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November 25, 2014

Brad Hubbard
Bureau of Reclamation
2800 Cottage Way, MP-410
Sacramento, CA 95825

Frances Mizuno
San Luis & Delta-Mendota Water Authority
P.O. Box 2157
Los Banos, CA 93635

Re: Long-Term Water Transfers Program Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR)

Dear Mr. Hubbard and Ms. Mizuno:

Butte County appreciates the opportunity to provide comments on the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the proposed Long-Term Water Transfers Program. Butte County and its surrounding region have a vested interest in assuring that the Long-Term Water Transfers Program has the least impact upon the community, agricultural economy and environment. Our region's water resources provide the life blood for our agricultural-based communities, economy and environment. Much of our local water supply comes from the various groundwater basins throughout the region that are recharged through these creeks and rivers.

We are troubled by the short amount of time afforded to provide comments on the EIS/EIR. It has been almost four years since the Bureau released the draft EIS/EIR scoping document. The Butte County Board of Supervisors submitted comments on the scoping document on February 22, 2011. Three years later the Bureau released a draft EIS/EIR, yet only provided the public 60 days to review, analyze and comment. The community has a strong interest in the Long-Term Water Transfers Program. So, in fairness, the Bureau of Reclamation (Bureau) should extend the comment period for at least ninety days.

Based on our preliminary review, we believe that the EIS/EIR is seriously flawed and will need to be revised and recirculated. The relied upon data is outdated, incomplete and selectively chosen. The result is that the EIS/EIR fails to meet the requirements of the National

Environmental Policy Act and the California Environmental Quality Act. Again, due to the inadequate amount of time afforded to comment, the comments provided by the Butte County Board of Supervisors do not reflect a full review of the document.

The Long-Term Water Transfers Program purports to assist water users south of the Delta with immediate implementable and flexible supplemental water supplies to alleviate shortages. The project objectives claim that shortages are expected due to hydrologic conditions, climatic variability, and regulatory requirements. Project justification intends to address unforeseen, short-term water supply challenges. The reality is that the circumstances facing the water users south of the Delta are neither short-term nor unforeseen. These water supply reliability challenges are baseline conditions that must be addressed at the local and regional level. Ironically, water users north of the Delta face similar challenges in terms of hydrologic conditions and climatic variability, but the EIS/EIR inadequately assesses these limitations. The project intends to establish a long-term water transfer program to meet the current and future demands south of the Delta, not based on any viable criteria.

Even though the EIS/EIR identified significant impacts in the Sacramento Valley, the methodology underestimated those impacts. The EIS/EIR identified significant impacts including lower groundwater elevations, changes to groundwater quality, reduction in groundwater recharge and decrease flows in surface water. However, it fails to take into account that the reduction in stream flows and the lowering of Lake Oroville that will harm the local economy. In addition to underestimating these impacts, the mitigation measures in the EIS/EIR are not viable and will not mitigate the significant impacts. The following specific examples highlight the flaws in the EIS/EIR and provides justification for a revised and recirculated EIS/EIR.

First, the description of the regulatory setting in Chapter 3 – Groundwater (section 3.3.1.2) is incomplete, misleading and inaccurate. The document makes no mention of the recently enacted Sustainable Groundwater Management Act. The implementation of the Sustainable Groundwater Management Act will occur during the ten year period of the water transfer program. The Sustainable Groundwater Management Act will affect the buyer and seller regions in regard to their groundwater management, land use, and water demands. The data and management programs developed through the Sustainable Groundwater Management Act will change the assumptions in the EIS/EIR.

Second, the EIS/EIR must reference and acknowledge Area of Origin provisions in the Water Code. Specifically, the EIS/EIR must reference Water Code 85031, which states, *“This division does not diminish, impair, or otherwise affect in any manner whatsoever any area of origin, watershed of origin, county of origin, or any other water rights protections, including, but not limited to, rights to water appropriated prior to December 19, 1914, provided under the law. This division does not limit or otherwise affect the application of Article 1.7 (commencing with Section 1215) of Chapter 1 of Part 2 of Division 2, Sections 10505, 10505.5, 11128, 11460, 11461, 11462, and 11463, and Sections 12200 to 12220, inclusive.”* Honoring area of origin water rights is consistent with state water policy and a foundational element to California’s water future. In addition, the EIS/EIR should also discuss how the project complies with SB1X, which calls for a reduced reliance on the Delta and to promote regional water supply reliability.

The description of the local regulatory setting in the EIS/EIR failed to reference the Butte County Groundwater Conservation Ordinance (Chapter 33 of the Butte County Code), which Butte County voters overwhelmingly adopted in 1996. The Groundwater Conservation Ordinance requires a permit for water transfers that include a groundwater substitution component. The primary purpose of this Ordinance is to ensure that an adequate independent environmental review occur and to assure that groundwater resources would not be adversely affected (i.e., overdraft, subsidence, saltwater intrusion) or result in uncompensated injury to overlying groundwater users and others. Additionally, the process of the Groundwater Conservation Ordinance brings a measure of transparency and public involvement that should be part of any water governance process. It is imperative that the proposed program adhere to the spirit and intent of local groundwater ordinances that have been codified since the Drought Water Bank held in the early 1990s. In this regard, the program needs to recognize that groundwater basins can extend across multiple administrative jurisdictions. Groundwater substitution transfers that occur in Colusa or Glenn counties have the potential, over the long term, to draw down groundwater sources shared with Butte County.

