account for diversion of the water that the City would divert under the Off-site Water Facility Alternatives, either at NCMWC’s existing diversion or at the Freeport Project.

Based on these assumptions, it is reasonable to conclude that the Off-site Water Facility Alternatives could create a minor reoperation effect for Reclamation’s Sacramento River Division as a result of the change in delivery schedule from agriculture to M&I. This effect is evaluated at both the project and cumulative levels in the DEIR/DEIS. Project-related impacts to CVP operations are specifically shown in Table 3B.9-3 on page 3B.9-29 and discussed on pages 3B.9-28 through 3B.9-30 of the DEIR/DEIS, and were concluded to be less than significant. Potential cumulative effects to the CVP-SWP system are discussed on pages 4-40 and 4-41 of the DEIR/DEIS and were not considered to be cumulatively considerable, based on the small quantity of water involved in relation to the 9 million acre-feet (MAF) of total supplies within the CVP-SWP system.

Notwithstanding these considerations, assuming that Reclamation ultimately approves the proposed assignment, Reclamation might seek to do so under conditions other than those assumed by the DEIR/DEIS, including but not limited to different or additional shortage or limited liability provisions, changes in the point of diversion, changes in the season of diversion, and/or an alternative water supply. If Reclamation were to seek to approve the proposed assignment subject to conditions other than those assumed by this DEIR/DEIS, then a subsequent or supplemental environmental document might be required to support any such decision to approve the proposed assignment. In such case, Reclamation would be the NEPA lead Federal agency. To the extent that further CEQA analysis would be required, the City would be the lead agency for CEQA review. Reclamation might also be required to undertake further environmental analysis to comply with other Federal laws, such as the Endangered Species Act.

## **MASTER RESPONSE 16: FORMULATION OF BASELINE CONDITIONS FOR NATOMAS CENTRAL MUTUAL WATER COMPANY'S SERVICE AREA**

*Several comment letters raised the issue of water use within NCMWC's service area and the concern that the assignment of 8,000 AFY of "Project" water under NCMWC's settlement contract to the City could lead to fallowing of agricultural lands within Natomas Basin and possibly impacts on listed species.*

As described on pages 3B.10-4 and 3B.10-5 of the DEIR/DEIS, the NCMWC service area (or Zone 1 of the "Water" Study Area) is experiencing a transition from irrigated agricultural uses to urban uses as a result of growth approved by the City of Sacramento, Sacramento County, and Sutter County. Table 3B.10-1 on page 3B.10-5 of the DEIR/DEIS documents this change as reflected by a nearly 4,500-acre reduction in agriculturally zoned or designated land between 2004 and 2007 within NCMWC's service area. These new growth areas include but are not limited to the Metro Air Park, Natomas Joint Vision, and Sutter Point Specific Plan.

Therefore, it would be inaccurate to state that further reductions of agricultural lands and changes in cropping patterns within NCMWC's service area would be a result of the proposed assignment. The reduction in agricultural lands and changes in cropping patterns within NCMWC's service area were active well before the proposed assignment, and before development of the project's environmental baseline (i.e., date of issuance of the NOP in 2008). For this reason, current patterns of development and changes in cropping patterns within NCMWC can reasonably be expected to continue with or without the proposed assignment.

Furthermore, NCMWC's previous investments in irrigation efficiencies within its service area would enable NCMWC to make the assignment without causing any fallowing of existing agricultural lands. As discussed on pages 21 through 26 of the 2007 Wagner and Bonsignore evaluation (provided in Appendix M2 of the DEIR/DEIS) and based on irrigation improvements within NCMWC's service area (such as the efficient use of return water), the proposed assignment would not result in any reductions in irrigated rice lands below the acreages present in 2007 (see Table 3B.10-1 of the DEIR/DEIS). As provided in Table 19 of the Wagner and Bonsignore evaluation, the water supplies available to NCMWC following the assignment would continue to be sufficient to maintain 2004 and 2007 cropping patterns, even in critically dry years, and would not require supplemental groundwater pumping.

