Letter 25

09 Dec 2011

Tom Mulvihill – General Manager
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Subject: Comments on "Draft Environmental Impact Report Water Supply Improvement" dated Oct 2011 with State Clearinghouse Number 2011071010

References: (1) 09 Aug 2007 Kern County Planning Comment Letter regarding 2007 Water Supply Improvement Project, 7 pages
(2) 09 Apr 1991 "Water System Emergency Interconnection Agreement" between IWVWD and North American Chemical Corporation, 7 pages
(3) 17 Apr 1991 Inter tie memo between IWVWD and US Navy, 1 page
(4) August 2011 IWVWD Well Production Data, 10 pages

Sir: This letter will comment on the Water Supply Improvement Project Draft Environmental Impact Report (WSIP DEIR)[1]. Many comments this author supplied to the Indian Wells Valley Water District (IWVWD) Initial Study[2] were not incorporated into the WSIP DEIR. Some of those comments will thus be repeated here.

The IWVWD is a water appropriator as defined by the State of California and affirmed by Lorelei Oviatt who wrote concerning a proposed 'negative declaration' with respect to a nearly identical IWVWD project in 2007, see Reference 1. As an appropriator, the IWVWD is entitled only to *surplus* water. In an overdrafted basin[3] such as the Indian Wells Valley (IWV), there is no surplus water. For overdraft evidence, see the IWV Cooperative Groundwater Management Group (IWVCGMG) hydrographs[4] as well as the recent Ridgecrest Landfill EIR[5].

25-1

As an appropriator, the IWVWD has a secondary water right. This means that private well owners have a right to water before appropriative users such as the IWVWD. The 2007 and 2011 IWVWD project documents do not discuss this legal fact – perhaps hoping private well owners wouldn't notice. The 2007 Kern County letter also points out the superior legal water rights of private well owners, see their page 5.

[1] http://iwvwd.com/eir.htm
[2] See PDF pages 130 to 136 of http://iwvwd.com/Eir/Appendix/Appendix_A_NOP_IS_Scoping_Letters.pdf
[3] See PDF page 47 of http://www.water.ca.gov/pubs/groundwater/bulletin_118/california%27s_groundwater_bulletin_118_-_update_2003_/bulletin118_entire.pdf
[4] http://iwvgroundwater.org/data/hydorgraphs_histograms/hydrographs_direct.html
[5] See PDF page 11 for 1.5 ft/yr declines http://www.co.kern.ca.us/planning/pdfs/eirs/ridgecrest_rslp/Chapter%204.9_Hydrology%20and%20Water%20Quality.pdf

The present project proposes to predict the effect of increased pumping through use of a groundwater flow model (GFM). This is a good idea, however, the GFM must be verified, validated, and accredited (VV&A) prior to making predictions that can be trusted[6,7]. There is no evidence that the original Brown and Caldwell GFM or the later Layne Christenson (now Layne Hydro) modified version conducted any VV&A. More importantly, there is no evidence that the Indian Wells Valley Cooperative Groundwater Management Group (IWVCGMG) and/or the IWVWD have paid for an independent, professional, peer review VV&A that is documented in a publicly available report of any of these GFMs. As a result, the model predictions cannot be used in any meaningful way in this WSIP DEIR CEQA process. Why does your present GFM only consider horizontal transmissivity – after all water is capable of moving through pore space in three dimensions, not just one. Why do your GFM predictions terminate in 2020? Does CEQA have a provision that allows cumulative impact[8] to terminate less than ten years in the future?

25-2

The WSIP is predicated primarily on the idea that the IWVWD needs a 20% redundancy in pumping capacity as a means of guaranteeing water availability for their customers. Below are two arguments that independently demonstrate the IWVWD does not need the WSIP to meet this need.

First the IWVWD would do well to reread the 1991 memos regarding interconnections between the IWVWD and North American Chemical Company (NACC [now Searles Valley Minerals]), attached Reference 2 as well as the IWVWD and the US Navy, attached Reference 3. A few germane excerpted quotes from the NACC memo are below:

> ¶ 2.3 "NACC is in need of a backup supply of water in the event of well failure or other emergency"
>
> ¶ 2.4 "The District is also in need of a backup supply of water in the event of well failure or other emergency. In addition, the District is in need of additional pumping capacity to meet its summertime peak demands."
>
> ¶4.2 "Each party shall have the right to receive water from the other in case of emergency or water shortage. If the emergency is a well or system failure, the recipient shall use reasonable efforts to restore its system and eliminate the need for water from the other party as soon as practicable."
>
> ¶ 4.5 "...the parties may mutually agree to transfer water for the purpose of system maintenance, make up, or for any other purpose."
>
> ¶ 4.7 "A party shall give at least 24 hours' telephonic notice to the other party of its intention to request delivery of water under this agreement. In an emergency where water is required on less than 24 hours' notice, the supplying party shall use its best efforts to make water available as soon as possible, without disrupting its own operations."