The EIS/EIR (Chapter 3, p. 21) includes a limited description of groundwater production, levels and storage in the Sacramento Valley. The section fails to report on the extensive data and analysis of groundwater conditions in this area. The EIS/EIR bases its analysis on a few selected wells, and provides a generalized description of regional groundwater conditions based on those wells. What is most troubling is the conclusion that the Sacramento Valley groundwater trends indicate that “wells in the basin have remained steady, declining moderately during extended droughts and recovering to pre-drought levels after subsequent wet periods.” This conclusion misrepresents the reality of groundwater conditions in the Sacramento Valley. The EIS/EIR acknowledges that one of the selected wells, 21N03W33A004M, shows a steady decline but discounts this data as an anomaly. The EIS/EIR fails to adequately take into consideration that current groundwater conditions are being impacted beyond routine seasonal fluctuations and does not account for projected impacts from climate change. In some areas, BMO alert or trigger levels have been reached. There are a number of areas that have a steady decline in groundwater elevation unrelated to drought conditions. The EIS/EIR should have included a more comprehensive analyses of groundwater conditions and locally adopted Basin Management Objectives (BMO), clearly describing how BMOs will be utilized and how the program will address current conditions.

In addition to misrepresenting groundwater elevation data, the EIS/EIR also willfully ignored and misrepresented the current condition of streams and creeks in the Sacramento Valley. The Sacramento Valley subsidence monitoring data are readily available through the Department of Water Resources and the EIS/EIR should have included that data. For specific data and analysis of Butte County groundwater conditions, we invite the Bureau to review the annual Groundwater Status Report at:

<http://www.buttecounty.net/waterresourceconservation/GroundwaterStatusReports.aspx>.

We have concerns over the modeling methodology and the resultant appraisal of that data. Unfortunately, the limited amount of time afforded to comment precludes Butte County from conducting an in-depth analysis. However, a preliminary review of the modeling data raised a number of questions. One is the implication of the limited dataset to conduct the CalSim II

modeling analyses. The choice of data used to establish baseline conditions for the SACFEM2013 analysis is critical to identifying the impacts of the study. The reliance on data from 1970 to 2003 fails to take into account current conditions and trends. For example, the analysis of the data used lead to an assumption that 12 out of 33 years would result in groundwater substitution transfer events. However, recent experience (2000-2014) has shown that transfer programs have actually occurred in 9 of 15 years; more than one and a half times that of the analysis. A reasonable expectation is that having an established Long-Term Transfer Program would facilitate a higher frequency of water transfers and that, in turn, groundwater substitution transfers would occur in most years. The discrepancy between calculated expectations versus actual occurrences demonstrates an obvious fundamental flaw in the EIS/EIR that requires revision.

One of the most egregious flaws with the EIS/EIR is how the impacts from groundwater substitution transfer programs are identified and mitigated. According to the EIS/EIR (p. 3.3-61), “an impact would be potentially significant if implementation of groundwater substitution transfers or cropland idling would result in:

- A net reduction in groundwater levels that would result in adverse environmental effects or effects to non-transferring parties;
- Permanent land subsidence caused by significant groundwater level decline.
- Degradation in groundwater quality such that it would exceed regulatory standards or would substantially impair reasonably anticipated beneficial uses of groundwater;”

Based on our preliminary analysis, the EIS/EIR fails to adequately assess the impacts from groundwater substitution transfer programs. The EIS/EIR underestimates the effects and fails to adequately mitigate those effects in regards to determining whether there is a net reduction in groundwater levels that would result in adverse environmental effects or effects to non-transferring parties. As previously shown, the assumption that groundwater substitution would occur on a limited basis was false, so the simulated changes in water table elevations can only be assumed to be grossly underestimated. Additionally, the EIS/EIR conclusion that most wells in the Sacramento Valley are deeper than the resulting groundwater elevations is not true. In actuality, most of domestic wells are less than 100 feet. The combination of these two erroneous conclusions resulted in the EIS/EIR completely failing to assess the potential impacts of the groundwater substitutions to shallow domestic wells. The lowering of groundwater elevations from groundwater substitutions during a drought period would likely make a number of domestic wells inoperable. The conclusion that shallow wells would only see a reduction in yield and not go “dry” is equally untrue. During the past two drought periods, Butte County and the Sacramento Valley have responded to numerous incidents of domestic wells failing. The EIS/EIR must recognize and analyze how the Long-Term Transfer Program will contribute and exacerbate the impacts of a natural disaster to those who rely on domestic wells.