## **MASTER RESPONSE 17: APPROACH TO THE EVALUATION OF PHYSICAL ENVIRONMENTAL EFFECTS FOR THE "WATER" COMPONENT OF THE PROJECT**

*Several comments questioned the DEIR/DEIS's approach to the analysis and the evaluation of physical environmental impacts, with emphasis on cultural and biological resources, as related to the Off-site Water Facility Alternatives.*

Because of the complexities of the "Water" portion of the project, the City developed a "Water" Study Area," divided into four zones: (1) NCMWC's service area; (2) Sacramento River; (3) Freeport Project; and (4) the place where new water conveyance and treatment infrastructure would be constructed (see pages 2-73 through 2-78 of

the DEIR/DEIS). As discussed in Chapter 2, “Alternatives” and reiterated in the introduction for each resource area in Chapter 3, “Affected Environment, Environmental Consequences, and Mitigation Measures” (see Section 3B.3, “Biological Resources – Water,” and Section 3B.5, “Cultural Resources – Water” of the DEIR/DEIS), the placement of new structural facilities as part of the Off-site Water Facility Alternatives would be limited to Zone 4 of the “Water” Study Area. Thus, no new physical improvements are proposed within Zones 1, 2, or 3.

This distinction is fundamental in understanding how and why the City evaluated the physical environmental effects of the Off-site Water Facility Alternatives for each zone. Within Zone 4 of the “Water” Study Area, the City considered the physical environmental impacts from both construction and operation of the off-site water facilities. In contrast, the physical environmental impacts anticipated to occur within Zones 1, 2, and 3 of the “Water” Study Area would be a result of minor operational changes that would occur within existing water conveyance and diversion facilities. That is, no physical changes would occur to existing facilities within Zones 1, 2, and 3. For this reason, the description and evaluation of environmental impacts for Zones 1, 2, and 3 primarily concerns any impacts caused by minor changes to flows within the Sacramento River and water use within NCMWC’s service area.

Furthermore, as discussed on page 1-17 of the DEIR/DEIS, the Freeport Project EIR/EIS is incorporated by reference into the DEIR/DEIS. The Freeport Project EIR/EIS provides extensive detail regarding the affected environment for Zones 2 and 3 of this project’s “Water” Study Area and evaluates potential environmental impacts caused by the Freeport Project’s operation up to 185 mgd. Given that the Off-site Water Facility Alternatives involve no increase in the permitted capacity for the Freeport Project diversion or its associated conveyance pipeline to that evaluated in the Freeport Project EIS/EIR, the DEIR/DEIS does not revisit the operational impacts of the Freeport Project diversion and conveyance pipeline. This approach is consistent with both CEQA and NEPA because the DEIR/DEIS describes its relationship with the incorporated Freeport Project EIR/EIS (see pages 1-17, 2-82, 3B.3-1, 3B.3-35, 3B.3-61, 3B.9-20, and 3B.9-28 of the DEIR/DEIS).

Beyond considering the City’s use of the existing Freeport Project facilities, potential direct and indirect impacts of changes in flow within the Sacramento River as a result of the proposed assignment, including the changes in delivery schedule and return flows, are considered in the DEIR/DEIS. More specifically, Table 3B.9-3 on page 3B.9-29 of DEIR/DEIS quantifies and summarizes the anticipated changes with the potential direct and indirect impacts discussed in Impact 3B.9-4 on page 3B.9-28 of the DEIR/DEIS. As discussed in Impact 3B.9-4, the potential direct and indirect effects of the proposed assignment would be minor to negligible when compared to overall flows in the Sacramento River system, including total Delta inflow and outflow, and Delta CVP and SWP exports. This finding, when considered in conjunction with the “Water” portion of the project’s integration with the Freeport Project, is central to supporting the analysis for other resource areas (e.g., fisheries, cultural resources, etc.) within Zones 1, 2, and 3 of the “Water” Study Area.

As emphasized throughout the DEIR/DEIS (see pages 2-80 through 2-82, 3B.3-34, 3B.5-1, and 3B.17-13) and in Master Response 16, the proposed assignment only would involve the purchase of CVP “Project” water allocated to NCMWC under its settlement contract with Reclamation. The agreement between SFP and NCMWC does not stipulate any corresponding land uses changes within NCMWC’s service area to support the assignment of the “Project” water to the City, because none are necessary or triggered by the assignment. In this context, water delivery and conveyance operations within NCMWC’s service area following the proposed assignment would be similar to existing conditions.