25-3

[6] http://en.wikipedia.org/wiki/Verification_and_Validation_%28software%29
[7] http://www.jhuapl.edu/techdigest/TD/td2502/Pace.pdf
[8] See PDF page 193 of http://www.califaep.org/docs/CEQA/CEQAHandbook2011.pdf

The USN / IWVWD intertie memo is short enough to be quoted in entirety – from the IWVWD Operations Manager to the US Navy Public Works Engineer:

> "I would like to take this opportunity to thank you, Bill, as well as Tom Fourtney and the rest of your staff, for your assistance with the successful testing of our mutual intertie facilities at your Intermediate Pumping Station location.
>
> The test resulted in a metered quantity of water being pumped to your facilities of more than 130,000 gallons, at a rate of over 3,000 gallons per minute, and then your pumping facilities giving the District over 55,000 gallons at a rate of more than 3,000 gallons per minute.
>
> This intertie now provides the Indian Wells Valley Water District with the ability to supply the Naval Weapons Center with a water supply equal to or greater than 3,000 gallons per minute, or, if needed, the ability for your facilities to provide the District with a water supply equal to this same quantity.
>
> The District has enjoyed a long history of cooperation with your department, and we look forward to continuing our mutual operations in the future."

25-3 continued

It is clear from these two memos that in 1991 that the administrative construct and physical plant existed to move water between the IWVWD, NACC, and USN. It is of note that 3,000 gpm is equivalent to more than two of the IWVWD's highest output wells in existence today. If the IWVWD must spend ratepayer funds on a capital project, why not improve / modernize the interties? No new IWVWD wells are needed to meet the 20% above peak day demand pumping capacity – use the intertie(s) as needed.

Second, the IWVWD would do well to analyze their well production data in context of the WSIP; see Table 1 on page 4 and Figure 1 on page 5. An explanation of each can be found in their respective captions. First, a notable observation:

> The IWVWD met the peak day demand for 2011 (which occurred on 26 Aug) with 29.8% more pumping capacity than actually consumed (with well 18 producing very little and well 13 generating zero, see Reference 3).

The data can be visualized in Figure 1 on page 5. One significant conclusion results – the IWVWD already has more than 20% redundancy in their system for peak day demand. If a similar analysis is performed back to 2005, the largest peak day demand for all years since then was 13.6 MG (22 July 2005) which yields a 23% "redundancy" with present production capacity. There is no basis for the WSIP since the excess pumping capacity is already present!

25-4

If consideration of both the intertie and the existing system excess pumping capacity are included, there is no defensible basis for the WSIP[9].

[9] See PDF page 193 of http://www.califaep.org/docs/CEQA/CEQAHandbook2011.pdf

Table 1: IWVWD water production data from August 2011. The "Actual Daily Production" column was created by adding the "gallons" columns for each IWVWD well from Reference 3. Due to variations in when the production numbers were read by the IWVWD, some averaging from day to day was performed. For example, the Ref 3 data for 06 Aug = 1.077 MG, 07 Aug = 1.413 MG, and 08 Aug = 27.782 MG. The value reported for these three days in the table below is the average across those three days (10.091 MG). The third column in the table below is the sum of all IWVWD stated pumping capacity from page 2-5 of the WSIP DEIS Project Description. The last column is computed as stated in the header – this is a measure of IWVWD pumping system excess capacity.

Day	Actual Daily Production (MG)	Theoretical Maximum Daily Production (MG)	(TMDP – ADP) / ADP
08/01/2011	9.111	16.704	0.833
08/02/2011	9.111	16.704	0.833
08/03/2011	9.111	16.704	0.833
08/04/2011	9.929	16.704	0.682
08/05/2011	9.929	16.704	0.682
08/06/2011	10.091	16.704	0.655
08/07/2011	10.091	16.704	0.655
08/08/2011	10.091	16.704	0.655
08/09/2011	10.438	16.704	0.600
08/10/2011	9.649	16.704	0.731
08/11/2011	9.764	16.704	0.711
08/12/2011	9.604	16.704	0.739
08/13/2011	10.379	16.704	0.609
08/14/2011	10.379	16.704	0.609
08/15/2011	10.379	16.704	0.609
08/16/2011	10.028	16.704	0.666
08/17/2011	9.832	16.704	0.699
08/18/2011	10.232	16.704	0.633
08/19/2011	9.691	16.704	0.724
08/20/2011	10.554	16.704	0.583
08/21/2011	10.554	16.704	0.583
08/22/2011	10.554	16.704	0.583
08/23/2011	10.058	16.704	0.661
08/24/2011	10.058	16.704	0.661
08/25/2011	9.918	16.704	0.684
08/26/2011	12.865	16.704	0.298
08/27/2011	9.538	16.704	0.751
08/28/2011	9.538	16.704	0.751
08/29/2011	9.538	16.704	0.751
08/30/2011	11.116	16.704	0.503
08/31/2011	9.310	16.704	0.794