The EIS/EIR (Chapter 3.7) identified that the Long-Term Water Transfers Program will impact local streams and jeopardize critical ecosystems. Of particular concern is the calculated stream flow reduction in Little Chico Creek of more than 1 cubic foot per second and a reduction of more than 10%. The EIS/EIR categorized the impact to Little Chico Creek as a significant impact. Unfortunately, the EIS/EIR underestimated the impacts and relied on outdated

information again. As mentioned previously, the EIS/EIR underestimates the frequency of groundwater substitution events, and the data relied upon for analyses are outdated. The stream gaging data along Little Chico Creek was based on data from 1976 to 1995, and the CalSimII modelling results did not include data after 2003. Because the stream data relied upon in the EIS/EIR do not reflect current baseline conditions in the Sacramento Valley, it raises significant doubts to the validity of the conclusion that the resultant reduction in flows, particularly in Little Chico Creek, would not impact spring-run Chinook salmon. Therefore, the Bureau must reevaluate the environmental impacts to streams and aquatic ecosystems based on current data.

The environmental analysis identified a number of significant impacts requiring mitigation. Unfortunately, the proposed mitigation measures, particularly Mitigation Measure GW-1: Monitoring Program and Mitigation Plans, will not mitigate adverse environmental effects or minimize potential effects to other legal water users. The EIS/EIR, as written, does not include criteria or standards that must be met to mitigate significant impacts and the Monitoring Program (3.3.4.1.2) has vague and subjective standards for what constitutes as an acceptable monitoring network. The EIS/EIR should assess the existing monitoring network and identify monitoring gaps based on the locations of potential willing sellers.

Another fundamental flaw is the expectation that potential sellers be required to develop a mitigation plan. The initial premise of the mitigation plan is that the seller's monitoring program would indicate whether the operation of wells for groundwater substitution pumping are causing substantial adverse impacts. Unfortunately, because the definition of substantial adverse impacts is not defined, the process to monitor and mitigate third party impacts lacks clarity. First, the Long-Term Water Transfers Program must define the specific parameters for what constitutes substantial adverse impacts. Then the Long Term Water Transfers Program must have an unambiguous, transparent, locally vetted dispute resolution program. It is imperative that the Long-Term Water Transfers Program recognize that potential impacts associated with the transfer of water from the Sacramento Valley need to be addressed through this type of approach.

The description of potentially significant unavoidable impacts (Section 3.3.5) contains inaccurate statements and misleading information. First, it is unclear why the Northern Sacramento Valley Integrated Regional Water Management Plan (NSVIRWMP) is included in this section. It appears that the Bureau does not understand the policy and governance of the NSVIRWMP. The NSVIRWMP does not have programs or project priorities that could be construed as potentially causing significant unavoidable impacts. Similarly, the reference to and characterization of the Tuscan Aquifer Investigation Project is inaccurate. The Tuscan Aquifer Investigation Project was a scientific project that intended to improve the understanding of the recharge characteristics of the lower Tuscan Formation and the interconnectedness of the basin. The characterization that the Tuscan Aquifer Investigation Project "would increase pumping within (or near) the Seller Service Area" is categorically false. If the Bureau had taken the time to review the data and reports from the Tuscan Aquifer Investigation, they might have improved their analysis by using current scientific data. It is apparent that they chose not to do so and mischaracterized a scientific investigation. We demand that the Bureau remove the reference to the Tuscan Aquifer Investigation Project.

Finally, we have questions and concerns regarding the designated lead agencies in the EIS/EIR. The Department of Water Resources (DWR) should be designated as a lead agency rather than as a Responsible Agency. A number of the participating agencies are State Water Project (SWP) Contractors regulated by DWR and the conveyance for the project will use SWP facilities under the jurisdiction of DWR. One of the risks and uncertainties identified in Chapter 2 of the EIS/EIR was the ability to coordinate water transfers with DWR. Additionally, we fail to understand why the San Luis & Delta-Mendota Water Authority (SLDMWA) is the only lead water agency. Other water agencies have responsibilities equal to those of SLDMWA. The roles and responsibilities of participating agencies (Section 1.5) is inadequate and vague. The EIS/EIR fails to justify the choice of the SLDMWA as the sole lead agency when there is such a clear conflict of interest between the SLDMWA and the northern Sacramento Valley counties that overlie the groundwater sources that will contribute to groundwater substitution transfers. The document fails to provide a rationale for not including other water agencies named in the EIS/EIR as lead agencies.

The magnitude of the proposed program is daunting and raises considerable concerns. In our comments on the scoping of the EIS/EIR in 2011, we surmised that an adequate EIS/EIR may not be possible based on the length and breadth of the proposed program. It appears that our concerns are true.

In conclusion, we cannot stress enough that actions through the Long-Term Transfer Program could have grave economic and environmental consequences in the Sacramento Valley that must be addressed. The EIS/EIR woefully fails to meet minimal environmental assessment standards, provides misleading statements and avoids including a complete, current, data set. We recommend that the Bureau of Reclamation extend the comment period for at least 90 days to allow a more complete review. Upon receipt of the comments, the Bureau must remedy the deficiencies in the EIS/EIR and recirculate it for comment.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Teeter', is written over a faint rectangular stamp.

Doug Teeter, Chair
Butte County Board of Supervisors