## **MASTER RESPONSE 18: EVALUATION OF GROUNDWATER IMPACTS TO THE SACRAMENTO COUNTY CENTRAL GROUNDWATER SUBBASIN**

*Several comments stated concerns about environmental impacts that could occur as a result of the City’s purchase of an average 6.5 mgd of capacity, with consideration of an appropriate peaking factor, within SCWA’s capacity in the Freeport Project.*

The DEIR/DEIS concludes that the primary, reasonably foreseeable environmental impact from the City's purchase of this capacity would be a corresponding reduction in SCWA's surface water supplies, which in turn could place additional demands on groundwater supplies from the Sacramento County central groundwater subbasin. The DEIR/DEIS specifically analyzes those impacts in Impact 3B.17-2 and concludes that these impacts would be less than significant once the Freeport Project became fully operational (see pages 3B.17-10 to 3B.17-13 of the DEIR/DEIS). Because each of the Off-site Water Facility Alternatives is predicated on the operation of the Freeport Project before construction, this assumption was considered appropriate. However, as discussed in the DEIR/DEIS's cumulative impact analysis, when considering the project in conjunction with other potential new source demands as contemplated in Sacramento County's 2009 Draft General Plan Update, a potential would remain for cumulative effects to groundwater resources post-2030 (see pages 4-42 to 4-44 of the DEIR/DEIS).

When evaluating the potential impacts to groundwater as a result of the Off-site Water Facility Alternatives, the DEIR/DEIS applies the groundwater basin's safe yield of 273,000 AFY as the threshold for significance (see pages 3B.17-9 and 4-42 of the DEIR/DEIS). The safe yield estimate was originally developed in conjunction with the Water Forum Agreement (WFA) and carried forward into the Central Sacramento County Groundwater Management Plan (2006); therefore, it was considered the best available data estimate at the time the DEIR/DEIS was prepared. Because each of the Off-site Water Facility Alternatives would depend on the Freeport Project's operation and because development within the SPA would not occur before one of those alternatives was implemented, the DEIR/DEIS considers project-level impacts to groundwater in the context of reduced groundwater demands from SCWA following initiation of the Freeport Project's operation. In other words, none of the Off-Site Water Facility Alternatives would trigger increased groundwater demand by SCWA before the time that SCWA could use the Freeport Project to enhance its surface water supplies. As a result, supplemental groundwater pumping by SCWA that could be required to make up for the City's use of capacity in the Freeport Project would occur at SCWA's existing well facilities and would be well within the central groundwater subbasin's safe yield through 2030. As described on page 4-42 of the DEIR/DEIS, only when the City's use of Freeport Project capacity was considered along with other possible future land use projects in the period after 2030 would the indirect impacts of the Off-site Water Facility Alternatives become cumulatively considerable.

As described on pages 2-80 and 2-81 of the DEIR/DEIS, the City's proposed water supply for each of the Off-site Water Facility Alternatives is NCMWC's CVP contract water and not groundwater. However, to comply with the California Supreme Court's interpretation of CEQA in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the City considered other water supplies as options that might be implemented if the project's primary water supply—an assignment of a portion of NCMWC's "Project" water—could not be implemented. These options would include pumping groundwater from the Sacramento County central groundwater subbasin. This optional water supply is referred to as Water Supply Option 1 and is described on page 3A.18-24 of the DEIR/DEIS. In distinguishing the level of impact between the Off-site Water Facility Alternatives and Water Supply Option 1, the primary differentiating characteristic is that potential groundwater impacts as a result of the Off-site Water Facility Alternatives generally would be indirect. In contrast, the anticipated effects of Water Supply Option 1 would be direct and would occur in the absence of any additional surface water supply.