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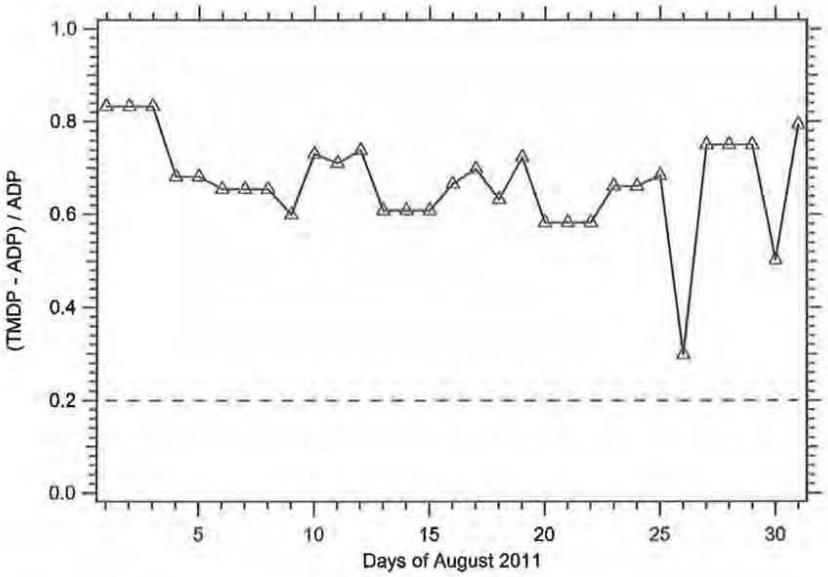
25-4 Continued

Figure 1: Plot of excess capacity column from Table 1 for August 2011. Notice that the peak day demand during August 2011 had 29.8% excess pumping capacity or 9.8% excess capacity to the IWVWD target of 20% (the dashed line below). Most days of the month had more than 60% excess pumping capacity including days just before and after the peak day.



25-4
Continued

The title of your project is a misnomer; there is no "improvement" involved. Your project proposes to establish additional prescriptive water rights in this overdrafted water basin as a means of supporting 1% population growth forecast by Kern COG and to meet your self-imposed 20% "redundancy". It is a shocking demonstration of your agency's myopic viewpoint that your recent Urban Water Management Plan[10] indicates that no new water will be needed until 2035 (which conflicts with the 2015 date cited on page ES-3 of the WSIP DEIR). What possible logic is there in waiting until then?

The WSIP proposes to increase the pump rate to 2200 gpm from 1200 gpm in two wells (see WSIP DEIR page ES-5). How does the IWVWD know that this pumping rate will be stable in time – that sand won't be 'mined' along with water leading shortened well life? Has not the IWVWD had this exact problem (sand mining leading to well failure) with their well 8? Perhaps this isn't a CEQA issue per se, but as a public agency you surely must be responsible stewards of your ratepayer derived revenue.

[10] See PDF page 33 of http://iwvwd.com/Newsletter/178-64P4-UWMP2010-FINAL%2005182011.pdf

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Is the WSIP consistent with Kern County Land Use Planning? Every time a serving agency like the IWVWD approves a project, they are required to declare that they can provide the services defined by the project, without negatively impacting existing customers (California Water Code Section 10910[11]). It would appear that the IWVWD is in violation of this requirement by its own admission, since new customers could only be served by drilling and pumping new wells in an already significantly overdrafted aquifer. The impact on the existing IWVWD customers and all other pumpers, including the US Navy, Searles Valley Minerals, and private well owners, will be catastrophic. The catastrophe will come in the form of deeper water levels, infiltration of brackish water, increasing concentrations of total dissolved solids (TDS), and increases in trace metals (i.e., arsenic). These are not wild claims, but are widely reported in the scientific literature (journal articles, books, conference proceedings). Furthermore the IWVWD already has evidence of this very occurrence in the form of their well 9A.

25-5

The IWVWD proposed mitigation measures on page ES-30 through 33 are remarkable (not in a good way). Four comments...

(1) The WSIP DEIR cannot be approved with the mitigation program to be developed as a separate process with scant details provided within the WSIP.

(2) If mandatory private well monitoring is required, then the IWVWD should get an independent third party (like the Kern County Water Agency) to conduct the monitoring, depth to water, and water quality analysis and tracking. This is the recommendation stated explicitly in the 2007 Kern County Planning Department Letter (see Reference 1). The IWVWD cannot conduct these tasks – it is exactly analogous to the fox guarding the hen house.

25-6

(3) The proposed mitigation schemes (drill new private wells, hook effected folks up to the IWVWD, etc.) presented makes no mention of how such a program might be paid for. The IWVWD does not have an excess of cash reserves that could be readily applied to these proposed mitigations – after all the IWVWD cut about 25% of their staff earlier this year because of a budget shortfall. In order for this mitigation to have any merit, an appropriate estimate of the number of affected parties must be made, some realistic estimate of the costs those parties might incur as a result of the IWVWD's consumptive policy, an escrow account funded to that level, and controls to ensure the funds will only be used for this stated purpose.

(4) Finally, the 1991 Bureau of Reclamation (BOR) report[12] does not state that high quality water is available to 2000 feet below ground surface (bgs); see for example, BOR well 3. Ignoring the false assumption that high quality water is available to 2000 feet bgs, how does the IWVWD propose to extract it? For small well owners, Grundfos does list pump/motor combinations that have a delivery specifications to 1100 feet bgs in their 4" Ø pump series, however, the output is low (2 gpm[13]) and the pump/motor (38 stage / 5 hp) is going to be expensive (see funding comments in the paragraph above).

[11] http://law.justia.com/codes/california/2010/wat/10910-10915.html
[12] http://iwvgroundwater.org/documents/pdf/173_Bureau_of_Reclamation_1993.pdf
[13] http://www.us.grundfos.com/web/download.nsf/Pages/DnldByProductLine?OpenDocument&Start=1&Count=80&Expand=5.19.2#5.19.2

It is impractical to pump from depths greater than say 1000 feet bgs in small private wells. A similar restriction exists for IWVWD size wells but the maximum depths are somewhat deeper – say 1200 feet bgs. Even if WSIP is somehow approved, is the IWVWD prepared to bear the increased cost of their strategy? TDS will increase with time leading to increased water treatment costs. Depth to water will ever increase leading to higher costs to deepen existing wells / drill new production wells. Who is going to pay for the increasing pumping costs coming from increasing depth to water? The ever increasing depth to water will result in either more expensive pump / motor combinations and/or lower water delivery rates. This in turn will lead to needing to drill additional wells in an attempt to preserve the overall pumped water delivery rate. Then there are the costs associated with hooking up private well owners as suggested by the WSIP "mitigation strategy". **This is clearly the makings of a faulty strategy that is <u>not</u> consistent with the IWVWD mission statement: "... to deliver the highest quality water at the best possible price while continuing to serve as respectful stewards of the environment."**

25-6
Continued

The notion that the IWVWD (and others) can pump water to some much deeper depth with little regard to groundwater consequences is ludicrous. Human existence is critically dependent on potable water – particularly in the desert. The economic state of the IWV will change dramatically as the cost of water increases due to increased drilling, pumping, and treatment costs. As those costs rise, property values will lower. There is also every reason to believe that the IWV will experience subsidence as other basins, including the Antelope Valley, have[14,15].

I recommend <u>No WSIP</u>. The IWVWD needs to find an alternate water source now – not in 2035. The IWV has a substantial volume of high TDS water. Shouldn't some effort be expended to assess how to render this high TDS water potable?

25-7

I request that these comments be provided to the IWVWD Board of Directors and included as part of the official administrative record on this matter.

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Ridgecrest, CA 93555-8415

CC: Jon McQuiston, Kern County First District Supervisor
Lorelei Oviatte, Kern County Planning & Community Development, Director
Assembly Member Shannon Grove
Senator Jean Fuller

[14] http://pubs.usgs.gov/circ/circ1182/pdf/partI_pt1.pdf
[15] http://pubs.usgs.gov/circ/circ1182/pdf/part4.pdf

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August 9, 2007

File: IWVWD
2007/2008 Water Supply
Improvement Project

Indian Wells Valley Water District
Attn: Tom Mulvihill
500 West Ridgecrest Boulevard
Ridgecrest, California 93555

RE: Comment Letter – Initial Study and Draft Mitigated Negative Declaration for the 2007/2008 Water Supply Improvement Project (May 2007) (SCH 2007051044)

Dear Mr. Mulvihill,

Kern County appreciates the opportunity to provide comments on the Mitigated Negative Declaration (MND) prepared for the proposed 2007/2007 Water Supply Improvement Project (State Clearinghouse Number 2007051044). The Indian Wells Valley Water District is a retail supplier of water for domestic use, landscape irrigation and fire protection for the City of Ridgecrest, and specific areas in San Bernardino County. This project proposes to construct various facilities and pipelines to expand the District's domestic water supply on 40 acres in the unincorporated community of Inyokern. These properties and all water pipelines to be constructed are within the unincorporated area of Kern County. The Kern County Planning Department has been designated by the Board of Supervisors as the official resource and expert on implementation of CEQA for County Departments. Under this designation and the Home Rule resolution , the Planning Department reviews other agencies environmental documents for projects that may impact County residents, businesses and affect economic growth in unincorporated communities. Staff works closely with County Counsel's office in ensuring compliance with CEQA. Kern County is, as well, a participating member of the Indian Wells Valley Cooperative Groundwater Management Working Group. Staff has reviewed the proposed Mitigated Negative Declaration and provides the following comments for the record. As this department did not receive the MND for comment until July 18, 2007, well after the June 6, 2007 close of public comment, Staff requests this comment be provided to the Board of Directors and included as part of the official administrative record on this matter.

1

Reference 1

Public Notification and Hearing Process Inadequate

Members of the public hold a "privileged position" in the CEQA process; such status reflects both " a belief that citizens can make important contributions to environmental protection and... notions of democratic decision-making..." *Concerned Citizens of Costa Mesa,Inc v 32nd District Agricultural Association* (1986) 42 Cal.3d 929,936[231 Cal. Rptr. 748]. The process of soliciting comments on the MND involved minimal notification that may have met the strict interpretation of law, but not the intention of community outreach and meaningful public participation required under CEQA. The District's own documents make statements that imply a commitment to the public process and interest in public comments. Appendices E of the MND includes the District's Supply Enhancement Plan (2003) that states in part " District shall be cognizant of the local needs of community ... and intends to work closely with the community on any supplemental supply." The MND contains no list of agencies that were notified directly and this department did not receive a copy of the MND until after the comment period was closed. The MND clearly states on page 2 that the District is a member of the Indian Wells Valley Cooperative Groundwater Management Working Group. This group meets monthly and has publicly expressed interest in projects affecting groundwater in the Indian Wells Valley. The MND was not provided to any of the members of this group. Surrounding property owners were not mailed notices that would have alerted them to request the MND for review and comment. Although sent to the CEQA State Clearinghouse as required by law, OPR is only responsible for distribution to State agencies, not local or federal entities. The necessary filing with the Kern County Clerk was completed , but does not constitute notification of specific County departments who rely on direct notification.