## **MASTER RESPONSE 19: WATER SUPPLY ASSESSMENT DEMAND FACTORS AND CONSERVATION TARGETS**

*Several comment letters stated concern about the demand and conservation factors applied in the City's Water Supply Assessment (WSA), included in Appendix M1 of the DEIR/DEIS.*

Concerning indoor water demand factors, the WSA and DEIR/DEIS relied on the best available information to calculate those factors, specifically information concerning such demands in the City's existing service area, as modified to reflect legislation and other factors that are relevant to the new construction that would occur in the SPA. As described on page 9 of the WSA, the City's 2005 Urban Water Management Plan (2005 UWMP)

contains the most current unit water demand factors used by the City to project land-use water demands in the existing City service area. The unit demand factors used in the 2005 UWMP represent historic conditions with a range of housing ages, plumbing fixtures, and irrigation systems. Since adoption of the 2005 UWMP, the City has completed a 5-year single-family residential meter reading project that has validated the unit demand factors used in the 2005 UWMP for the City's existing service areas. Specifically, in the 2005 UWMP, the "Low Density Residential" land-use category was assigned a unit demand factor of 0.65 acre-feet per dwelling unit per year (af/du/yr). The results for the City's 2003-2008 meter reading study indicate that average annual unit demand was 0.67 af/du/yr for all samples and 0.63 af/du/yr when the highest and lowest 10% of samples were removed, thereby supporting the use of 0.65 af/du/yr for the analysis in the DEIR/DEIS. The WSA used these factors to calculate a gallons per capita per day figure for indoor use demand and then adjusted that figure downward in light of additional factors—such as the water conservation legislation enacted in 2009, SB X7 7, the inclusion of water meters with initial construction in the SPA, and the more efficient building standards that would apply to new construction—to determine indoor per capita and per unit demands for the SPA. This analysis was based on the best available information, including, among other factors, water use data in the existing City service area, water demands within the service areas of other nearby water suppliers, and state and Federal mandates that would apply to new construction within the SPA.

In relation to comments regarding outdoor water use indicated in the WSA, an outdoor demand factor of 3.73 af/acre/yr was developed and used for the Proposed Project Alternative's future housing in the SPA. This value accommodates variances in plant factors and irrigation efficiencies as recognized by the Model Water Efficient Landscape Ordinance (MWELO). Specifically, this value accommodates the MWELO requirements at the land planning stage but also accounts for the "human factor" of potential overwatering (even with irrigation controllers installed), piecemeal changes in landscape design for individual lots, reduction in irrigation efficiencies through long-term product wear, and limited resources for enforcement in the absence of dedicated irrigation meters. These conservative estimates and unpredictable future variables were used out of an abundance of caution to ensure that the long-term water demands of implementing the Proposed Project Alternative could always be met in all year types with the identified water supplies.

Concerning the passage of SB X7 7 in late 2009, the WSA accounts for that legislation as one of the factors that would cause per-capita and per-unit demands within the SPA to be lower than those within the City's existing service area (see page 14 in Appendix M1 of the DEIR/DEIS). The City acknowledges that it would be required to set a 2020 water conservation target based on one of four methods. However, at this time (and at the time the DEIR/DEIS was prepared), the City has not established a water conservation target and is still in the process of selecting one of the four methods under SB X7 7 that are available for establishing the target (Water Code Section 10608.20[a]–[b]). For this reason, and based on the WSA's consideration of numerous other factors that would apply to new construction in the SPA, the WSA uses an indoor per capita demand factor that is 10% below calculated per capita indoor demand in the City's existing service area, as well as per acre outdoor demand factors that are lower than outdoor demands in the existing service area. Finally, interpreting SB X7 7 to require that water suppliers would use one of its four target-calculation methods as the exclusive basis for calculating overall water demands in WSAs would be contrary to SB X7 7 itself, which indicates that those methods apply to calculating 2020 conservation targets only and do not constrain the measures that urban water suppliers can use to implement those targets (Water Code Section 10608.26[b]).

## **MASTER RESPONSE 20: FORMULATION OF OFF-SITE WATER FACILITY ALTERNATIVES AND WATER SUPPLY OPTIONS**

*Several comment letters stated that the alternatives considered by the City for the "Project" water and carried forward for analysis in the DEIR/DEIS are too narrowly focused to enable meaningful evaluation of alternative water sources.*

The Off-site Water Facility Alternatives all share a common water source (a portion of NCMWC's "Project" water under its settlement contract) that would be diverted using the existing Freeport Project diversion and

conveyance pipeline, differentiated primarily by the location of the facilities that would convey water from the Freeport Project to the SPA. The City, however, defined the Off-Site Water Facility Alternatives in this way after an extensive process in which the City considered numerous possible water supply sources. Alternatives considered, including other water supply sources, but not carried forward for analysis under CEQA or NEPA are described in Section 2.8 on page 2-97 of the DEIR/DEIS. Lastly, other water supply sources were considered by the City to satisfy CEQA's requirements, as interpreted by the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, are described in Section 3A.18.5 on page 3A.18-22 of the DEIR/DEIS as Water Supply Options.