A public hearing was held on this matter before the Board of Directors on July 9, 2007. At that time public testimony was taken on the environmental document and closed for public comment. The matter was then continued for further discussion to a meeting on August 13, 2007. At that meeting a large number of citizens and others attended, but due to the size of the Board meeting room were not able to hear or speak. Further, two additional public opportunities for comment occurred as Board subcommittees met on August 7 and August 9 that had this CEQA document on the agenda. Neither of these two opportunities was widely known as to actually provide the public and agencies a meaningful opportunity to comment. Further the inclusion in the document of pre-drafted findings (Appendix A – Draft Mitigated Negative Declaration and Draft Mitigation Monitoring Program) that references the Board has reviewed all written comments and all impacts are less than significant sends a poor message to the public.

As this department, as well as others, did not have either a copy of the MND or notification of the public hearing on July 9, 2007, it is appropriate and required that public testimony be taken on the adequacy of the environmental document at the August 13, 2007 hearing. While public hearings on the proposed negative declaration are not required under CEQA, the Courts have held that it is an error to hold a hearing on the project, but not on the environmental document for the project. (CEQA Guidelines Section 15202(b), *Bakersfield*

2

Reference 1

Citizens for Local Control v City of Bakersfield (5th Dis. 2004) 124 Cal. App.4th 1184 1200-1202 [22 Cal. Rptr 3d 203]. Staff requests that you provide a place that will accommodate a large number of people, reopen the public hearing and accept written and oral testimony on the document, as well as the project.

Environmental Analysis, Project Description and Determination of Significance Incomplete and Inadequate

Project Description

The project description does not include complete details of the project so that an adequate evaluation of the impacts can be completed. The following actions and components are mere statements in the documents with no explanation, maps or other diagrams showing the location or extent of the activity. They include, but are not limited to : site grading, construction of a 1 acre discharge pond, pipelines and any related pumps, motors and control facilities and disinfection and treatment facilities. There is no explanation of construction scheduling, duration, phasing or equipment required for grading, excavation, well drilling or construction of treatment facilities. These details are required to be discussed and evaluated for environmental effects of implementing the project. CEQA case law notes:

> " A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, and assess the advantage of terminating the proposal.. and weigh other alternatives in the balance."

County of Inyo v City of Los Angeles (3d Dist 1977) 71 Cal. App. 3d 185, 193 [139 Cal. Rptr. 396]

III Air Quality

There is no information or study provided in the comments to the checklist to support the conclusion that the project will have a less than significant impact on air quality. In fact the checklist appears to state there will be impacts ".. Aside from short-term, impacts during construction..."(p. 19) Without air quality modeling to provide quantification, Staff is unable to determine if the impacts are below the adopted Kern County Air Pollution Control District thresholds for CEQA analysis NO x (25 t/y) ROG (25 t/y) and PM $_{10}$ (15 t/y). (Guidelines for Implementation of the California Environmental Quality Act (CEQA) of 1970 for Kern County Air Pollution Control District amended July 1, 1999) A full air quality modeling by an accepted model (EMFAC 2007 or Urbemis 9.1) along with appropriate other air models for construction and truck traffic associated with construction activities should be completed for an adequate CEQA document. The activities that need analysis include, but are not limited to: site grading, construction of a 1 acre discharge pond, pipelines and any related pumps, motors and control facilities, including the use of temporary diesel pumps, well drilling and disinfection and treatment facilities. Given the project's location within the Joint Service R-2508 Airspace and within ½ mile of China Lake Naval Weapons Station, impacts on visibility from fugitive dust also should be evaluated. In addition, the studies should address the related health impacts on surrounding property owners from construction activities and on-going project operations.

3

Reference 1

All studies and recommended mitigation measures to reduce impacts on air quality should be included and recirculated for comment before the documents determination that the impacts are less than significant impacts can be substantiated.

V. Cultural Resources

It is unclear from the short description in the checklist and attached study if the pipeline right of way was surveyed for cultural resources. The document appears to rely on a simple statement that the pipelines will be "...generally within existing dirt roads." (pg 11). The document includes no aerials or other diagrams showing the location of the purposed pipelines. . As noted in the Appendices C Cultural Resources Overview, Water System General Plan, Indian Wells Valley Water District (CRM Tech 1997) " records search results show that less than 5% of the study area has been systematically surveyed for archaeological resources, leaving a hugh question mark for Indian Wells Valley in terms of presence or absence of sites." (p. 6). A full archeological survey of all areas that could be disturbed by implementation of this project needs to be completed for inclusion in the environmental document and circulated for public comment. Further the recommendations of the cultural resource study that was completed for the actual well site properties have not been included as fully enforceable mitigation measures. The mitigation measures should be revised and recirculated for inclusion of all recommended measures for the protection of archeological resources before the determination of less than significant impacts cannot substantiated.

VIII Hazard and Hazardous Materials

Item e. (p. 35-36) The document notes the project is within the Joint Service Restricted R-2508 Air Space, references the Kern County Airport Land Use Compatibility Plan and states that China Lake and EAFB will be notified. It is not clear from the record that these installations ever received the document. Impacts on shared water resources for the China Lake installation, along with potential air quality impacts on visibility make it critical that the military have a full opportunity to review all relevant information. Based on the lack of information provided in the document the conclusion of less then significant impacts are not substantiated.

VIII Hydrology and Water Quality

Item a. (p.37) On July 23 ,2007 notification was made to Kern County by the District (attached Exhibit A) that an unregulated contaminant had been detected associated with disinfection and/or treatment facilities (including arsenic treatment) at well sites. This information raises a question as to the potential for contamination of the groundwater and surrounding water wells as this project includes these same types of facilities. This is a potentially significant impact that requires a full discussion as well as new information that requires revision and recirculation of the document.

Item b. (p. 38) The conclusion that the project will not substantially deplete groundwater supplies or affect surrounding land uses is based on incomplete information. The report included in the document only simulated the effects of production wells on the new facilities and does not show the effects on the surrounding property owners' wells. A full modeling study needs to be completed on the potential impacts to all surrounding water wells.

4

Reference 1

Further the MND should provide the public with information regarding the Districts water rights in relation to the groundwater basin. Surrounding property owners of existing homes and wells have overlying rights to sufficient water which supercede the rights of the District to extract water, as your rights would be appropriative rights to attach only surplus waters. (*California Water Service Co v Edward Sidebotham & Son, Inc* (1964) [224 Cal. App. 2d 715, 725.] The courts have further confirmed the overlying users (surrounding property owners) right to reasonable protection against pumping that lowers groundwater levels in the overlying owner's wells. (*Burr v Maclay Rancho Water Co*, (1908) 154 Cal. [428, 435-436]. A mitigation measure should be included that determines, if water levels drop to levels that render the existing well either unuseable or results in cost to redrill for the owner, that the District will adjust operations to prevent such impacts. Absent such a mitigation measure, the impacts to surrounding properties owners they may substantially deplete nearby wells to levels that cannot support a single-family residence are significant and unavoidable.

Along with the absence of a complete analysis of the potential pumping of groundwater at the levels stated in the document (two wells, each with a capacity of pumping 2, 500 gpm) are any mitigation measures to protect and minimize impacts on surrounding private well owners. The following are recommended mitigation measures that could be imposed to lessen the potentially significant impacts on surrounding water well owners. These mitigation measures have been included in a water supply and recharge project EIR approved by the Board of Supervisors and have been successfully implemented in other areas of Kern County.

Proposed Mitigation Measures

1. Create a monitoring committee to monitor the impact of operations on groundwater levels and quality and to ensure that adjacent landowners are protected. The monitoring committee would be responsible for development of a detailed monitoring and operational constraints plan and would ensure that it is implemented. Composition of the monitoring committee shall include, at a minimum, the following representatives: District , Inyokern Community Services District, China Lake, neighboring landowners and/or other selected representatives, and Kern County. The monitoring committee would meet regularly and provide reports to the property owners as well as the Lahontan Regional Water Quality Control Board. All cost for the committee operation are to be borne by the District.
2. To ensure that Project operations do not adversely impact the quality of nearby resident's drinking water, the monitoring committee shall offer to sample and analyze water from domestic drinking water wells located within two or three miles of the operations. In order to assess the results of these analyses, samples will need to be collected before and after operations begin. The sampling and analysis protocols shall be defined in the monitoring and operational constraints plan. If analytical results reveal that the project operations may adversely affect a resident's drinking water well, then operations will be adjusted to prevent such effect or the owner of the well shall be provided compensation of an alternate source of water in the event that adverse effects do occur.

5

Reference 1

The conclusionary statements regarding the amount and adequency of water supply available for future use is based on a single report done in 1993 by the US Bureau of Reclamation. This 14 year old document does not include an cumulative analysis of current conditions that could affect water demands such as the City of Ridgecrest General Plan update, Kern County General Plan update completed in 2004, Current update of San Bernardino General Plan, and the districts own admission of growth on page 2. A complete analysis of demands and availability of water needs to be included in the document so that the public and decision makers can understand the need or other feasible alternatives for the project.

Item e (page 40). There are no "planned storm water drainage systems" in the area. There is, however, dirt and county maintained roads that could be undermined or eroded by releases of water. Analysis should be provided to substantiate this conclusionary statement of "no impact".

Item d (page 40) As previously noted, there is new evidence of the release of an unregulated contaminant from existing water wells. Without a complete project description and analysis of the construction and operation of the disinfection and treatment facilities (including arsenic treatment) the conclusion of "no impact" to water quality is unsupported by the record.

IX Land Use and Planning

Item b (p. 42) The MND uses Section 53091 of the California Government Code to state " General Plan designations and zoning restrictions are not applicable to water facilities." In fact this Government Code Section only references zoning. While saying the district is exempt from the requirements of the General Plan, the document discusses General Plan requirements in a number of places and then appears to be using compliance with the plan to justify minimal analysis and no mitigation.

While the District may be exempt from the General Plan requirements, CEQA does require analysis of indirect impacts of the implementation of a project. The Kern County General Plan Circulation Element requires that section and midsection lines be reserved for a roadway network. No maps were provided showing the location of the recharge ponds or water wells. It is not clear if these facilities would be located within an eventual road right of way to implement the circulation impact. Absent this level of analysis, the impacts are potentially significant for the eventual build out and access to adjacent parcels as well as regional circulation.