Under NEPA, the range of alternatives that must be considered is limited to those reasonably related to the project's objectives as described in USACE's purpose and need statement (e.g., *Westlands Water District v. U.S. Department of Interior* [9th Cir. 2004] 376 F.3d 853, 868; *Seattle Audubon Society v. Moseley* [9th Cir. 1996] 80 F.3d 1401, 1404; and *City of Alexandria v. Slater* [D.C. Cir. 1997] 198 F.3d 862, 868-869). The relevant portion of the purpose and need statement for the project (on page 1-8 of the DEIR/DEIS) states: "Secure a sufficient and reliable water supply consistent with the requirements of Measure W and objectives of the Water Forum Agreement to support planned development within the SPA, which the City estimates to be 5,600 acre-feet per year." Measure W would require that the City, before applying to annex the SPA, "[i]dentify and secure the source of water supply(ies) to serve the [SPA]. This new water supply shall not cause a reduction in the water supplies designated to serve existing water users north of Highway 50." (City Charter, Section 7.08.A.) Further, the consideration of alternatives is also driven by the associated approval authorities for the Federal agencies involved. Because the proposed assignment would not result in work in navigable waters or the discharge of dredged or fill material into waters of the U.S., the consideration of alternative water supplies is not within the USACE's scope of analysis.

During its initial evaluation process and as described in Section 2.8 of the DEIR/DEIS, the City considered numerous water supply sources for the project before selection of NCMWC's "Project" water as the preferred water supply. As discussed on pages 2-97 through 2-103 of the DEIR/DEIS, the City evaluated 10 water sources for the project, each initially considered but not carried forward for one or more reasons. Through this process, the City determined during preparation of the DEIR/DEIS that the water supply incorporated into the Off-site Water Facility Alternatives was the only supply that was defined well enough, with sufficient documented reliability consistent with both the Water Forum Agreement and Measure W.

In addition to consideration of other water supply sources, the DEIR/DEIS also considers options to the diversion at Freeport. Section 2.8 of the DEIR/DEIS describes the diversion possibilities considered but eliminated from further analysis. Section 2.8.1 on page 2-98 of the DEIR/DEIS describes the screening process and results of the various possibilities considered. As discussed on page 2-99 of the DEIR/DEIS, a new Sacramento River diversion and water right was not considered as part of the Off-site Water Facility Alternatives, primarily because of potentially greater physical and operational impacts to the Sacramento River and the additional length of conveyance facilities that would be required. Similar adverse effects could be realized under a Lower American River diversion. For these reasons, the diversion of NCMWC's "Project" water at Freeport was selected for further consideration and analysis under NEPA, by virtue that this supply and conveyance pathway would most closely align with the project's stated purpose and need.

In addition, in order to satisfy the requirements of CEQA as interpreted by the California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the City evaluated three water supply options in Section 3A.18.5 on pages 3A.18-23 to 3A.18-52 of the DEIR/DEIS. However, the water supply options are not "alternatives" considered under NEPA, but rather, different options that the City potentially could implement because of regulatory uncertainties associated with the Off-Site Water Facility Alternatives, as required under *Vineyard, supra*, 40 Cal. 4th.

## **MASTER RESPONSE 21: CONTENTS OF APPENDIX M IN THE DEIR/DEIS**

*Several of the comment letters stated confusion about the location of information referenced in the Chapter 3B sections of the DEIR/DEIS, primarily the Wagner and Bonsignore evaluation prepared for NCMWC.*

The Wagner and Bonsignore evaluation is included in Appendix M2 of the DEIR/DEIS. As shown in Chapter 5, “Errata” of the FEIR/FEIS, the table of contents in the DEIR/DEIS has been revised to include a complete breakdown of the contents of Appendix M.

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