IX Population and Housing

Item a (p 46-47) Enhancing the capacity of the Indian Wells Valley Water District to provide for an expanded population and growth in the City of Ridgecrest is clearly growth inducing. In fact page 2 of the document states that the project is intended to "plan for moderate growth of the community". As there is no evidence in the document that there is any current emergency for the District in providing water to current customers, the project is wholly intended to accommodate growth. In addition the activities listed on page 2 and 3 of the MND that are being done by the District to manage growth demands on the water supply are not described in sufficient detail to justify the project as the only alternative. The full growth inducing impacts of increasing the water supply through implementation of this project need to be included in a revised environmental document for review and comment.

Reference 1

XVII Mandatory Findings of Significance

Item a (p. 55) Field studies of the pipeline alignments have not been completed. The recommendations for reduction of impacts on archeology have not been included as mitigation measures to support the conclusion of less then significant with mitigation incorporated.

Item b(p. 56) The conclusion of no impacts for cumulative impacts is conclusionary and unsubstantiated by the record. As detailed in previous comments, the cumulative impacts from growth on water supply quantity and quality have not been addressed. This impact is potentially significant and may require the preparation of an Environmental Impact Report.

Conclusion

The Kern County Planning Department requests that the Board of Directors reopen the public hearing on August 13, 2007 to take public testimony and refer this project back to staff for preparation and circulation of an adequate environmental document.The Mitigated Negative Declaration is inadequate, not in compliance with CEQA and can not be used for approval of the project. The analysis and studies requested in this comment letter, specifically on archeology, air quality and hydrology should be conducted and recommended mitigation measures identified and imposed. Based on the growth inducing and air quality impacts this project is potentially significant and pending the results of additional studies it is not clear that a Mitigated Negative Declaration is sufficient. If the air quality impacts or the project is found to be growth inducing, an Environmental Impact Report may be required. The appropriate document should be prepared and recirculated for a new comment period. All persons who have submitted letters of comment as well as all agencies and parties of interest on the mailing list for the IWVWater District should be mailed copies of the document for review. All surrounding property owners within 1000 feet of the project boundaries, including the pipeline alignments, should also receive direct notification of the availability of the document.

Kern County Planning requests copies and notifications of all actions and hearings on this project, including any resolutions and the filing of any Notice of Determination on the project. If you have any questions regarding these comments please contact Lorelei Oviatt at (661) 862-8866. Thank you for the opportunity to participate in the environmental review process.

Sincerely,

Lorelei H. Oviatt, AICP
Special Projects Division Chief

cc: Resource Management Agency
Environmental Health Services Department
Supervisor Mc Quiston
Craig Peterson
County Counsel – Bruce Divelbiss

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Reference 1

Water System Emergency Interconnection Agreement

1 Identification

This agreement is entered into effective March 1, 1991, between North American Chemical Company ("NACC"), a Delaware corporation, and Indian Wells Valley Water District ("District"), a county water district.

2 Recitals

2.1 NACC owns and operates two separate systems for production and transmission of groundwater from the Indian Wells Valley Basin ("Basin") to its industrial facilities in the Searles Valley. The water systems are known as the Indian Wells Feeder System and the West End System respectively.

2.2 The District owns and operates facilities for production and transmission of groundwater from the Basin to its customers within its boundaries, including the District's A-zone pressure grid system.

2.3 NACC cannot supply all its potable water needs through either of its systems alone. NACC is in need of a backup supply of water in the event of well failure or other emergency. In addition, NACC is in need of a connection between its two systems in order to supply the West End System from wells which are part of the Indian Wells Feeder System.

2.4 The District is also in need of a backup supply of water in the event of well failure or other emergency. In addition, the District is in need of additional pumping capacity to meet its summertime peak demands.

2.5 The parties mutually desire to protect the aquifer of the Basin by, among other things, minimizing pumping from the pumping depression in the Ridgecrest Zone where the wells of NACC's West End System are located.

2.6 In order to accomplish these goals, the parties desire to provide for interconnection of their water systems, to define terms and conditions of providing water from one to the other, to provide for the ownership and operation of the interconnection facilities, and to provide for necessary licenses.

2.7 Kerr-McGee Chemical Corporation and the District entered into a written agreement dated October 29, 1986, entitled "Agreement re Use of Water Well," which provided the District with an alternate source of water to the China Lake Acres area. With the sale of its Searles Valley assets to NACC, Kerr-McGee has assigned its interest in the October 29, 1986 agreement to NACC and the District has consented to this assignment. The parties intend that this agreement supersede the earlier agreement.

2.8 The parties intend that each party retain full ownership and control of its respective water systems. The parties do not intend a merger of systems.

2.9 The term "emergency" as used herein means an unforeseen combination of circumstances, or the resulting state, that calls for immediate action, i.e., a pressing need.

Reference 2

2.10 The parties agree that execution and implementation of this agreement shall not adversely affect either party's right, if any, to produce water from the Basin.

3 Interconnections

The parties agree to establish interconnections between their water systems at the locations shown on the map attached as Exhibit A. Piping and instrumentation diagrams for each interconnection are attached collectively as Exhibit B. The parties may add, delete, or change interconnections by a written document signed by both parties, referring to this agreement, and attaching a map and piping and instrumentation diagram showing the additions, deletions or revisions.

4 Conditions for delivery of water

4.1 Each party's right to receive water from the facilities of the other pursuant to this agreement is limited to quantities in excess of the supplying party's own needs, as determined by the supplying party in its sole discretion and judgment.

4.2 Each party shall have the right to receive water from the other in case of emergency or water shortage. If the emergency is a well or system failure, the recipient shall use reasonable efforts to restore its system and eliminate the need for water from the other party as soon as practicable.

4.3 The District shall have the right to receive water from NACC to meet the District's peak demands subject to any limitations in this paragraph 4.

4.4 NACC shall have the right to wheel water through the District's A-zone pressure grid, subject to the availability of transmission capacity and subject to a wheeling charge as listed in Table 1, payable 30 days after invoicing. These rates are subject to adjustment by written notice to reflect changes in the District's energy cost from a base of $ .10/kwh.

SEASON	Wheeling Charge Per Acre Foot
Summer (June, July, August)	$6.50
Fall and Spring (Sept., Oct., Nov., and March, April, May)	$5.30
Winter (Dec., Jan., Feb.)	$3.10

Table 1. Wheeling charge rate

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Reference 2

4.5 In addition to the rights to receive water in paragraphs 4.2 to 4.4, the parties may mutually agree to transfer water for the purpose of system maintenance, make up, or for any other purpose.

4.6 Each party agrees to make up any water taken under this agreement within a reasonable time, not to exceed one year, so that the net transfer of water over time will be zero. Accordingly, the providing of water under this agreement neither adds to nor detracts from either party's water rights. Neither party purports to sell water to the other party pursuant to this agreement. To avoid any possibility of classification of NACC as a public utility, the provisions of this paragraph may not be waived by NACC except by an instrument in writing, signed by an authorized officer of NACC.

4.7 A party shall give at least 24 hours' telephonic notice to the other party of its intention to request delivery of water under this agreement. In an emergency where water is required on less than 24 hours' notice, the supplying party shall use its best efforts to make water available as soon as possible, without disrupting its own operations.

4.8 Either party may refuse to accept water from the other at any time if, in the recipient's judgment, accepting water will adversely affect the recipient's facilities or water supply.

4.9 The parties agree to establish operating procedures for requests for, and delivery of, water under this agreement, which may be changed from time to time.

5 Ownership and operation of facilities

5.1 Each party shall maintain ownership of its own facilities, and shall operate and maintain its own facilities, at its own expense. For each interconnection made pursuant to this agreement, the supplying party shall own, cause to be installed and operate all pipes, equipment, instrumentation and facilities from its own system up to and including the water meter and the recipient shall own, cause to be installed and operate all pipes, equipment, instrumentation and facilities from the water meter to its own system, unless otherwise agreed. The ownership of all pipes, meter equipment, instrumentation and facilities shall be shown on the piping and instrumentation diagrams for that interconnection (see Exhibit B).

5.2 Each connection shall have a gate valve on both sides, each of which shall be capable of separating the respective systems. Each party shall have sole control over its valve. The supplying party shall control valving for regulation of pressure and flow, in accordance with the operating procedure established in writing by the parties.

5.3 A meter shall be maintained on each connection by the supplying party, who shall allow access to the meter to the other party. Upon any transfer of water pursuant to this agreement, both parties shall record the meter reading before commencing and after completing the same. Meters shall be calibrated at least annually, or more frequently on reasonable request of the other party.

5.4 If repairs become necessary in order to reliably and safely maintain the interconnections provided for in this agreement, each party agrees to perform such repairs on its own facilities and at its own expense, if it is economically feasible to do so, within a reasonable time after notification from the other party of the need for the repair.

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Reference 2

5.5 Each party will conduct its operations under this agreement in such a way as to minimize disruption to the operations of the other.

5.6 Neither party shall operate, interfere with or tamper with the other's facilities without the prior written consent of the other party.

6 Licenses

6.1 NACC hereby grants the District a non-exclusive, revocable license for installation and operation of facilities required or permitted by this agreement which are owned by the District but located on land owned in fee by NACC.

6.2 The District hereby grants NACC a non-exclusive, revocable license for installation and operation of facilities required or permitted by this agreement which are owned by NACC but located on land owned in fee by the District.

6.3 The District shall be entitled to construct, install, maintain and operate any additional improvements or facilities on land owned in fee by NACC deemed necessary or appropriate by the District to handle, distribute or treat water after its delivery to the District if such actions do not interfere with NACC's continued use of the facilities and subject to the approval of NACC, which shall not be unreasonably withheld.

6.4 NACC shall be entitled to construct, install, maintain and operate any additional improvements or facilities on land owned in fee by the District deemed necessary or appropriate by NACC to handle, distribute or treat water after its delivery to NACC if such actions do not interfere with the District's continued use of the facilities and subject to the approval of the District, which shall not be unreasonably withheld.

7 Novation

The "Agreement re Use of Water Well" described in paragraph 2.7 is terminated and the continuing rights and obligations of the parties with respect to the subject matter of that agreement shall hereafter be governed by this agreement.

8 Negation of warranties--no liability

Neither party makes any representation or warranty as to (1) quality of water produced or delivered; (2) the condition of any of its wells, pipelines, or other facilities; (3) the availability of water for delivery under this agreement; or (4) the continued operation of its wells or other facilities. Neither party shall have any liability with respect to such matters.

9 Termination

9.1 This agreement shall continue in force until terminated by either party (1) on six months' written notice to the other; (2) following a material default by the other party, if the default has not been cured within 30 days after written notice of the default has been given to the other party; or (3) upon execution of a written termination agreement signed by both parties.

Reference 2